

**Human Trafficking of Women for Sexual Exploitation in
India: A Study with Special Reference to Lucknow City**

Thesis

**SUBMITTED TO THE
BABASAHEB BHIMRAO AMBEDKAR UNIVERSITY, LUCKNOW**



FOR THE AWARD OF DEGREE OF

Doctor of Philosophy

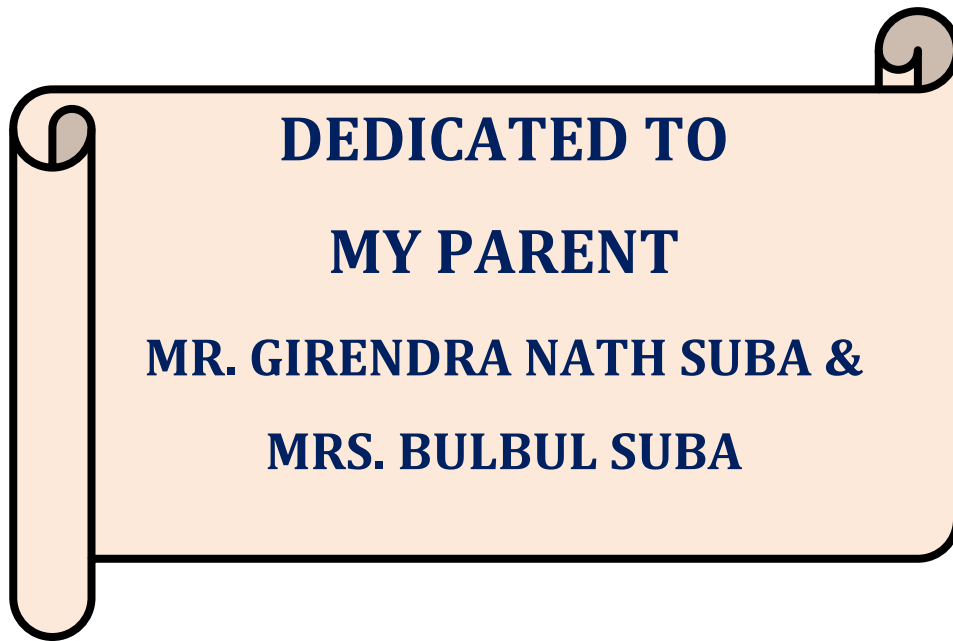
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2022



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DECLARATION

I, **Chandana Suba**, hereby declare that this research work embodied in this Ph.D. thesis titled "**Human Trafficking of Women for Sexual Exploitation in India: A Study with Special Reference to Lucknow City**" has been carried out by me under the supervision of **Prof. (DR.) SANJEEV KUMAR CHADHA** Head, Department of Law, Babasaheb Bhimrao Ambedkar University, Lucknow.

This research work is an original work and it has not been previously submitted in part or full for any other degree or diploma in this or any other University. This is also declare that the thesis is essentially free from all kinds of plagiarism.

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CERTIFICATE

This is to certify that the thesis titled "**Human Trafficking of Women for Sexual Exploitation in India: A Study with Special Reference to Lucknow City**" submitted by **Chandana Suba** is an original research work and has not been previously submitted in part or full for the award of any other degree or diploma to this or any other university.

This thesis submitted to Babasaheb Bhimrao Ambedkar University, Lucknow satisfies all the requirements as stipulated in the Doctor of Philosophy (Ph.D.) Regulation 2016 as amended in 2017 and it is fit for submission and evaluation for the award of degree of Doctor of Philosophy of the University.

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ABBREVIATION

AIR	:	All India Reporters
All	:	Allahabad
APOV	:	Abuse of Power or of a Prostitution of Vulnerability
Art.	:	Article
BBA	:	Bachpan Bacho Andolan
CBI	:	Central Bureau of Investigation
CEDAW	:	Convention on Elimination of all form of Discrimination against
Cr.p.c.	:	The Code of Criminal Procedure
CrI	:	Criminal
Ed. /ed.	:	Edition/ Edited
Et al.	:	And others (etali)
Etc.	:	And so on (et cetera)
FIR	:	First Information Reports
H.C.	:	High Court
i.c.	:	It is (id est)
Ibid	:	in the same place (Ibiden)
ICESCR	:	International Convention on Social and Cultural Rights
Id.	:	The Same (Idem)
ILO	:	International Labour Organization
INTERPOL	:	International Police Organization
IPC	:	The Indian Penal Code, 1860
ITPA	:	Immoral Trafficking Act, 1956
J.	:	Justice
JJ Act	:	Juvenile Justice Act, 2000



















Ltd.	:	Limited
NCRB	:	National Crime Record Bureau
NCW	:	National commission for Women
NGOs	:	Non- Government Organization
NHRC	:	National Human Rights Commission
Ors	:	Others
P.	:	Page
PC.	:	Privy Council
PIL	:	Public Interest Litigation
pp.	:	Pages
Pvt.	:	Private
SC	:	Supreme Court
SCC	:	Supreme Courts Cases
Sec.	:	Section
SITA	:	Suppression of Immoral Trafficking Act
SITA	:	The Suppression of Immoral Trafficking in Women and Girls
STDS.	:	Sexual Transmitted Diseases
Supra	:	in the work cited
UDCR	:	Universal Declaration of Child Rights
UK	:	United Kingdom
UNDP	:	United Nations Development Programme
UNESCO	:	United Nations Educational Scientific and Cultural Organization
UNFPA	:	United Nations Population Fund
UNICEF	:	United Nations Children’s Emergency Fund
UNO	:	United Nations Organization

UNTOC	:	United Nations Countries against Transnational organized Crime
US	:	United States of America
viz-	:	Namely
vol.	:	Volume
Vs. /v.	:	Versus
WWII	:	World War II
AHTUS	:	Anti –Human Trafficking Units
NAHTA	:	The National Anti-Human Trafficking Authority

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HUMAN TRAFFICKING OF WOMEN



CHAPTER-I
INTRODUCTION



INTRODUCTION

1.1 INTRODUCTION

“Human life is the gift of our creature and it should never be for sale. It takes a special kind of depravity to exploit and hurt the most vulnerable member of society. Human traffickers rob children of their innocence, they expose them to the worst of life before they have been seen much of life.”

- George W. Bush

Human trafficking is a highly debatable issue in both domestic ally as well as internationally. According to various authoritative reports thousands of persons are trafficked within and across the borders every year. Human trafficking is real and dark side of our society. In the modern world, nearly all the countries are facing problems relating to human trafficking and the condition in India is also the same. Human trafficking is the largest criminal activity and the fastest growing organized crime in the world.

The Indian Constitution,¹ part third contains fundamental rights which are enforceable by the authority of the court, if any person is deprived from it. One of these rights, as enumerated in Article 21 of the Indian Constitution, is the right to life and personal liberty which incorporates a right to live with human dignity. Lack of adequate protection from the state and adverse economic necessities impel people belonging to low strata to indulge into occupations which contravene their human and constitutional rights. The lackadaisical approach of the state is exhibited by the growing incidents of human

¹ The Constitution of India, 1950; Jain, M. P., *Indian Constitutional law* (LexisNexis, Haryana, India, 8th edn., 2018).

trafficking. The researcher provides for a systematic way to understand human trafficking.

The Constitution of India, Part three of under Article 23, prohibits trafficking in human beings. According to Article 23, Prohibition of trafficking in human beings and forced labor- (1) trafficking in human beings and beggar and other similar forms of forced labor are prohibited and any contravention of this provision shall be an offence punishable in accordance with the law. This includes trafficking for all purposes. Women and children's from poor back ground are the main target groups of traffickers.

The Victims of Trafficking Violence Protection Act of 2000² defines human trafficking as (1) sex trafficking in which a commercial sex act is included by force, fraud, or coercion, or in which the person include to perform such act has not attained 18 years of age, or (2) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Article 3 of The UN Trafficking Protocol (United Nation Protocol To Prevent, Suppress And Punish Trafficking In Person, especially Women And Children, Supplementing The United Nations Convention Against Trans-National Organized Crime, December 2000) defines as follows: “the recruitment, transportation, transfer, harboring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall be including, at the minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or

² The Victims of Trafficking Violence Protection Act, 2000

services, slavery or practices similar to slavery, servitude or removal of organs³.

On the basis of the definition given in the Trafficking in Persons Protocol, it is evident that trafficking in persons has three constituent elements:-⁴ The Act (What is done) - Recruitment, transportation, transfer, harbouring or receipt of persons. The Means (How it is done) - Threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability or giving payments or benefits to a person in control of the victim. The Purpose (Why it is done) - For exploitation which includes exploiting for prostitution of others, sexual exploitation, forced labor, slavery or similar practices and the removal of organs. Section 10 of the Indian penal code, 1860 defines woman as: the word “woman” denotes a female human being of any age⁵.

Table- No 1: Year wise data of Human Trafficking related Cases in Uttar Pradesh from 2013 to 2020.⁶

Year	Number of cases registered	Number of recovered victims	Number of arrested criminals
2013	9	42	23
2014	8	17	25
2015	11	50	23
2016	79	920	172
2017	46	66	162
2018	35	86	115
2019	48	137	204
2020	90	174	344

³ The UN Trafficking Protocol (United Nation Protocol To Prevent, Suppress And Punish Trafficking In Person, especially Women And Children, Supplementing The United Nations Convention Against Trans-National Organized Crime, December 2000)

⁴ Siller N.,van Doore K.E. (2020) Establishing the Constituent Elements of Trafficking in Persons: Conceptualizing “Transnationality” and “Involvement by an Organized Criminal Group”. In: Winterdyk J., Jones J. (eds) The Palgrave International Handbook of Human Trafficking. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-319-63058-8_12

⁵ The Indian penal code, 1860

⁶ National Crime Records Bureau (Ministry of Home Affairs) Government of India, Crime in India, Statistics

According to Table- No 1, NCRB published several crime data reports named “CRIME IN INDIA” under reported Human trafficking related cases in Uttar Pradesh from 2013 to 2020.⁷

The National Crime Records Bureau (NCRB) released its annual crime data, “Crime in India-2017”. In this report, there was, however, a nine per cent increase in kidnapping and abduction cases in 2017, with 95,893 cases registered against 88,008 in 2016. According to NCRB data a total number of 1,00,555 (23,814 male and **76,741 female**) victims were reported kidnapped or abducted, out of which 56,622 (14,296 male and **42,326 female**) victims were children and 43,933 (9,518 male and **34,415 female**) victims were adults during 2017⁸.

Table- No 2: Number of Victims Trafficked (Human Trafficking) -2018.

	Below 18 years of age Male and Female			Above 18 years of age Male and Female			Total Male and Female		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
Utter Pradesh	2	39	41	0	49	49	2	88	90
All India	1587	1247	2834	482	2472	2954	2069	3719	5788

According to Table- No 2, NCRB published crime data report named “CRIME IN INDIA- 2018” under reported Human trafficking related trafficked victims divided into two category such as (i) below 18 years of age Male and Female and (ii) above 18 years of age Male and Female, in Uttar Pradesh total

⁷ <https://ncrb.gov.in/en/crime-india>

⁸ Crime in India-2017

number of trafficked victims are 90 and in India total number of victims trafficked are 5788 (year 2018).⁹

Table- No 3: Number of Victims Trafficked (Human Trafficking) -2019.

	Below 18 years of age Male and Female			Above 18 years of age Male and Female			Total Male and Female		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
Utter Pradesh	16	16	32	11	94	105	27	110	137
All India	1742	1172	2914	795	2907	3702	2537	4079	6616

According to Table- No 3, NCRB published crime data report named “CRIME IN INDIA- 2019” under reported Human trafficking related trafficked victims divided into two category such as (i) below 18 years of age Male and Female and (ii) above 18 years of age Male and Female, in Uttar Pradesh total number of trafficked victims are 137 and in India total number of victims trafficked are 6616(year 2019).¹⁰

Table- No 4: Number of Victims Trafficked (Human Trafficking) -2020.

	Below 18 years of age Male and Female			Above 18 years of age Male and Female			Total Male and Female		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
Utter Pradesh	0	61	61	0	119	119	0	180	180
All India	1377	845	2222	535	1952	2487	1912	2797	4709

⁹ Crime in India-2018

¹⁰ Crime in India-2019

According to Table- No 4, NCRB published crime data report named “CRIME IN INDIA- 2020” under reported Human trafficking related trafficked victims divided into two category such as (i) below 18 years of age Male and Female and (ii) above 18 years of age Male and Female, in Uttar Pradesh total number of trafficked victims are 180 and in India total number of victims trafficked are 4709 (year 2020).¹¹

Table- No 5: Victims rescued of Human Trafficking -2018.

	Below 18 years of age Male and Female			Above 18 years of age Male and Female			Total Male and Female		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
Utter Pradesh	2	39	41	0	45	45	2	84	86
India	1456	902	2358	413	2493	2960	1869	3395	5264

According to Table- No 5, NCRB published crime data report named “CRIME IN INDIA- 2018” under reported Human trafficking related rescued victims divided into two category (i) such as below 18 years of age Male and Female and (ii) above 18 years of age Male and Female, in Uttar Pradesh total number of rescued victims are 86 and in India total number of rescued victims are 5264 (year 2018).¹²

¹¹ Crime in India-2020

¹² Supra 9

Table- No 6: Victims rescued of Human Trafficking -2019.

	Below 18 years of age Male and Female			Above 18 years of age Male and Female			Total Male and Female		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
Utter Pradesh	12	20	32	7	98	105	19	118	137
India	1743	1094	2837	770	2964	3734	2513	4058	6571

According to Table- No 6, NCRB published crime data report named “CRIME IN INDIA- 2019” under reported Human trafficking related rescued victims divided into two category (i) such as below 18 years of age Male and Female and (ii) above 18 years of age Male and Female, in Uttar Pradesh total number of rescued victims are 137 and in India total number of rescued victims are 6571 (year 2019).¹³

Table- No 7: Victims rescued of Human Trafficking -2020.

	Below 18 years of age Male and Female			Above 18 years of age Male and Female			Total Male and Female		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
Utter Pradesh	0	58	58	0	116	116	0	174	174
India	1350	801	2151	553	1976	2529	1903	2777	4680

According to Table- No 7, NCRB published crime data report named “CRIME IN INDIA- 2020” under reported Human trafficking related rescued victims divided into two category (i) such as below 18 years of age Male and Female

¹³ Supra 10

and (ii) above 18 years of age Male and Female, in Uttar Pradesh total number of rescued victims are 174 and in India total number of rescued victims are 4680 (year 2020).¹⁴

Table- No 8: Victims Rescued under Human Trafficking- 2018 to 2020.

S. No.	India			Uttar Pradesh		
	Male	Female	Total	Male	Female	Total
2018	1869	3395	5264	2	84	86
2019	2513	4058	6571	19	118	137
2020	1903	2777	4680	0	174	174

According to Table- No 8, NCRB published crime data report named “CRIME IN INDIA- 2018 to 2020” under reported Human trafficking related rescued victims profile wise in India total number of rescued victims are 5264 (year 2018), 6571 (year 2019), 4680 (year 2020) and in Uttar Pradesh total number of rescued victims are 86 (year 2018) 137 (year 2019), 174 (year 2020).

Table- No 9: Purpose of Human Trafficking- 2018.

State/ Nation	Forced Labour	Sexual Exploitation for Prostitution	Domestic Servitude	Force Marriage	Petty Crimes
India	1046	1922	143	220	7
Uttar Pradesh	0	46	3	29	0

According to Table- No 9 NCRB, published crime data report named “CRIME IN INDIA- 2018” under reported Human Trafficking for specific purpose (i) Forced Labor (ii) Sexual Exploitation for Prostitution (iii) Domestic Servitude (iv) Forced Marriage and (v) Petty Crimes 2018.¹⁵

¹⁴ Supra 11

¹⁵ Supra 9

1.2. STATEMENT OF PROBLEM

In the modern times, the increasing percentage of human trafficking for sexual exploitation in India mainly consists of maximum percentage of women as victims? Social problems arising out of violation of their legitimate constitutional and legal rights change in social status and social outlook such as the problem of rehabilitation, problem of improving social image, problem of re-acceptance by family, problem of marriage and other social evils etc. Problems related to health, physical and mental serious incurable diseases: HIV and other infectious diseases and suffering from mental incurable diseases like mental trauma, deformed mind and other mood related diseases.

1.3. OBJECTIVES OF RESEARCH

Specific objectives of proposed research are:

- Objective of proposed research is to analyze the constitutional and legal perspectives of human trafficking in Lucknow city of Uttar Pradesh, India.
- To study the need of identifying factors of human trafficking.
- To explore the preventive measures of human trafficking.
- To analyze the anti- trafficking legislations and the problems faced by the Uttar Pradesh Government in its enforcement.
- To study the prevention, control and abolition of human trafficking and rehabilitation, protect and assist Trafficked victim person?
- To study the judicial views on Human trafficking victims and criminal justice system in India.

1.4. IMPORTANCE OF RESEARCH

Proposed research will analyze why human trafficking is to be identified as a growing phenomenon, whether the Present Acts or policies to prevent trafficking are capable or not in addressing the real problems of vulnerable populations according to their own needs, in their own contexts and will

identify the constitutional and legal functions of the concerning authority under the law. The study will also suggest constitutional/legal preventive measures required to be taken in order to conduct human trafficking. This will provide guidance to policy makers to modify/amend constitutional/legal provisions. This research is useful and very important for the nation and for the Indian society. The research will help to identify the impact of human trafficking. It will further help to identify the constructive suggestions to improve the social impact and social life. Therefore, the research is worth to meet out the social and national problem to ensure social justice in India. The importance of this research, is to study the trends and dimensions of trafficking in order to identify the vulnerability factors and issues so that it would facilitate the response systems in developing and implementing holistic policies and programs to combat human trafficking.

1.5. REVIEW OF LITERATURE

The researcher visited central Library of the Babasaheb Bhimrao Ambedkar University, Lucknow as well as Dr. Ram Manohar Lohiya National Law University, Lucknow and the University of Lucknow and collected materials and review. Researcher also collected many literatures on the topic of Human Trafficking which are given below:

Human Trafficking, by Minal H. Upadhyay, Shri Niwas Publication, India, Jaipur, 1st Edition, 2012. In this literature the author dealt with the legal lack, root causes, problems and objects of Human Trafficking. How the state failed to preserve and protect their rights which have in turn aggravated the deplorable plight of the economically backward section of the society. Lack of adequate protection from the state adverse economic necessities impel people belonging to low economic strata to indulge into occupations which contravene their human and Constitutional rights. The network of human trafficking is headed and managed by big mafias and their agents who take undue advantage of innocence, miser ability and vulnerability of the poor and illiterate people

who get lured by the fancy and attractive claims alleged by these agents. The vast population and poverty is the root cause of the problem of human trafficking in India. Poor people are often allured to sell their human organs, especially Kidneys. India is a source, destination, and transit for the purpose of force labour and commercial sexual exploitation. In India the problem in human trafficking is estimated to be in millions.

Human Trafficking Around the World Hidden in Plain Sight, Rita J. Simon, and Hepburn Stephane, Columbia University Press, New York, 2013. In this literature author focuses on the reasons of Human Trafficking. Author said India may appear to be simply another poor country. But it has a very complex culture with a root issue of caste discrimination behind some of our social evils. India's constitution explicitly prohibits discrimination on the basis of religion, race, caste, sex, or place of birth: yet prejudice persists. In what is called the silent apartheid, those marginalized by the caste system are person of the Dalit/ Scheduled castes (SC), formally Untouchables; the Scheduled tribes (ST); and the other backward classless (OBC). "Together these groups are classically known as the Sudras or the slave/ vassal castes," The most prevalent form of trafficking in India occurs within the nation upon its own citizens, mainly for forced labor. The victims are men, women and children forced to work off debts by laboring in brick kilns, rice mills and embroidery factories or by toiling as agricultural workers or domestic servants.

Women and Crime, by Stacy L. Mallicoat and Connie Estrada Ireland, Sage Publication India Pvt. Ltd., New Delhi, 2014. In this literature author clarifies the purpose, methods and reasons of Human Trafficking. Traffickers use several methods to manipulate women and girls into the sex trade and prey on their poor economic standing and desires for improving their financial status. These enticements include offers of employment, marriage, and travel. Each of these opportunities is a ruse to trap women into sexual slavery. In some cases, women may be kidnapped or abducted, although these tactics are rare

compared to the majority of cases, which involve lies, deceit, and trickery to collect victims. In some cases, young children are recruited by family friends or community members or may even be intentionally sold into servitude by their own parents. Traffickers use a number of coercive methods and psychological manipulations to maintain control over their victims and deprive them of their free will, to render them subservient and dependent by destroying their sense of self and connection to others, and to make their escape virtually impossible by destroying their physical and psychological defenses. The emotional and physical trauma, as well as the degradation associated with being subjected to humiliation and violence, treatment as a commodity, and unrelenting abuse and fear, presents a grave risk to the physical, psychological and social-emotional development of trafficking victims.

Women and Crime, by Dr. Babita Chugh, Rajat Publications New Delhi, India, Daryaganj, 1st Published, 2015. In this literature the author has identified several reasons of Human Trafficking. The Author analyses a complex of underlying factors which contributes to the phenomenon of trafficking. However, the main structural causes are the poverty, inequality and subordination of woman and children. The trafficking in persons indicates low educational levels among child victims. They also show that parents with little or no education are more likely to expose their children to trafficking than others. Children with no literary skills and limited knowledge about the outer world are easy targets for traffickers who present themselves as potential friends. In the developing countries the literacy rates for girls and woman are often lower than for boys and men, leaving females more vulnerable to trafficking. The new information technology has helped to expand the communication and information. At the same time, trafficking is facilitated by globalization and by modern technologies. Traffickers are taking to the internet to organize mail-order bride schemes and adoption services for the purpose of pornography and prostitution. E-mail and Inter-net marketing have made transactions safe and simple.

The author also described the trafficked victims health and social issues identifying sufferer of Human Trafficking. Trafficking affects the mental and physical health of the victims as well as their social situation and future life. It also has legal implications and a damaging effect on society and development. Trafficking into the sex industry leads to stigmatization of the victims and their families. This makes it hard for the victims to return to their families, who may not welcome them. It may also be hard to get acceptance and support from the community at large. It may be harder if the victim is believed to be suffering from HIV. There will be limited opportunities to marry and have a family, and it may be difficult to get a job. Thus, many victims who have returned to their homes become easy targets for re- trafficking.

The author has also described the legal structure and to understand the crime of Human Trafficking. Human trafficking is a crime of crimes. It is a basket of crimes. In this basket one can dig out the elements of abduction, kidnapping, illegal detainment, illegal confinement, criminal intimidation, hurt, grievous hurt, sexual assault, outraging modesty, rape, unnatural offences, selling and buying of human beings, servitude, criminal conspiracy, abetment etc. Therefore, multiple abuse and abusers located at different points of time and placed together constitute the organized crime of trafficking. A host of human rights violation like denial of privacy, denial of justice, denial of access to justice, deprivation of basis rights and dignity etc constitute other part of the exploitation. Therefore, there is no doubt that trafficking is an organized crime.

1.6. HYPOTHESES

- Human trafficking of women for sexual exploitation occurs due to lack of effective laws which leads to human rights violation on massive scale.
- Most of the victims of human trafficking for sexual exploitation are women mainly belonging to poor society.
- Police-personnel are not specifically trained on how to rescue and protect female victims of human trafficking.

- Governmental rehabilitation policies for sexually exploited women are not effective.
- Present justice system is not adequate to provide speedy justice to victims of human trafficking for sexual exploitation.

1.7. RESEARCH METHODOLOGY

The nature of this research is Doctrinal and Empirical. This research will be based on primary and secondary data collected from various reports on human trafficking, issued and published by NCRB, constitutional/legal provisions, judicial views, international and national reports, policy brief, research papers, books, monographs, journals etc. Apart from these, views, concerns and suggestions of constitution/legal experts will also be collected by using systematic method and content analysis of their views will be embodied. Observation and interview methods of data collection will be employed in the study. The interview method will be used as tool of data collection. Questionnaire will be developed by the researcher on the basis of different aspects of Human Trafficking.

1.8. UTILITY OF RESEARCH

India is the nation uniquely situated as a source, transit and destination country for men, women and children trafficked for forced labour, bondage labour, child marriage, sexual exploitation, begging, surrogacy and organ transplantation etc. Trafficking of human is one of the worst and heinous act representing abuses of human rights. This research work examines the phenomenon of human trafficking in Uttar Pradesh specifically Lucknow City. This research work will be very useful for the prevention, control and abolition of human trafficking and it will also help to guide and understand the government policies and regulations.

1.9. CHAPTER PLAN

For the systematic and purposeful study the entire thesis/research work has been broadly divided into seven chapters, these are given below-

Chapter- I Introduction- this chapter introduces an overview on the research work and describe the human trafficking related problems in special contexts to women for sexual exploitation.

Chapter- II Meaning, concept and history of human trafficking of women for sexual exploitation- under this chapter describe the meaning, concept and history of human trafficking of women for sexual exploitation.

Chapter- III Human trafficking of women for sexual exploitation: International perspective- This chapter's focal point is legal instruments related to human trafficking of women for sexual exploitation at international level.

Chapter- IV Human trafficking of women for sexual exploitation: National perspective- this chapter specially deals issues and laws related to human trafficking of women for sexual exploitation at national level.

Chapter- V Roll of judiciary to combat human trafficking of women for sexual exploitation- this chapter describe the Roll of judiciary to combat human trafficking of women for sexual exploitation.

Chapter- VI Data analysis of human trafficking of women for sexual exploitation of Lucknow city- this chapter focuses on the data analysis of human trafficking of women for sexual exploitation of Lucknow city.

Chapter- VII Conclusion and Suggestions- In this chapter, conclude the above mentioned chapters and thereafter given some valuable suggestions.

- Appendices
- Interview/Questionnaire

CHAPTER-II
MEANING, CONCEPT AND
HISTORY OF HUMAN
TRAFFICKING OF WOMEN FOR
SEXUAL EXPLOITATION



CHAPTER-II

**MEANING, CONCEPT AND HISTORY OF HUMAN
TRAFFICKING OF WOMEN FOR SEXUAL EXPLOITATION**

2.1. INTRODUCTION:

Human trafficking is the illegal trade of human beings, mainly for the purposes of commercial sexual exploitation and forced labor. In short, it's modern day slavery.

-Jen Lilley

Trafficking of humans is done for various reasons. They are trafficked for labor, organ trade, begging and commercial sexual exploitation, etc. Most of the victims are trafficked with the false promises of better jobs, better career prospects, job training, better educational opportunities and marriage. Mostly women victims of sex trafficking are trapped by traffickers into sex work. Today our society is facing a major issue of human trafficking. Trafficking in persons is a serious crime and a grave violation of human rights.

The fundamental right to live with human dignity, to equality and to work in ones chosen profession or trade inherently includes protection from sexual harassment. It is indubitable the position that the Constitution guarantees fundamental freedoms to women.¹ Right to live with human dignity, it is the fundamental right of every one in this country assured under the interpretation to Article 21 of the Constitution.² The Indian Supreme Court in *Francis Coralie v. Union Territory of Delhi*³, has explained the meaning of word 'life' in following words:

The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate

¹ R Chakraborty, *Anti Human Trafficking Laws* 176 (Kamal Publishers, New Delhi, Edition, 2019).

² *Supra*, P 222

³ (AIR 1981 SC 746)

nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingle with fellow human beings.

In most of the Human Trafficking of Women for Sexual Exploitation related cases victim's right to life with human dignity is violated. *Geeta Kancha Tamang vs State of Maharashtra*⁴ In this case the Court while denying the release of a women trafficker, on mercy grounds, who had served 14 months imprisonment the Court stated that the first aspect that the Court has to consider for such a heinous crime is that trafficking in persons is prohibited under Article 23 of the Constitution of India. It is, therefore, the Fundamental Right of every Indian citizen not to be trafficked. Such act constitutes the grossest violence of the Human Rights of the victim child.

The Constitution of India, 1950 contains provisions to restrain trafficking. Under Article 35 (a) (ii), the Parliament alone is competent and empowered to make laws for prescribing punishment for those acts which are declared to be offences under Part III of the Constitution dealing with the fundamental rights. The Immoral Traffic (Prevention) Act, 1956 is an example of exercise of such power by the Parliament.⁵ The Indian Penal Code, 1860 with some specific provisions deals with traffic in human beings as punishable. The Code of Criminal Procedure, 1973 has separate provisions prohibiting traffic in human beings.

2.2. Meaning, Definition and Concept of human trafficking:

Historically, the term, 'traffic' was used to refer to movement of persons for immoral purposes and prostitution. Traditional meaning of the term

⁴ Criminal Appeal No. 858 of 2009

⁵ R.P.Kataria Manzar Saeed, *Law Relating to Prevention of Immoral Traffic in India* 43 (Orient Publishing Company, Allahabad, Second Edition 2014).

‘trafficking’ referred to kidnapping and enslavement of workers, especially women and children for commercial sexual exploitation.⁶

Trafficking of person- (1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by:

First- using threats, or

Secondly- using force, or any other form of coercion, or

Thirdly- by abduction, or

Fourthly- by practicing 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.⁷

The SAARC Convention defines ‘trafficking’- *Trafficking means the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking.*⁸

⁶ Rekha Pande, *Sex Trafficking in South Asia with a Special Focus on India* 23 (Kalpaz Publications, Delhi, First Published, 2016).

⁷ The Indian Penal Code, 1860, Section 370

⁸ SAARC Convention (n7), Art. 1(3).

The Protocol of Palermo of the year 2001 defines trafficking in Human beings as:

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

In a landmark judgment of *Raj Bahadur v. Legal Remembrancer*⁹ the Calcutta High Court defined trafficking in human being as selling and buying of men and women like goods and includes trafficking in women and children for immoral or other purposes.

Federal Law defines “sex trafficking” as “the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act, in which the commercial sex act is induced by force, fraud, or coercion or in which the person induced to perform such an act has not attained 18 years of age”.

According to the TVPA, a “commercial sex act” is any sex act where anything of value is given to or received by any person, such as survival sex, drugs, transportation, food, or clothing.

TVPA further defined human trafficking as “severe forms of trafficking in persons” including both sex trafficking and labor trafficking.

⁹ AIR 1953 Cal 522

According to the Farr, Sex trafficking is a practice that involves moving of person within local or national for exploitation in the sex market and it is a business venture, in which traffickers trade the sexualized bodies of others for money, i.e. the commodity is a person, objectified in its sale by one party to another.¹⁰

Sex Trafficking occurs when an adult is forced into (or maintained in) a situation of sexual exploitation. Any person involved in their recruitment, transportation, harboring or receipt has committed a trafficking crime. So trafficking also can occur within debt bondage, if women and girls are forced to continue in prostitution to pay off an unlawful 'debt'.¹¹

Beijing Declaration, the Platform for Action adopted by the Fourth World Conference on Women at Beijing on 15 September 1995 states:

The effective suppression of trafficking in women and girls for the sex trade is a matter of pressing international concern. Implementation of the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of others (General Assembly resolution 317(IV), annex), as well as other relevant instruments, needs to be reviewed and strengthened. The use of women in international prostitution and trafficking networks has become a major focus of international organized crime. The Special Rapporteur of the Commission on Human Rights on violence against women, who has explored these acts as an additional cause of the violation of the human rights and fundamental freedoms of women and girls, is invited to address, within her mandate and as a matter or to address, within her mandate and as a matter of urgency, the issue of international trafficking for the purpose of the sex trade, as well as the issues of forced

¹⁰ Rekha Pande, *Sex Trafficking in South Asia with a Special Focus on India* 24 (Kalpaz Publications, Satyawati Nagar, Delhi, First Published, 2016).

¹¹ Factsheet: Understanding human trafficking and slavery, available at: <http://www.worldvision.com.au> (Visited on February 06, 2021).

prostitution, rape, sexual abuse and sex tourism. Women and girls who are victims of this international trade are at an increased risk of further violence, as well as unwanted pregnancy and sexually transmitted infection, including infection with HIV/AIDS¹².

Article 4, **The Council of Europe Convention** on Action against Trafficking in Human Beings for the purposes of this Convention:

- a. “Trafficking in human beings” shall mean 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 others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- b. The consent of a victim of “trafficking in human beings” to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- c. The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in human beings” even if this does not involve any of the means set forth in subparagraph (a) of this article;
- d. “Child” shall mean any person under eighteen years of age;¹³

¹² Hillary Simpson, *International Human Rights in Context Law and Politics* 130 (Koros Press Limited, London, UK, Edition, 2015).

¹³ Article 4 of the Council of Europe Convention on Action against Trafficking in Human Beings: <https://www.loc.gov/law/foreign-news/article/council-of-europe-anti-human-trafficking-convention-now-in-force/>

Who are trafficked?

- Women and Children are the key target group, because of their marginalization, limited economic resources and predominance in the “invisible” informal sector.
- People from impoverished and low income households in rural areas and urban slums, especially women engaged in small farming, petty trading, vending as laborers, scavengers and in other low status work and services.
- Young girls running away from home or girls from families that expect their daughters to financially contribute to their support are easy targets for traffickers.¹⁴

2.3. History of human trafficking:

Immoral trafficking of women for sexual exploitation is prevalent in the society from the ancient times. Human trafficking can be referred to as modern-day-slavery. Almost all countries abolished slavery, but it still exists all over the world with a changed face namely, ‘Human trafficking’.¹⁵

The first international document on trafficking in women was the International Agreement for the Suppression of the White Slave Traffic, which was adopted in 1904 and has been ratified by 12 States. In 1949 the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others was adopted by the General Assembly resolution 317 (IV), annex and has subsequently been ratified by 49 States.

During the Vienna Conference on Human Rights held in June of 1993, women organized a special tribunal to demand that women’s basic rights be

¹⁴ Romila Chawla, *Women Trafficking An International Problem* 222 (Life Span Publishers and Distributors, New Delhi, Revised Edition, 2019).

¹⁵ Dr. R. Seyon, *Judicial Activism and Human Rights of Women and Children* 186 (Regal Publications, New Delhi, Edition, 2016).

recognized as human rights. Rape was declared a war crime against women and humanity. Women also demanded an end to the trafficking of women and children. There is no international instrument in existence which explicitly stipulates that it is a human right to be free of sexual exploitation. Therefore, a new Convention must be promulgated. We introduce the new concept/ definition of prostitution which is under the umbrella of sexual exploitation: “*Sexual exploitation is a violation of human dignity, therefore: It is a fundamental human right to be free from sexual exploitation is a practice by which person(s) achieve sexual gratification or financial gain or advancement through the abuse of a person’s sexuality by abrogating that person’s human right to dignity, equality, autonomy and physical and mental well-being*”.¹⁶

In November 2000, the General Assembly adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.¹⁷

2.4. Contributing Factors of Human Trafficking:

The factors contributing to trafficking in women are varied and complex, differing from country to country. In order to establish what factors make women vulnerable to trafficking, it is necessary not only to consider global and regional social and economic changes, but also to conduct a local-level analysis of country conditions in source countries for trafficking.¹⁸

Some Contributing Factors of Human Trafficking are given below:

- i. Armed conflict situation

¹⁶ Romila Chawla, *Women Trafficking An International Problem* 17 (Life Span Publishers and Distributors, New Delhi, Revised Edition, 2019).

¹⁷ Minal H. Upadhyay, *Human Trafficking* 52 (Shree Niwas Publications, Jaipur, India, First Published, 2012).

¹⁸ Trafficking in Women: Contributing Factors and Trends *available at*: [hrlibrary.umn.edu](http://hrlibrary.umn.edu/materials)> materials (Visited on February 12, 2021).

- ii. Economic deprivation
- iii. Forced marriage
- iv. Gender-based discrimination
- v. Globalization
- vi. Growth of Entertainment Sex Industry/Sex Tourism
- vii. Internet Pornography
- viii. Low social status
- ix. Lack of employment opportunities
- x. Low levels of education and general awareness
- xi. Migration
- xii. Poverty
- xiii. Traditional religious and cultural practices, etc.

2.5. Types of Human Trafficking:

Human Trafficking victims can be of any age, race, cast, gender or nationality; it happens almost all over the world. The different types of human trafficking are:

2.5.1. Domestic Servitude

Domestic servitude is a specific kind of forced labour, which takes place in a private homes.¹⁹ Women are particularly vulnerable to domestic servitude which occurs in private homes and is often unregulated by public authorities.

2.5.2. Debt bondage

The UN Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institution and Practices similar to Slavery includes debt bondage as a practice similar to slavery: ‘ Debt bondage that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those

¹⁹ Domestic servitude *available at:* <https://www.octf.gov.uk>>Ha... (Visited on January 02, 2021).

services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined'.²⁰

Debt bondage or bonded labor relies on the victims belief in a debt owed and the payment of debt is demanded as labor.²¹

2.5.2. Child labor

According to data from census 2011, the number of child labourers in India is 10.1 million of which 5.6 million are boys and 4.5 million are girls. A total of 152 million children-64 million girls and 88 million boys-are estimated to be in child labour globally, accounting for almost one in ten of all children worldwide.²²

According to International Labour Organization (ILO), the term 'child labour' is often defined of their childhood, their potential and their dignity and that is harmful to physical and mental development.²³ The enactment of Child Labor (Prohibition and Regulation) Act of 1986 is indeed a bold step to prohibit the child labor. The Act prohibits employment of children in certain occupations and processes.²⁴ National policy on child labour in 1987 says that "no, child below age of 14 years shall be employed to work in any factory or mine or engaged in any hazardous employment".²⁵

²⁰ Slavery, Forced Labor, Debt Bondage, and...-Issue Lab *available at:* <https://www.issuelab.org/res...> (Visited on January 05, 2021).

²¹ Stacy L. Mallicoat and Connie Estrada Ireland, *Women and Crime* 148 (Sage Publications, India, Pvt. Ltd., New Delhi, Published, 2014).

²² Child labour and exploitation UNICEF India *available at:* <https://www.unicef.org/what-we-do> (Visited on January 05, 2021).

²³ <https://www.insightsonindia.com/r...>

²⁴ Rashee Jain, *Textbook on Human Rights Law and Practice* 74 (Universal Law Publicationg, LexisNexis, Gurgaon, Haryana, India, Third Edition, 2016).

²⁵ <https://www.rauias.com/child-labo...>

M C Mehta vs State of Tamil Nadu²⁶ In this Public Interest Litigation the Supreme Court laid down various measures which needs to be taken in order to provide support to the child labour and his family. The Supreme Court stated that *“We are of the view that the offending employer must be asked to pay compensation for every child employed in contravention of the provisions of the Act a sum of Rs 20,000; and the Inspectors, whose appointment is visualized by Section 17 to secure compliance with the provisions of the Act, should do this job. The Inspectors appointed under Section 17 would see that for each child employed in violation of the provisions of the Act, the employer concerned pays Rs 20,000 which sum could be deposited in a fund to be known as Child Labour Rehabilitation-cum-Welfare Fund. The liability of the employer would not cease even if he would desire to disengage the child presently employed. It would perhaps be appropriate to have such a fund district wise or area wise. The fund so generated shall form corpus whose income shall be used only for the child concerned. The quantum could be the income earned on the corpus deposited qua the child. To generate greater income, fund can be deposited in high-yielding scheme of any nationalized bank or other public body ”*.

Bachpan Bachao Andolan v. Union of India²⁷ This case addresses the vital issue of flourishing businesses in women and child trafficking evolving strategies for combating sexual exploitation. It culminates with directions regarding child care and protection. It touches upon the deplorable condition of women and children and deals with Supersession of Immoral Trafficking Act, Geneva Convention on Immoral Trafficking of women and Children, 1956, Right of Children to free and Compulsory Education Act, 2009, Juvenile Justice Authority, Central Adoption Resource Agency (CARA), National Child Labour Project (NCLP) for rehabilitation of child labourers and Schemes for working children in need of care and protection. The Court directed the Central

²⁶ 1996 (SCC) 756

²⁷ (2011) 5 SCC 1

Government to file a comprehensive affidavit of compliance. The Court decided to deal with the menace of child exploitation systematically by issuing appropriate directions.

2.5.3. Forced Labor

Forced Labor is the coercion or exploitation of workers, especially persons who are vulnerable due to extreme poverty or unemployment or who are marginalized because of civil, racial or political conflict.²⁸

According to the **ILO's Forced Labor Convention, 1930 (No. 29)** "forced or compulsory labor is all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily." Forced labor can include forced sexual services.²⁹

People's Union for Democratic Rights v. Union of India,³⁰ While considering a PIL for the emancipation of Bonded Labor the Supreme Court defined the meaning of Forced Labor vis a vis Article 23 of the Constitution of India. With increase in Labor trafficking across the country the judgment is very relevant in order. The Supreme Court stated "Now the next question that arises for consideration is whether there is any breach of Article 23 when a person provides labor or service to the State or to any other person and is paid less than the minimum wage for it. It is obvious that ordinarily no one would willingly supply labor or service to another for less than the minimum wage, when he knows that under the law he is entitled to get minimum wage for the labor or service provided by him. It may therefore be legitimately presumed that when a person provides labor or service to another against receipt of remuneration which is less than the minimum wage, he is acting under the force of some compulsion which drives him to work though he is paid less than

²⁸ Stacy L. Mallicoat and Connie Estrada Ireland *Women and Crime* 148 (Sage Publication, India, Pvt. Ltd. 2014).

²⁹ <https://www.antislavery.org/forced...>

³⁰ (1982) 3 SCC 235

what he is entitled under law to receive. What Article 23 prohibits is “forced labor” that is labor or service which a person is forced to provide and “force” which would make such labor or service “forced labor” may arise in several ways. It may be physical force which may compel a person to provide labor or service to another or it may be force exerted through a legal provision such as a provision for imprisonment or fine in case the employee fails to provide labor or service or it may even be compulsion arising from hunger and poverty, want and destitution. Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as “force”, it would be “forced labor”.

According to the **U.S. Trafficking Victims Protection Reauthorization Act**, labor trafficking is the recruitment, harboring, transportation, provision or obtaining of a person for labor or services through the use of force, fraud or coercion for the purposes of subjection to involuntary servitude, peonage, debt bondage or slavery.³¹

2.5.4. Prostitution

Prostitution is the sale of sexual services, such as oral sex or sexual intercourse, for money. Prostitution the word itself speaks about the plight of a woman. It is not a problem which exists in India but exists throughout the world. In modern India different kinds of prostitution are prevailing apart from prostitution in brothels they being: Street prostitutes, Bar dancers, Call girls, Religious prostitution, Escort girls, Road side brothel etc.³²

2.5.5. Sex Trafficking

Trafficking in women for sex work is a reflection of the complex social issues. Sex trafficking has been found in a wide variety of venues within the

³¹ <http://www.endslaverynow.org/learn>

³² Minal H. Upadhyay, *Human Trafficking* 7, 10 (Shree Niwas Publications, Jaipur, India, First Published, 2012).

sex industry, including residential brothels, escort services, fake massage businesses, strip clubs and street prostitution.³³

2.5.6. Trafficking for the removal of organs

The Istanbul Declaration defines *organ trafficking* as “the recruitment, transport, transfer, harbouring or receipt of living or deceased persons or their organs 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 to, or the receiving by, a third party of payments or benefits to achieve the transfer of control over the potential donor, for the purpose of exploitation, by the removal of organs for transplantation”³⁴.

In many countries, waiting lists for transplants are very long and criminals have seized this opportunity to exploit the desperation of patients and potential donors. The health of victims, even their lives, is at risk as operations may be carried out in clandestine conditions with no medical follow-up.³⁵

The sale and purchase of organs is prohibited by the **Council of Europe Convention on Human Rights and Biomedicine** (also known as the Oviedo Convention). The Convention, which entered into force in December 1999, is not only open for signature by the member States of the Council of Europe, but also the non-member States which have participated in its elaboration and by the European Community.³⁶

³³ Human Trafficking National Human Trafficking Hotline *available at:* <https://humantraffickinghotline.org>...(Visited on December 05, 2020).

³⁴ Trafficking in Persons for the Purpose of Organ Removal *available at:* <https://www.unodc.org>>UN...(Visited on February 02, 2021).

³⁵ Types of human trafficking- Interpol *available at:* <https://www.interpol.int>>crimes (Visited on February 02, 2021).

³⁶ Trafficking in Persons for the Purpose of Organ Removal *available at:* <https://www.unodc.org>>UN...(Visited on February 02, 2021).

2.6. Trafficking of women for sexual exploitation:

Sexual exploitation or sex trafficking especially affects young women. Many of the sexual exploitation cases involve working in street prostitution, organized brothels, strip clubs, live-sex shows, pornography businesses, etc. Other sexual exploitation cases take the form of private homes, where the women or child is forced to live and work with the offender. The victims of sexual exploitation are often lured in with the promise of a good job in another country in exchange for the acts, kidnapping, fraudulent marriage proposals, or even sold in to the business by family members. Women sex tourism, a specific type of commercial sex trade that is a fast growing problem involves a person traveling to another country in order to engage in the act.³⁷

A place used for the purpose of Sexual Exploitation:

Section 2(a) of the Immoral Traffic (Prevention) Act, 1956 defines “brothel” to mean any house, room, conveyance or place or any portion of any house, room, conveyance or place which is used for purpose of sexual exploitation or abuse, for the gain of another person or for the mutual gain of two or more prostitutions. The essential ingredient, therefore, is a place being used for the purpose of sexual exploitation or abuse. The phrase “for the purpose of” indicates that the place being used for the purpose of the prostitution may be a brothel provided a person uses the place and ask for girls, where the person is shown girls to select from and where one does engage or offer her body for promiscuous sexual intercourse for hire.³⁸

Munni v. State of Maharashtra,³⁹ The menace of sexual abuse by immoral trafficking of children to force them somehow to enter in the business of prostitution is age-old phenomenon and needs to be tackled by Central as

³⁷ Minal H. Upadhyay, *Human Trafficking* 29 (Shree Niwas Publications, Jaipur, India, First Published, 2012).

³⁸ R Chakraborty, *Anti Human Trafficking Laws* 232 (Kamal Publishers, New Delhi, Edition 2019).

³⁹ Criminal Writ Petition No. 227/2011 (Bombay High Court)

well as State Government with utmost care and precaution. Poverty, illiteracy or helplessness of parents may make the minor girl vulnerable to sexual abuse/exploitation.

The term trafficking for sexual exploitation was formerly thought of as the organized movement of people, usually women, between countries and within countries for sex work with the use of physical coercion, deception and bondage through forced debt.⁴⁰

Human sexual trafficking is a form of slavery. It happens when human beings are sold and bought for the purposes of sexual exploitation. It includes people mostly women being.⁴¹

Human trafficking for the purpose of sexual exploitation is a major cause of contemporary sexual slavery and is primarily for prostituting women and children into sex industries.⁴²

Women are lured by promises of decent employment into leaving their homes and travelling to what they consider will be a better life. But the victims are often provided with false travel documents and an organized network is used to transport them to the destination country, where they find themselves forced into sexual exploitation and held in inhumane conditions and constant terror.⁴³

Sexual trafficking includes coercing a migrant into a sexual act as a condition of allowing or arranging the migration. Sexual trafficking uses physical or sexual coercion, deception, abuse of power and bondage incurred through forced debt. Trafficked women and children, for instance, are often

⁴⁰ Dr. Babita Chugh, *Women and Crime* 160 (Rajat Publications, New Delhi, India, First Published, 2015).

⁴¹ Minal H. Upadhyay, *Human Trafficking* 32 (Shree Niwas Publications, Jaipur, India, First Published, 2012).

⁴² Casper Davis (ed.), *Crime and Society* 280 (Nyx Academics LLC, USA, 2012).

⁴³ Types of human trafficking- Interpol *available at*: <https://www.interpol.int/crimes> (Visited on February 02, 2021).

promised work in the domestic or service industry, but instead are sometimes taken to brothels where their passports and other identification papers are confiscated. They may be beaten or locked up and promised their freedom only after earning-through prostitution-their purchase price, as well as their travel and visa costs.⁴⁴

There are instances when victims of trafficking are subjected to multiple rapes, captivity and other atrocities and state machinery failed to protect them. In fact in almost every case of sex-trafficking victims are subjected to rape in order to force them into prostitution. Even if victims explicitly give ‘shadow consent’ in the latter period of their exploitative lives, in most circumstances they were invariably raped in the initial stages after being trafficked.⁴⁵

The National Commission for Women reported that organized crime played a significant role in the country’s sex trafficking trade and women who were trafficked frequently were subjected to extortion, beatings and rape. How women were trafficked varies widely. Although some were abducted forcibly or drugged, most were trafficked through false offers of marriage, employment or shelter. Poverty, illiteracy and lack of employment opportunities contributed to the trafficking problem, although organized crime was a common element in all trafficking incidents, as was police corruption and collusion. Although corruption was endemic in the country, there was no known anti-corruption initiative that was linked specifically to corruption as it related to trafficking during the year.⁴⁶

As per the existing law, Immoral Traffic Act 1956 prostitution becomes an offence when there is commercial exploitation of a person. If a woman or child is sexually exploited and any person gains out of the same, it amounts to

⁴⁴ Dr. Babita Chugh, *Women and Crime* 161 (Rajat Publications, New Delhi, India, First Published, 2015).

⁴⁵ Dr. Sarfaraz Ahmed Khan, *Transnational Sex-Trafficking An Integrated Reparation Model* 69 (Thomson Reuters South Asia Private Limited, Gurgaon, First Edition, 2019).

⁴⁶ Amit Kumar, *Crime against Child* 16 (Centrum Press, New Delhi, India, First Edition, 2016).

commercial sexual exploitation, which is a legally punishable offence wherein the culpability lies against all exploiters. Trafficking is the process of recruiting, contracting, procuring or hiring a person for CSE.

Therefore, trafficking is a process and CSE is the result. The 'demand' in CSE generates, promotes and perpetuates trafficking. This is a vicious cycle. Trafficking could also be a means for other types of violations such as for developing pornographic material, for promoting sex tourism, for sexual exploitation under the façade of bar tending, massage parlours etc, or even for exploitative labour where sexual abuse may or may not coexist. ITPA envisages only trafficking for CSE.⁴⁷

2.7. Conclusion

Human trafficking especially women sexual exploitation is a contemporary form of modern slavery and it is a grave violation of Human Rights. It is a crime against individuals and its consequences are most directly felt by those who are its victims. Victims are recruited and trafficked using deception and coercion and find themselves held in conditions of slavery in a variety of jobs. Victims can be engaged in agricultural, mining, construction work, factories, domestic servitude, forced criminal activities and other intensive jobs. Victims are forced to carry out a range of illegal activities, which in turn generate income. These can include drug cultivation, forced begging, prostitution or illicit intercourse with any person or for any unlawful and immoral purpose etc. Victims often have quotas and can face severe punishment if they do not perform adequately. As a criminal act, trafficking violates the rule of law, threatening national jurisdictions and international law. The Supreme Court of India to protect the women and children from various types of abuses and exploitation, Indian judiciary has taken the lead to save

⁴⁷ Sunita Sharma, *Women and Crime* 246 (Crescent Publishing Corporation, New Delhi, First Published, 2017).

women and children from exploitation and ensure their welfare. The Supreme Court has even directed the States that it is their duty to create an environment where the women and children workers can have opportunities to grow and develop in a healthy manner with full dignity in consensus of the mandate of the Constitution of India. In the context of India, the Constitution of India, 1950 under Article 21 provided Right to life with human dignity. But women trafficking into the sex industry leads to stigmatizations of their families. This makes it hard for the victims to return to their own families as, they don't welcome them. It may also be hard to get acceptance and support from the community and society at large. The range of trafficking related crimes and their interrelated impacts have created a cumulative threat to global peace, security and stability.

CHAPTER-III
HUMAN TRAFFICKING OF
WOMEN FOR SEXUAL
EXPLOITATION:
INTERNATIONAL PERSPECTIVE



**HUMAN TRAFFICKING OF WOMEN FOR SEXUAL
EXPLOITATION: INTERNATIONAL PERSPECTIVE**

3.1. INTRODUCTION

Human trafficking is a crime against humanity. We must unite our efforts to free victims and stop this crime that's become ever more aggressive, that threatens not just individuals, but the foundational values of society.

-Pope Francis

Women and girls are trafficked into gender-specific situations of exploitation such as exploitative prostitution and sex tourism, and forced labour in domestic and service industries. They also suffer gender-specific forms of harm and consequences of being trafficked (for example, rape, forced marriage, unwanted or forced pregnancy, forced termination of pregnancy, and sexually transmitted diseases, including HIV/AIDS).¹

The exploitation of individuals for profit has a long history and international efforts to address it can be traced back at least a century², well before the birth of the modern human rights system. However, it is only over the past decade that trafficking has become a major concern. During that same period, a comprehensive legal framework has developed around the issue. These changes confirm that a fundamental shift has taken place in how the international community thinks about human exploitation. It also confirms a change in expectations of what Governments and others should be doing to deal with trafficking and to prevent it. Hence, the victim-centred approach is also gathering increased support from the international community. Human rights form a central plank of the new understanding and there is now widespread acceptance of the need for a human rights-based approach to trafficking.³

¹ https://www.ohchr.org/documents/publications/fs36_en., Accessed on 8 March 2021

² Chakraborty R, *Anti Human Trafficking Laws* 234(Kamal Publishers, New Delhi, Edition, 2019).

³ Hillary Simpson, *International Human Rights in Context Law and Politics* 259 (Koros Press Limited, London, UK, Edition, 2015).

As explained further in this Fact Sheet, such an approach requires understanding of the ways in which human rights violations arise throughout the trafficking cycle and of the ways in which States' obligations under international human rights law are engaged.⁴ It seeks to both identify and redress the discriminatory practices and unequal distribution of power that underlie trafficking, that maintain impunity for traffickers and that deny justice to victims.

International agreements on what constitutes "trafficking in persons" are very recent. In fact, it was not until the late 1990s that States began the task of separating out trafficking from other practices with which it was commonly associated such as facilitating irregular migration. The first-ever agreed definition of trafficking was incorporated into the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking Protocol).⁵ That definition has since been incorporated into many other legal and policy instruments as well as national laws.

This chapter focuses and describes international instruments as such international treaty, regional treaty, protocols, non- treaties instruments and guide lines of international organizations which are concerned with human trafficking. These are the given below -

3.2. INTERNATIONAL LAW

These are some important international laws relevant to prevent of trafficking given below as such-

3.2.1. HUMAN TRAFFICKING RELATED INTERNATIONAL LAW

Human trafficking has gained attention in the legal community and the term is used interchangeably with the legal concepts of slavery and "slave-like"

⁴ Dr. Sarfaraz Ahmed Khan, *Transnational Sex-Trafficking An Integrated Reparation Model* 7 (Thomson Reuters South Asia Private Limited, Gurgaon, First Edition, 2019).

⁵Mamta Rao, *Laws Relating to Women and Children* 553(Eastern Book Company, Lucknow, 3rd Edition 2012).

practices, including peonage, involuntary servitude, bonded labor, and forced labor.

In December 2000, the United Nations General Assembly approved the Protocol to Prevent, Suppress, and Punish Trafficking Persons, known as the U.N. TIP Protocol or “Palermo Protocol”. The TVPA has parallels to the international standard so the U.S. is able to collaborate with other nations to combat human trafficking on a global level.

International law may be relevant to the criminal cases of foreign national trafficking survivors because a trafficking crime can occur in more than one country and the recruiters and traffickers can also send their victims to other countries for commercial gain. The same trafficking case could be investigated across multiple jurisdictions in the United States and overseas, so it is important to remember that each country may have its own human trafficking laws. This intersection may impact the immigration avenues available to people trafficked into the United States.⁶

Human Trafficking Laws in United States are given below-

- Victims of Crime Act of 1984 (42 U.S.C. § 10601-10603) This 1984 legislation established a crime victims fund from fines collected from convicted offenders. The funds are distributed through state victim assistance and compensation programs.
- Crime Victims' Rights Act of 2004 (18 U.S.C. § 3771) The CVRA of 2004 was enacted to ensure that crime victims are notified of their rights (notice of court proceedings, right to be present and to be heard at public proceedings, right to restitution, etc.).

⁶ ovcttac.gov/taskforceguide/eguide/1-understanding-human-trafficking/14-human-trafficking-laws/international-law/, Accessed on 8 March 2021

- Victims' Rights Clarification Act of 1997 (18 U.S.C. § 3510) This amendment to Title 18, U.S.C. gives further assurance to the right of victims of crime to attend the trials of those accused of the crime.
- Victims of Crime Act (VOCA) (2016) Under the new Act, more funding is available to victims to receive financial assistance to help them rebuild their lives. The funding is now more regulated on a federal level through the final guidelines⁷.

Psychological Coercion in the context of Modern-Day Involuntary Labor: Revisiting *United States v. Kozminski* and Understanding Human Trafficking (2007), 38 U. of Toledo L. Rev. 3 at 945. This article, from Loyola Law School, discusses psychological coercion in cases of labor trafficking and provides prosecutors a critical discussion point for the use of psychological coercion against the victims of human trafficking.⁸

3.2.2. International Laws-

- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the U.N. Convention Against Transnational Organized Crime (2000), G.A. Res. 55/25, Annex II, U.N. Doc. A/Res/55/25 (Nov. 15, 2000) The United Nation's Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children is the first legally binding, global instrument with an agreed definition on trafficking in persons.
- 1926 Slavery Convention Signed in 1926, and amended in 1953, the United National Slavery Convention extended the work accomplished under the Brussels Act to address the slave trade and slavery by the signatories of the

⁷ <https://www.federalregister.gov/documents/2016/07/08/2016-16085/victims-of-crime-act-victim-assistance-program>, Accessed on 10 March 2021

⁸ LOGAN, T. K., et al. "UNDERSTANDING HUMAN TRAFFICKING IN THE UNITED STATES." *Trauma, Violence & Abuse*, vol. 10, no. 1, 2009, pp. 3–30. JSTOR, <http://www.jstor.org/stable/26636178>. Accessed 24 June. 2021.

Convention of Saint-Germain-en-Laye. The Convention defines slavery and the responsibilities on countries to prevent slavery.

- OCFS Responding to Commercially Sexually Exploited and Trafficked Youth⁹: A Blueprint for Systems of Care in New York State This handbook, from the New York State Office of Children and Family Services, offers guidance to develop system interventions to meet the needs of trafficked and exploited youth.

3.2.3. Victims of trafficking hold the right to assistance, support and protection.

EIGE has analysed both the EU Anti-Trafficking Directive and the Victims' Rights Directive from a gender perspective. The Institute, in cooperation with the European Commission, has developed gender and child specific recommendations to help Member States implement the directives and monitor their progress. Both directives need to be implemented in complementarity in order to maximise their potential to protect. National strategies to address trafficking for sexual exploitation should also be included in a broader national strategy to combat gender-based violence.¹⁰

3.2.4. EU Anti-Trafficking Day: Commission calls for more action to protect women and girls

To mark the 12th EU Anti-Trafficking Day, Commissioner for Migration, Home Affairs and Citizenship Dimitris Avramopoulos will tomorrow address an event organised by Civil Liberties, Justice and Home Affairs (LIBE) and Women's Rights and Gender Equality (FEMM) Committees of the European Parliament for the launch of a report on gender-specific measures in anti-trafficking actions, prepared by the European Institute for Gender Equality (EIGE) in cooperation with the European Commission. The report highlights

⁹ <https://ocfs.ny.gov/programs/human-trafficking/>, Accessed on 8 March 2021

¹⁰ <https://eige.europa.eu/rdc/eige-publications/gender-specific-measures-anti-trafficking-actions-report>, Accessed on 8 March 2021

that trafficking for sexual exploitation is the most commonly reported form of human trafficking in the EU: 95% of registered victims of trafficking for sexual exploitation in the EU are women or girls.¹¹ Commissioner Avramopoulos said: “Trafficking in human beings is a heinous crime and has no place in Europe or anywhere else in the world. There should be zero tolerance towards traffickers that continue to exploit and abuse vulnerable people, in particular women and girls. Europe needs to put an end to this crime, and prevent that it happens in the first place, while offering effective support to the victims. We need operational deliverables and tangible results. Today’s report is a stark reminder of how serious the problem is, and aims to ensure actual impact on the lives of many victims of trafficking. Together we will continue our efforts to fully eradicate the trafficking in human beings, building a Europe that is safe for all.” The report is a deliverable of the new set of priority actions adopted by the Commission in December 2017. Commissioner Avramopoulos will speak in the European Parliament tomorrow at 11.30 CET, which will be streamed live on EBS+. More information on the Commission’s priority actions on trafficking in human beings is available in the factsheet and on the anti-trafficking website.

3.2.5. Trafficking for sexual exploitation: a gendered crime

Trafficking for sexual exploitation is the most commonly reported form of human trafficking in the European Union. It is a form of gender-based violence that disproportionately affects women. 95% of registered victims of trafficking for sexual exploitation in the EU are women or girls.¹² Trafficking in women and girls remains a structural form of violence against women. Member States are obliged by law to take gender specific measures to assist and protect victims. In the lead up to the EU Anti-Trafficking day on 18 October, the

¹¹Ibid

¹²Ibid

European Institute for Gender Equality (EIGE) has published a report on the matter.¹³

“Our research shows that trafficking for sexual exploitation is rooted in gender inequalities. Anti-trafficking efforts cannot and must not overlook the gender-specific roots of this crime, which make women and girls more vulnerable to trafficking,” said Virginija Langbakk, EIGE’s director.

“Women and girls make up the majority of reported victims of trafficking and continue to be disproportionately affected. This report forms part of a new set of priority actions presented by the Commission in December 2017, and reflects the commitments agreed in the Joint Statement signed by the Heads of ten EU Agencies last June. I believe it will help the many women and girls who have suffered unfathomably at the hands of traffickers and abusers. It will also help Member States translate into action their legal obligations to adopt gender-specific measures which take into account the form of exploitation victims have been subjected to,” said the s EU Anti-Trafficking Coordinator Myria Vassiliadou.

3.3. TREATIES AND OTHER INSTRUMENTS PARTICULARLY RELEVANT TO PREVENT TRAFFICKING

These are some instruments at international level particularly relevant to prevent trafficking described given below such as –

3.3.1. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966

These are the some important provisions of above Covenant relevant to prevent trafficking given below such as-

¹³ https://ec.europa.eu/anti-trafficking/legislation-and-case-law/international-legislation_en, Accessed on 8 March 2021

Article 7 No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.¹⁴

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3. (a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term “forced or compulsory labour” shall not include: (i) Any work or service, not referred to in subparagraph

(b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.¹⁵

¹⁴Article 7 of INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966: [https://www.ohchr.org/documents/professionalinterest/ccpr.](https://www.ohchr.org/documents/professionalinterest/ccpr/), Accessed on 8 March 2021

¹⁵ . Article 8 of INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.¹⁶
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

3.3.2. INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 1966

Article 10 The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care

¹⁶ . Article 9 of INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966

and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.¹⁷

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
3. Special measures of protection and assistance should be taken on behalf of all children and young person's without any discrimination for reasons of parentage or other conditions. Children and young person's should be protected from economic and social exploitation.¹⁸ Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

3.3.3. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, 1979

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination¹⁹.

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

¹⁷ <https://www.ohchr.org/Documents/Professionalinterest/cescr.>, Accessed on 8 March 2021

¹⁸ Supra 2 p 246

¹⁹ <https://www.un.org/womenwatch/daw/cedaw/cedaw.htm>, Accessed on 8 March 2021

women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

By accepting the Convention, States commit themselves to undertake a series of measures to end discrimination against women in all forms, including:

- to incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;
- to establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and
- to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.

The Convention provides the basis for realizing equality between women and 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 agree to take all appropriate measures, including legislation and temporary special measures, so that women can enjoy all their human rights and fundamental freedoms.

The Convention is the only human rights treaty which affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations.²⁰ It affirms women's rights to acquire, change or retain their nationality and the nationality of their children. States parties also agree to take appropriate measures against all forms of traffic in women and exploitation of women.

Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice. They are also committed to submit

²⁰ <https://pcw.gov.ph/convention-on-the-elimination-of-all-forms-of-discrimination/>, Accessed on 8 March 2021

national reports, at least every four years, on measures they have taken to comply with their treaty obligations.

3.3.4. CONVENTION ON THE RIGHTS OF THE CHILD, 1989

The United Nations Convention on the Rights of the Child (CRC) is a human rights treaty setting out the civil, political, economic, social, health and cultural rights of children. The Convention defines a child as any human being under the age of eighteen, unless the age of majority is attained earlier under a state's own domestic legislation. Nations that ratify the Convention are bound to it by international law. It was adopted and opened for signature on 20 November 1989 and came into force on 2 September 1990. Currently, 193 countries are party to it, including every member of the United Nations except Somalia, South Sudan, and the United States.²¹

Article 1 (Definition of the child): The Convention defines a 'child' as a person below the age of 18, unless the laws of a particular country set the legal age for adulthood younger. The Committee on the Rights of the Child, the monitoring body for the Convention, has encouraged States to review the age of majority if it is set below 18 and to increase the level of protection for all children under 18.²²

Article 2 (Non-discrimination): The Convention applies to all children, whatever their race, religion or abilities; whatever they think or say, whatever type of family they come from. It doesn't matter where children live, what language they speak, what their parents do, whether they are boys or girls, what their culture is, whether they have a disability or whether they are rich or poor. No child should be treated unfairly on any basis.

²¹ <https://waccglobal.org/a-summary-of-the-convention-on-the-rights-of-the-child/>, Accessed on 8 March 2021

²² Article 1 of The United Nations Convention on the Rights of the Child (CRC), 1989

Article 3 (Best interests of the child):²³ The best interests of children must be the primary concern in making decisions that may affect them. All adults should do what is best for children. When adults make decisions, they should think about how their decisions will affect children. This particularly applies to budget, policy and law makers.

Article 11 (Kidnapping): Governments should take steps to stop children being taken out of their own country illegally. This article is particularly concerned with parental abductions. The Convention's Optional Protocol on the sale of children, child prostitution and child pornography has a provision that concerns abduction for financial gain.²⁴

Article 19 (Protection from all forms of violence):²⁵ Children have the right to be protected from being hurt and mistreated, physically or mentally. Governments should ensure that children are properly cared for and protect them from violence, abuse and neglect by their parents, or anyone else who looks after them. In terms of discipline, the Convention does not specify what forms of punishment parents should use. However any form of discipline involving violence is unacceptable. There are ways to discipline children that are effective in helping children learn about family and social expectations for their behaviour – ones that are non-violent, are appropriate to the child's level of development and take the best interests of the child into consideration. In most countries, laws already define what sorts of punishments are considered excessive or abusive. It is up to each government to review these laws in light of the Convention.

Article 33 (Drug abuse): Governments should use all means possible to protect children from the use of harmful drugs and from being used in the drug trade.

²³ Article 3 of The United Nations Convention on the Rights of the Child (CRC),1989

²⁴ Article 11 of The United Nations Convention on the Rights of the Child (CRC),1989

²⁵ Article 19 of The United Nations Convention on the Rights of the Child (CRC),1989

Article 34 (Sexual exploitation): Governments should protect children from all forms of sexual exploitation and abuse. This provision in the Convention is augmented by the Optional Protocol on the sale of children, child prostitution and child pornography.

Article 35 (Abduction, sale and trafficking): The government should take all measures possible to make sure that children are not abducted, sold or trafficked. This provision in the Convention is augmented by the Optional Protocol on the sale of children, child prostitution and child pornography.²⁶

Article 36 (Other forms of exploitation): Children should be protected from any activity that takes advantage of them or could harm their welfare and development.

3.3.5. INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES, 1990

The above Convention has been adopted by General Assembly resolution 45/158 of 18 December 1990²⁷

Preamble of this Convention as such-

The States Parties to the present Convention,

Taking into account the principles embodied in the basic instruments of the United Nations concerning human rights, in particular the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child,

²⁶ Article 35 of The United Nations Convention on the Rights of the Child (CRC),1989

²⁷ <https://www.ohchr.org/en/professionalinterest/pages/cmw.aspx>, Accessed on 8 March 2021

Taking into account also the principles and standards set forth in the relevant instruments elaborated within the framework of the International Labour Organisation, especially the Convention concerning Migration for Employment (No. 97), the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No.143), the Recommendation concerning Migration for Employment (No. 86), the Recommendation concerning Migrant Workers (No.151), the Convention concerning Forced or Compulsory Labour (No. 29) and the Convention concerning Abolition of Forced Labour (No. 105), Reaffirming the importance of the principles contained in the Convention against Discrimination in Education of the United Nations Educational, Scientific and Cultural Organization,

Recalling the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Declaration of the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Code of Conduct for Law Enforcement Officials, and the Slavery Conventions,

Recalling that one of the objectives of the International Labour Organisation, as stated in its Constitution, is the protection of the interests of workers when employed in countries other than their own, and bearing in mind the expertise and experience of that organization in matters related to migrant workers and members of their families,

Recognizing the importance of the work done in connection with migrant workers and members of their families in various organs of the United Nations, in particular in the Commission on Human Rights and the Commission for Social Development, and in the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization

and the World Health Organization²⁸, as well as in other international organizations,

Recognizing also the progress made by certain States on a regional or bilateral basis towards the protection of the rights of migrant workers and members of their families, as well as the importance and usefulness of bilateral and multilateral agreements in this field,

Realizing the importance and extent of the migration phenomenon, which involves millions of people and affects a large number of States in the international community,

Aware of the impact of the flows of migrant workers on States and people concerned, and desiring to establish norms which may contribute to the harmonization of the attitudes of States through the acceptance of basic principles concerning the treatment of migrant workers and members of their families,²⁹

Considering the situation of vulnerability in which migrant workers and members of their families frequently-find themselves owing, among other things, to their absence from their State of origin and to the difficulties they may encounter arising from their presence in the State of employment,

Convinced that the rights of migrant workers and members of their families have not been sufficiently recognized everywhere and therefore require appropriate international protection,

Taking into account the fact that migration is often the cause of serious problems for the members of the families of migrant workers as well as for the workers themselves, in particular because of the scattering of the family,

²⁸ <https://apps.who.int/iris/handle/10665/344101>, Accessed on 8 March 2021

²⁹ https://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/@sro-new_delhi/documents/publication/wcms_124657.., Accessed on 7 March 2021

Bearing in mind that the human problems involved in migration are even more serious in the case of irregular migration and convinced therefore that appropriate action should be encouraged in order to prevent and eliminate clandestine movements and trafficking in migrant workers, while at the same time assuring the protection of their fundamental human rights,

Considering that workers who are non-documented or in an irregular situation are frequently employed under less favourable conditions of work than other workers and that certain employers find this an inducement to seek such labour in order to reap the benefits of unfair competition,

Considering also that recourse to the employment of migrant workers who are in an irregular situation will be discouraged if the fundamental human rights of all migrant workers are more widely recognized³⁰ and, moreover, that granting certain additional rights to migrant workers and members of their families in a regular situation will encourage all migrants and employers to respect and comply with the laws and procedures established by the States concerned,

Convinced, therefore, of the need to bring about the international protection of the rights of all migrant workers and members of their families, reaffirming and establishing basic norms in a comprehensive convention which could be applied universally,

Have agreed as follows:

Article 1

1. The present Convention is applicable, except as otherwise provided hereafter, to all migrant workers and members of their families without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin,

³⁰ <https://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/rep-vi.>, Accessed on 10 March 2021

nationality, age, economic position, property, marital status, birth or other status.³¹

2. The present Convention shall apply during the entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence.³²

Article 11

1. No migrant worker or member of his or her family shall be held in slavery or servitude.
2. No migrant worker or member of his or her family shall be required to perform forced or compulsory labour.
3. Paragraph 2 of the present article shall not be held to preclude, in States where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court.
4. For the purpose of the present article the term “forced or compulsory labour” shall not include:

(a) Any work or service not referred to in paragraph 3 of the present article normally required of a person who is under detention in consequence of a lawful order of a court or of a person during conditional release from such detention;

(b) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

³¹ <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers>, Accessed on 15 March 2021

³² Art. 1 of International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990

(c) Any work or service that forms part of normal civil obligations so far as it is imposed also on citizens of the State concerned.³³

3.3.6. PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME, 2000 (TRAFFICKING PROTOCOL)

The Protocol against Trafficking in Persons, which supplements the United Nations Convention against Transnational Organized Crime (UNTOC), is the primary legal instrument concerning trafficking in persons. It was adopted by the General Assembly under resolution 55/25 on 15 November 2000 and came into force on 25 December 2003.³⁴

The Protocol contains a preamble and 30 articles. The preamble recognizes that “despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons”. The Preamble also acknowledges that “effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights”.

The purposes of the Protocol are prescribed in article 2:

- To prevent and combat trafficking in persons, paying particular attention to women and children;

³³ Art. 11 of International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990

³⁴ <https://www.unodc.org/e4j/en/tip-and-som/module-6/key-issues/international-legal-framework.html>, Accessed on 8 March 2021

- To protect and assist the victims of such trafficking, with full respect for their human rights; and
- To promote cooperation among States Parties in order to meet those objectives.

3.3.7. OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY, 2000

The above Optional Protocol Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000. It entered into force on 18 January 2002.

The Optional Protocol on the sale of children, child prostitution and child pornography supplements the Convention on the rights of the Child by providing States with detailed requirements to end the sexual exploitation and abuse of children. It also protects children from being sold for non-sexual purposes such as forced labour, illegal adoption and organ donation.³⁵

In the present Protocol, Considering that, in order further to achieve the purposes of the Convention on the Rights of the Child and the implementation of its provisions, especially articles 1, 11, 21, 32, 33, 34, 35 and 36, it would be appropriate to extend the measures that States Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography,

Considering also that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development,

³⁵ https://ec.europa.eu/anti-trafficking/legislation-and-case-law-international-legislation- united-nations/optional-protocol-convention_en, Accessed on 8 March 2021

Gravely concerned at the significant and increasing international traffic of children for the purpose of the sale of children, child prostitution and child pornography,

Deeply concerned at the widespread and continuing practice of sex tourism, to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography,

Recognizing that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation, and that girl children are disproportionately represented among the sexually exploited,

Concerned about the growing availability of child pornography on the Internet and other evolving technologies, and recalling the International Conference on Combating Child Pornography on the Internet (Vienna, 1999) and, in particular, its conclusion calling for the worldwide criminalization of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography, and stressing the importance of closer cooperation and partnership between Governments and the Internet industry,

Believing that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking of children,

Believing that efforts to raise public awareness are needed to reduce consumer demand for the sale of children, child prostitution and child pornography, and also believing in the importance of strengthening global

partnership among all actors and of improving law enforcement at the national level, 248 Volume 2171, A-27531

Noting the provisions of international legal instruments relevant to the protection of children, including the Hague Convention on the Protection of Children and Cooperation with Respect to Inter-Country Adoption, the Hague Convention on the Civil Aspects of International Child Abduction, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, and International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists for the promotion and protection of the rights of the child,

Recognizing the importance of the implementation of the provisions of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography and the Declaration and Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children, held at Stockholm from 27 to 31 August 1996, and the other relevant decisions and recommendations of pertinent international bodies, Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child.³⁶

3.3.8. UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME, 2000

The United Nations Convention against Transnational Organized Crime, adopted by General Assembly resolution 55/25 of 15 November 2000, is the

³⁶ https://ec.europa.eu/anti-trafficking/sites/default/files/un_optional_protocol_on_sale_and_pornography_en_1, Accessed on 8 March 2021

main international instrument in the fight against transnational organized crime. It opened for signature by Member States at a High-level Political Conference convened for that purpose in Palermo, Italy, on 12-15 December 2000 and entered into force on 29 September 2003. The Convention is further supplemented by three Protocols, which target specific areas and manifestations of organized crime: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition. Countries must become parties to the Convention itself before they can become parties to any of the Protocols³⁷.

The Convention represents a major step forward in the fight against transnational organized crime and signifies the recognition by Member States of the seriousness of the problems posed by it, as well as the need to foster and enhance close international cooperation in order to tackle those problems. States that ratify this instrument commit themselves to taking a series of measures against transnational organized crime, including the creation of domestic criminal offences (participation in an organized criminal group, money laundering, corruption and obstruction of justice); the adoption of new and sweeping frameworks for extradition, mutual legal assistance and law enforcement cooperation; and the promotion of training and technical assistance for building or upgrading the necessary capacity of national authorities.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, was adopted by General Assembly resolution 55/25. It entered into force on 25 December 2003. It is the first global legally binding instrument with an agreed definition on trafficking in persons. The intention behind this definition is to facilitate convergence in national approaches with regard to the establishment of domestic criminal offences that

³⁷ <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>, Accessed on 8 March 2021

would support efficient international cooperation in investigating and prosecuting trafficking in persons cases. An additional objective of the Protocol is to protect and assist the victims of trafficking in persons with full respect for their human rights.

The Protocol against the Smuggling of Migrants by Land, Sea and Air, adopted by General Assembly resolution 55/25, entered into force on 28 January 2004. It deals with the growing problem of organized criminal groups who smuggle migrants, often at high risk to the migrants and at great profit for the offenders. A major achievement of the Protocol was that, for the first time in a global international instrument, a definition of smuggling of migrants was developed and agreed upon. The Protocol aims at preventing and combating the smuggling of migrants, as well as promoting cooperation among States parties, while protecting the rights of smuggled migrants and preventing the worst forms of their exploitation which often characterize the smuggling process.

The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition was adopted by General Assembly resolution 55/255 of 31 May 2001. It entered into force on 3 July 2005. The objective of the Protocol, which is the first legally binding instrument on small arms that has been adopted at the global level, is to promote, facilitate and strengthen cooperation among States Parties in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. By ratifying the Protocol, States make a commitment to adopt a series of crime-control measures and implement in their domestic legal order three sets of normative provisions: the first one relates to the establishment of criminal offenses related to illegal manufacturing of, and trafficking in, firearms on the basis of the Protocol requirements and definitions; the second to a system of government authorizations or licensing intending to ensure legitimate manufacturing of, and trafficking in, firearms; and the third one to the marking and tracing of firearms.

3.3.9. SOUTH ASIAN ASSOCIATION FOR REGIONAL COOPERATION, CONVENTION ON PREVENTING AND COMBATING TRAFFICKING IN WOMEN AND CHILDREN FOR PROSTITUTION, 2002

The South Asian Association for Regional Cooperation (SAARC) deals with the problem of trafficking. The SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution of 2002 was signed by Member States including India. The main purpose of this Convention is to promote cooperation amongst Member States so that they may effectively deal with the various aspects of trafficking in women and children, i.e. the prevention of the use of women and children in international prostitution networks, particularly where the countries of the SAARC region are the countries of origin, transit and destination, the repatriation and rehabilitation of victims of trafficking.³⁸

Article 2 described scope of the Convention

The purpose of this Convention is to promote cooperation amongst Member States so that they may effectively deal with the various aspects of prevention, interdiction and suppression of trafficking in women and children; the repatriation and rehabilitation of victims of trafficking and prevent the use of women and children in international prostitution networks, particularly where the countries of the SAARC region are the countries of origin, transit and destination.³⁹

Article 3 Offences

1. The State Parties to the Convention shall take effective measures to ensure that trafficking in any form is an offence under their respective criminal

³⁸ <https://evaw-global-database.unwomen.org/es/countries/asia/india/2002/south-asian-association-for-regional-cooperation#:~:text=The%20main%20purpose%20of%20this,the%20countries%20of%20the%20SAARC>, Accessed on 8 March 2021

³⁹ <http://un-act.org/wp-content/uploads/2015/11/South-Asian-Association-for-Regional-Cooperation-SAARC-Convention-on-Preventing-and-Combating-Trafficking-in-Women-and-Children-for-Prostitution.>, Accessed on 8 March 2021

law and shall make such an offence punishable by appropriate penalties which take into account its grave nature.

2. The State Parties to the Convention, in their respective territories, shall provide for punishment of any person who keeps, maintains or manages or knowingly finances or takes part in the financing of a place used for the purpose of trafficking and knowingly lets or rents a building or other place or any part thereof for the purpose of trafficking.

3. Any attempt or abetment to commit any crime mentioned in paras 1 and 2 above or their financing shall also be punishable.

Article 8 Measures to Prevent and Interdict Trafficking In Women and Children

1. The State Parties to the Convention shall provide sufficient means, training and assistance to their respective authorities to enable them to effectively conduct inquiries, investigations and prosecution of offences under this Convention.
2. The State Parties to the Convention shall sensitize their law enforcement agencies and the judiciary in respect of the offences under this Convention and other related factors that encourage trafficking in women and children.
3. The State Parties to the Convention shall establish a Regional Task Force consisting of officials of the Member States to facilitate implementation of the provisions of this Convention and to undertake periodic reviews.
4. The State Parties to the Convention may also, by mutual agreement, set up bilateral mechanisms to effectively implement the provisions of the Convention, including appropriate mechanisms for cooperation to interdict trafficking in women and children for prostitution.
5. The State Parties to the Convention shall exchange, on a regular basis, information in respect of agencies, institutions and individuals who are involved in trafficking in the region and also identify methods and routes

used by the traffickers through land, water or air. The information so furnished shall include information of the offenders, their fingerprints, photographs, methods of operation, police records and records of conviction.

6. The State Parties to the Convention may consider taking necessary measures for the supervision of employment agencies in order to prevent trafficking in women and children under the guise of recruitment.
7. The State Parties to the Convention shall endeavour to focus preventive and development efforts on areas which are known to be source areas for trafficking.
8. The State Parties to the Convention shall promote awareness, inter-alia, through the use of the media, of the problem of trafficking in Women and Children and its underlying causes including the projection of negative images of women.

3.3.10. COUNCIL OF EUROPE, CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS, 2005 (EUROPEAN TRAFFICKING CONVENTION)

Council of Europe: Anti-Human Trafficking Convention Now in Force (Mar. 2, 2008) On February 1, 2008, the Council of Europe's (COE) Convention on Action against Trafficking in Human Beings, which opened for signature on May 16, 2005, entered into force for the first ten countries that ratified the Convention. These include COE Member States Albania, Austria, Bulgaria, Croatia, Cyprus, Denmark, Georgia, Moldova, Romania, and Slovakia. The purpose of the Convention is to prevent trafficking in all forms (national and transnational, organized-crime related or not), protect the human rights of victims, and prosecute traffickers. On May 1, the Convention will become effective for Bosnia and Herzegovina, France, and Norway. Twenty-four other Member States have signed but not ratified the treaty; ten have not yet signed it. Non-member states (which at present include Canada, the Holy See, Japan,

Mexico, and the United States) and the European Community are also eligible to become party to the Convention. (Council of Europe Convention on Action against Trafficking in Human Beings Entered into Force on 1 February 2008, LEGAL NEWS (Feb. 5, 2008)⁴⁰,

Bearing in mind the following recommendations of the Committee of Ministers to member states of the Council of Europe: Recommendation No R (91) 11 on sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults; Recommendation No R (97) 13 concerning intimidation of witnesses and the rights of the defence; Recommendation No. R (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation and Recommendation Rec (2001) 16 on the protection of children against sexual exploitation; Recommendation Rec (2002) 5 on the protection of women against violence;⁴¹

Bearing in mind the following recommendations of the Parliamentary Assembly of the Council of Europe: Recommendation 1325 (1997) on traffic in women and forced prostitution in Council of Europe member states; Recommendation 1450 (2000) on violence against women in Europe; Recommendation 1545 (2002) on a campaign against trafficking in women; Recommendation 1610 (2003) on migration connected with trafficking in women and prostitution; Recommendation 1611 (2003) on trafficking in organs in Europe; Recommendation 1663 (2004) Domestic slavery: servitude, au pairs and mail-order brides;

Taking due account of the United Nations Convention against Transnational Organized Crime and the Protocol thereto to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children with a view

⁴⁰ <https://www.loc.gov/law/foreign-news/article/council-of-europe-anti-human-trafficking-convention-now-in-force/>, Accessed on 8 March 2021

⁴¹ <http://www.europarl.europa.eu/document/activities/cont/201006/20100607ATT75644/20100607ATT75644EN.>, Accessed on 8 March 2021

to improving the protection which they afford and developing the standards established by them;

Taking due account of the other international legal instruments relevant in the field of action against trafficking in human beings;

Article 1 – Purposes of the Convention

1. The purposes of this Convention are:

- a. to prevent and combat trafficking in human beings, while guaranteeing gender equality;
- b. to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution;
- c. to promote international cooperation on action against trafficking in human beings.

2. In order to ensure effective implementation of its provisions by the Parties, this Convention sets up a specific monitoring mechanism.⁴²

Article 6 – Measures to discourage the demand

To discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking, each Party shall adopt or strengthen legislative, administrative, educational, social, cultural or other measures including:⁴³

- a. research on best practices, methods and strategies;
- b. raising awareness of the responsibility and important role of media and civil society in identifying the demand as one of the root causes of trafficking in human beings;

⁴² Article 1 of the Council of Europe's (COE) Convention on Action against Trafficking in Human Beings, 2005

⁴³ Article 6 of the Council of Europe's (COE) Convention on Action against Trafficking in Human Beings, 2005

- c. target information campaigns involving, as appropriate, inter alia, public authorities and policy makers;
- d. Preventive measures, including educational programmes for boys and girls during their schooling, which stress the unacceptable nature of discrimination based on sex, and its disastrous consequences, the importance of gender equality and the dignity and integrity of every human being.

Chapter VIII – Relationship with other international instruments

Article 39 - Relationship with the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organized crime. This Convention shall not affect the rights and obligations derived from the provisions of the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organized crime, and is intended to enhance the protection afforded by it and develop the standards contained therein.⁴⁴

3.3.11. CHARTER OF FUNDAMENTAL RIGHTS IN THE EUROPEAN UNION, 2000, ARTICLE 5, AND DIRECTIVE 2011/36/EU OF THE EUROPEAN PARLIAMENT AND COUNCIL ON PREVENTING AND COMBATING TRAFFICKING IN HUMAN BEINGS AND PROTECTING ITS VICTIMS, 2011

This document is addressed to victims and to practitioners seeking an overview of rights based on EU legislation, as well as to Member States developing similar overviews of rights of human trafficking victims at national level. EU legislation provides for minimum standards, Member States can go beyond these standards as appropriate. Rights deriving from EU legislation which is due to be transposed into national law by Member States after the

⁴⁴ Article 39 of the Council of Europe's (COE) Convention on Action against Trafficking in Human Beings, 2005

publication of this document are marked in italics in the text. For the purpose of the rights and obligations set out in this document, a ‘child’ shall mean any person below 18 years of age. Where the age of the victim is uncertain and there are reasons to believe that the victim is a child, the victim is presumed to be a child. ‘Victim’ for the purposes of this document refers to an individual who is subject to trafficking in human beings. ‘Perpetrator’ and ‘offender’ for the purposes of this document refers to an individual or individuals who have been accused or found guilty of human trafficking. ‘Third-country national’ is an individual who is not a citizen of a Member State of the European Union.⁴⁵

Directive 2011/36/EU, Article 11, paragraph 2:

2. Member States shall take the necessary measures to ensure that a person is provided with assistance and support as soon as the competent authorities have a reasonable grounds indication for believing that the person might have been subjected to any of the offences referred to in Articles 2 and 3.⁴⁶

Directive 2011/36/EU, Article 11, paragraph 1:

1. Member States shall take the necessary measures to ensure that assistance and support are provided to victims before, during and for an appropriate period of time after the conclusion of criminal proceedings in order to enable them to exercise the rights set out in Framework Decision 2001/220/JHA, and in this Directive.⁴⁷

Directive 2011/36/EU, Article 11, paragraph 3:

3. Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim’s

⁴⁵ https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eu_rights_of_victims_of_trafficking_en_1., Accessed on 8 March 2021

⁴⁶ Directive 2011/36/EU, Article 11, paragraph 2

⁴⁷ Directive 2011/36/EU, Article 11, paragraph 1

willingness to cooperate in the criminal investigation, prosecution or trial, without prejudice to Directive 2004/81/EC or similar national rules. Directive 2011/36/EU, recital 18: In cases where the victim does not reside lawfully in the Member State concerned, assistance and support should be provided unconditionally at least during the reflection period. If, after completion of the identification process or expiry of the reflection period, the victim is not considered eligible for a residence permit or does not otherwise have lawful residence in that Member State, or if the victim has left the territory of that Member State, the Member State concerned is not obliged to continue providing assistance and support to that person on the basis of this Directive.⁴⁸

Directive 2011/36/EU, Article 13, paragraphs 1 and 2:

1. Child victims of trafficking in human beings shall be provided with assistance, support and protection. In the application of this Directive the child's best interests shall be a primary consideration.
2. Member States shall ensure that, where the age of a person subject to trafficking in human beings is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection in accordance with Articles 14 and 15.⁴⁹

Directive 2011/36/EU, Article 14, paragraph 1:

1. Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due account

⁴⁸ Directive 2011/36/EU, Article 11, paragraph 3

⁴⁹ Directive 2011/36/EU, Article 13, paragraphs 1 and 2

of the child's views, needs and concerns with a view to finding a durable solution for the child.⁵⁰

Directive 2011/36/EU, Article 16, paragraphs 1 and 2:

1. Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, as referred to in Article 14(1), take due account of the personal and special circumstances of the unaccompanied child victim.
2. Member States shall take the necessary measures with a view to finding a durable solution based on an individual assessment of the best interests of the child.⁵¹

3.4. SOME IMPORTANT NON-TREATY INSTRUMENTS RELEVANT TO PREVENTION OF TRAFFICKING

These are some important non-treaty instruments relevant to the prevention of trafficking they are given below -

3.4.1. RECOMMENDED PRINCIPLES AND GUIDELINES ON HUMAN RIGHTS AND HUMAN TRAFFICKING (RECOMMENDED PRINCIPLES AND GUIDELINES)

The Recommended Principles and Guidelines on Human Rights and Human Trafficking, which are included as an addendum to report of the Economic and Social Council (E/2002/68/Add.1), have been developed in order to provide practical, rights-based policy guidance on the prevention of trafficking and the protection of victims of trafficking. Their purpose is to promote and facilitate the integration of a human rights perspective into national, regional and international anti-trafficking laws, policies and interventions.⁵²

⁵⁰ Directive 2011/36/EU, Article 14, paragraph 1

⁵¹ Directive 2011/36/EU, Article 16, paragraphs 1 and 2

⁵² <https://www.ohchr.org/documents/publications/traffickingen.>, Accessed on 20 March 2021

According to Guideline 2: Identification of trafficked persons and traffickers

Trafficking means, it is much more than the organized movement of persons for profit. The critical additional factor that distinguishes trafficking from migrant smuggling is the presence of force, coercion and/or deception throughout or at some stage in the process - such deception, force or coercion being used for the purpose of exploitation. While the additional elements that distinguish trafficking from migrant smuggling may sometimes be obvious, in many cases they are difficult to prove without active investigation. A failure to identify a trafficked person correctly is likely to result in a further denial of that person's rights.⁵³

States are also obliged to exercise due diligence in identifying traffickers, (The term "traffickers", where it appears in the present Principles and Guidelines, is used to refer to: recruiters; transporters; those who exercise control over trafficked persons; those who transfer and/or maintain trafficked persons in exploitative situations; those involved in related crimes; and those who profit either directly or indirectly from trafficking, its component acts and related offences.) including those who are involved in controlling and exploiting trafficked persons. States and, where applicable, intergovernmental and non-governmental organizations, should consider:

1. Developing guidelines and procedures for relevant State authorities and officials such as police, border guards, immigration officials and others involved in the detection, detention, reception and processing of irregular migrants, to permit the rapid and accurate identification of trafficked persons.

⁵³ Guideline 2 of the Economic and Social Council as an addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1)

2. Providing appropriate training to relevant State authorities and officials in the identification of trafficked persons and correct application of the guidelines and procedures referred to above.
3. Ensuring cooperation between relevant authorities, officials and nongovernmental organizations to facilitate the identification and provision of assistance to trafficked persons. The organization and implementation of such cooperation should be formalized in order to maximize its effectiveness.⁵⁴
4. Identifying appropriate points of intervention to ensure that migrants and potential migrants are warned about possible dangers and consequences of trafficking and receive information that enables them to seek assistance if required.
5. Ensuring that trafficked persons are not prosecuted for violations of immigration laws or for the activities they are involved in as a direct consequence of their situation as trafficked persons.
6. Ensuring that trafficked persons are not, in any circumstances, held in immigration detention or other forms of custody.
7. Ensuring that procedures and processes are in place for receipt and consideration of asylum claims from both trafficked persons and smuggled asylum seekers and that the principle of non-refoulement is respected and upheld at all times.⁵⁵

3.4.2. BASIC PRINCIPLES AND GUIDELINES ON THE RIGHT TO A REMEDY AND REPARATION FOR VICTIMS OF GROSS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAW AND SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW (BASIC PRINCIPLES AND GUIDELINES ON THE RIGHT TO A REMEDY AND REPARATION)

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious

⁵⁴ Ibid p 6

⁵⁵ Ibid p7

Violations of International Humanitarian Law adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005⁵⁶

Victims' right to remedies

Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law:⁵⁷

- (a) Equal and effective access to justice;
- (b) Adequate, effective and prompt reparation for harm suffered;
- (c) Access to relevant information concerning violations and reparation mechanisms.

3.4.3. UNICEF GUIDELINES ON THE PROTECTION OF CHILD VICTIMS OF TRAFFICKING (UNICEF GUIDELINES)

The UNICEF Guidelines set out standards for good practice in the protection of and assistance to child victims of trafficking from identification to recovery and reintegration of the child. The Guidelines are based on relevant international and regional human rights instruments and provide a straightforward account of the policies and practices required to implement and protect the rights of child victims of trafficking. The Guidelines aim to help governments and state actors, international organizations and NGOs develop special protection measures for child victims of trafficking. The Guidelines focus on the steps needed to protect and assist anyone under 18 who is believed to have been trafficked, and to make decisions about their future. The Guidelines do not discuss the steps needed to prevent children from being trafficked. A draft

⁵⁶ <https://www.ohchr.org/en/professionalinterest/pages/remedyandreparation>. Accessed on 18 March 2021

⁵⁷ VII Victims' right to remedies of the Basic Principles and Guidelines on the Right to Remedy and Reparation.

of the Guidelines was issued in March 2003 and considered by the Task Force on Trafficking in Human Beings of the Stability Pact for South Eastern Europe. The Stability Pact Task Force formally endorsed the Guidelines in April 2003. They were published in May 2003 and in a revised form in October 2003. At an intergovernmental meeting in Sofia, Bulgaria in December 2003, government representatives from South Eastern Europe signed a Statement on Commitments endorsing the Guidelines and pledging to develop and adopt minimum standards for the treatment of child victims of trafficking based upon the Guidelines.⁵⁸

The Guidelines summarize basic information about child rights as set out in the United Nations Convention on the Rights of the Child (CRC) and other relevant international legal instruments. As noted, the UNICEF Guidelines cover 11 specific aspects concerning trafficking of children:⁵⁹

1. Identification of children as victims of trafficking;
2. Appointment of a guardian for each trafficked child;
3. Questioning by the authorities;
4. Referral to appropriate services and inter-agency coordination;
5. Interim care and protection;
6. Regularization of a child's status in a country other than their own;
7. Individual case assessment and identification of a durable solution;
8. Implementing a durable solution, e.g., possible return to a child's country of origin;
9. Access for children to justice;
10. Protection of the child as a victim and potential witness; and
11. Training for government and other agencies dealing with child victims.

⁵⁸ <https://www.refworld.org/pdfid/49997af7d>, Accessed on 18 March 2021

⁵⁹ UNICEF's Guidelines for Protection of the Rights of Child Victims of Trafficking in South Eastern Europe, p10

It takes more than this checklist to create the ‘protective environment that safeguards children from maltreatment of all kinds. The UNICEF Guidelines explicitly focus on children who are being or have been trafficked for exploitation.

3.4.4. CRIMINAL JUSTICE RESPONSES TO TRAFFICKING IN PERSONS: ASEAN PRACTITIONER GUIDELINES

This guideline finalized by the ASEAN Ad-Hoc Working Group on Trafficking in Persons, 25 June 2007, Vientiane, Lao PDR; and endorsed by the 7th ASEAN Senior Officials Meeting on Transnational Crime, Vientiane, Lao PDR, 27 June 2007.

The overall objective of these Practitioner Guidelines is to assist the criminal justice agencies of ASEAN Member Countries in their goal of securing justice for victims and ending the impunity of traffickers.⁶⁰

Part One - Evidential Matters

A. Strengthening of the legal framework

1. All forms of trafficking in persons and related crimes should be specifically criminalised in accordance with applicable international standards.
2. Penalties for those convicted of the crime of trafficking in persons and related crimes should be commensurate with the gravity of the crime.
3. Offences of trafficking in persons, together with trafficking in persons related crimes are recommended to be predicate offences in respect of money laundering legislation.
4. In order to ensure that there are no safe havens for traffickers, States are encouraged to either extradite or prosecute alleged offenders.

⁶⁰ https://jica-cb-workshop.weebly.com/uploads/8/0/7/2/8072630/criminal_justice_responses_to_Trafficking_in_persons., Accessed on 8 March 2021

5. Existing and future bilateral and multilateral extradition and mutual legal assistance treaties should be applicable for trafficking in persons and trafficking related crimes.
6. To the extent possible, the legal framework should enable victims to seek and receive remedies including compensation from appropriate sources including from those convicted of trafficking in persons and related offences.

B. Specialisation and co-operation

1. A specialist investigation capacity within national police forces is key to a strong and effective criminal justice response to trafficking in persons. Front-line law enforcement officials should also understand the crime of trafficking and their responsibility to provide an initial response.
2. Prosecution agencies should also develop a specialist response capacity. A number of prosecutors - appropriate to the current and anticipated caseload - should be specially trained and designated to undertake the preparation and presentation of TIP and related prosecutions.
3. Priority should be given to the development and delivery of specialist training for any designated prosecutors.
4. If the caseload does not yet warrant a specialist prosecutorial response, then the prosecutorial agency should designate a focal point for TIP related cases.
5. A number of judges, appropriate to the current and anticipated caseload, should be specially prepared and designated to undertake the management and adjudication of TIP related trials.⁶¹
6. All prosecutors and judges should be sensitized to understand the crime of trafficking and informed of the applicable legal framework.
7. There should be close co-operation between investigators and prosecutors, including at the specialist level, at the earliest possible stages in trafficking cases in order to ensure strong prosecution cases.

⁶¹ <https://www.notip.org.cn/UserImages/00001426.>, Accessed on 9 March 2021

C. Management of the victim as a witness

1. Prosecutors and investigators should work closely to secure the consent and cooperation of victims of trafficking to act as victim-witnesses and to provide evidential statements.
2. To the extent possible, victims of trafficking should not be charged or prosecuted in relation to crimes committed by them that are a direct consequence of an act of trafficking in persons.
3. Victims of trafficking should, as provided in domestic law, be provided with prompt access to protection and shelter.
4. Administrative and/or legal provisions should be put in place to enable consenting and co-operating victim-witnesses to remain in the country for the purposes of assisting with the investigation and / or testifying in criminal proceedings.
5. Specialist prosecutors and victim support agencies should cooperate to support victims throughout their involvement as witnesses in criminal proceedings.⁶²
6. The privacy of victims of trafficking should be respected and their personal particulars should remain confidential, to the extent provided by law.
7. To the extent possible, efforts should be made to expedite criminal proceedings in trafficking cases to reduce the stress and pressure endured by victims when having to wait for long periods of time to testify at trial.

D. Special measures for child victims

1. The special needs of child victims of trafficking as well as their special rights to protection, care and support should be recognised and respected by all criminal justice agencies.⁶³

⁶² <https://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.>, Accessed on 12 March 2021

⁶³ <https://wcd.nic.in/sites/default/files/DRAFT%20TRAFFICKING%20IN%20PERSONS%20%28PREVENTION%2C%20CARE%20AND%20REHABILITATION%29%20BILL%202021%20%281%29.>, Accessed on 12 March 2021

E. Witness protection issues⁶⁴

1. Victim-witnesses and where necessary, their families, should be protected from reprisals from their traffickers.
2. The privacy of victim-witnesses is to be protected at all times, to the extent provided by law.
3. To the extent possible under domestic law, the physical re-location of consenting victim-witnesses, including to second or third countries, should be considered where such relocation is necessary to protect them.

F. Trial Issues

1. Prosecutors and investigators should work closely to secure the consent and cooperation of victims of trafficking to testify in the trial of their traffickers in those cases where their testimony is necessary for the prosecution.
2. In the interests of justice and victim protection, trafficking in persons related trials should be commenced and completed without undue delay. Mechanisms such as preliminary hearings should be considered where possible.
3. In order to make trials less stressful for testifying victim-witnesses, a range of alternatives to testifying in open court should be explored; this may include the opportunity to testify from behind a screen, or at a closed session of the trial proceedings or by means of a video link.
4. Other practical court support measures could include: pre-trial court room visits, escorts to and from court buildings, the use of separate entrances to the court building, private waiting areas and the regular provision of information concerning the conduct of the trial from the prosecution side throughout the court proceedings.

⁶⁴ <https://www.lawctopus.com/academike/witness-protection-problems-faced-and-need-for-a-protection-programme-in-india/>, Accessed on 12 March 2021

5. It is the responsibility of both the prosecutor and the judge to ensure that a fair trial takes place in accordance with applicable international standards.

Part Two - International operational and legal / judicial co-operation

A. International Operational Co-operation

1. Efforts should be made to increase deployment of coordinated specialist investigator-prosecutor investigation teams at the international level.⁶⁵
2. There should be increased collaboration in the use of specialist investigative techniques in international investigations.
3. Regional training workshops on the management of coordinated investigation teams and implementation of specialist investigative techniques should be developed.
4. National multi-agency border liaison units should be established, especially at identified border “hot spots” to improve the capacity and quality of cross-border co-operation.
5. Relevant agencies should be encouraged and supported in effective use of modern information and communications technology at all levels to facilitate closer and faster co-operation.
6. Operational international co-operation measures should be closely coordinated with other appropriate regional structures such as the Heads of Specialist Trafficking Units (HSU) Process, Interpol and joint meetings of ASEAN law enforcement agencies.⁶⁶

B. International Legal / Judicial Co-operation – General

1. The use of the principle of “extradite or prosecute” is encouraged as a guide for all actions in relation to the prosecution of cross-border trafficking in persons cases.

⁶⁵ <https://www.ojp.gov/pdffiles1/Digitization/148118NCJRS.>, Accessed on 15 March 2021

⁶⁶ <https://www.interpol.int/en/How-we-work/Capacity-building/Capacity-building-projects/Project-Sunbird>, Accessed on 16 March 2021

2. Where possible, extra-territorial provisions should be attached to trafficking in persons laws and related statutes as a further measure to remove safe havens for traffickers.
3. ASEAN Member States should review and harmonise domestic law to the extent possible to ensure that extradition and mutual legal assistance provisions are able to function effectively.

C. International Legal / Judicial Co-operation - Extradition

1. The conclusion and effective implementation of bilateral extradition treaties and working towards a model ASEAN extradition treaty will be important steps forward in ending impunity for traffickers.
2. Where extradition is not possible because of the absence of a treaty, alternative means, such as the use of the UN Convention against Transnational Organised Crime,⁶⁷ where applicable, or other arrangements at the international, regional or bi-lateral level and on a case-by-case basis, could be considered.
3. In appropriate transnational cases where traffickers could be prosecuted in two or more States, alternative means at the international, regional or bilateral levels could be considered to assess and coordinate criminal proceedings and, where appropriate, consider the transfer of criminal proceedings to the most appropriate State in the interests of the proper administration of justice.
4. Consideration should be given, where appropriate, to the development of specific legal provisions to facilitate the transfer of criminal proceedings in cross-border cases in the ASEAN region.

D. International Legal / Judicial Co-operation - Mutual Legal Assistance in Criminal Matters

⁶⁷ https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO., Accessed on 13 March 2021

1. The Treaty of Mutual Legal Assistance in Criminal Matters Among Like-Minded ASEAN Member Countries (MLAT)⁶⁸ is a major step forward in ending impunity for traffickers and should be ratified by all ASEAN Member States as soon as possible.
2. All practitioners are encouraged to accept and utilise the MLAT templates as published on the website of the Treaty Secretariat and there should be closer and quicker communication between Central Authorities and prosecutors in trafficking cases involving mutual legal assistance requests.
3. Where possible, States are encouraged to enable the use and admissibility of videoconference evidence in court and courts so enabled should be fully equipped and resourced for the use of video evidence.
4. Requests of mutual legal assistance should be in accordance to established procedures in the Treaty of Mutual Legal Assistance in Criminal Matters Among Like-Minded ASEAN Member Countries (MLAT).⁶⁹ States should accord high priority to and expedite requests relating to trafficking cases.
5. Requested States should promptly acknowledge receipt of trafficking in persons related MLAT requests and provide the Requesting State with regular updates on the progress of the request.
6. Consideration should be given to amending domestic legislation to ensure that measures are taken to identify, trace and freeze or seize proceeds of crime derived from trafficking in persons for the purpose of eventual confiscation.
7. Consideration should also be given to concluding bilateral or multi-lateral treaties, agreements or arrangements to enhance the effectiveness of international legal / judicial cooperation on trafficking in persons cases.

⁶⁸ <https://unterm.un.org/unterm/display/record/unhq/na/c383d069-a097-423d-9eed-2fef10e99ad9>, Accessed on 11 March 2021

⁶⁹ <https://mea.gov.in/mutual-legal-assistance-in-criminal-matters.>, Accessed on 13 March 2021

8. Members of the judiciary, prosecutors and specialist investigators should receive training and support on international legal / judicial co-operation measures, with particular emphasis on the use and admissibility in court of evidence obtained through international judicial co-operation.
9. Research into the current application of international legal / judicial co-operation and anti-money laundering measures in relation to trafficking in persons cases should be undertaken in the ASEAN region and the results should be widely disseminated.

E. Networking

1. Close operational co-operation between specialist investigators and prosecutors is an essential component of an effective response to trafficking in persons and a regional network of specialist prosecutors similar to the current Heads of Specialist Trafficking Units (HSU) Process should be developed⁷⁰.
2. Any regional network of specialist prosecutors should establish the closest possible operational links with the HSU Process to ensure close collaboration.
3. A regional programme should be developed to foster close co-operation and networking between specialist investigators, prosecutors and Central Authority legal officers and include activities such as regional training workshops, seminars and retreats.
4. To facilitate regional networking, a specific website should be created to enable specialists to communicate informally with each other to share best practice lessons and to serve as a regional specialist contact directory for nominated focal points.

⁷⁰ <https://asean.org/wp-content/uploads/2021/01/DOC-11-ANNEX-16-Adopted-HSU-TOR-as-of-19-July-2017>, Accessed on 12 March 2021

3.4.5. UNHCR GUIDELINES ON INTERNATIONAL PROTECTION: THE APPLICATION OF ARTICLE 1A (2) OF THE 1951 CONVENTION AND/OR 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES TO VICTIMS OF TRAFFICKING AND PERSONS AT RISK OF BEING TRAFFICKED (UNHCR TRAFFICKING GUIDELINES)

The European Commission presented its proposal for a Directive on preventing and combating trafficking in human beings and protecting victims on 29 March 2010.⁷¹ The proposal, if adopted, would repeal the Framework Decision on combating trafficking in human beings, in place since 2002, which provides for a European legal basis to prosecute the crime of human trafficking. The proposed Directive aims among other things at achieving increased consistency among national rules on the fight against human trafficking and on victim protection.

The following comments of the Office of the United Nations High Commissioner for Refugees (hereinafter “UNHCR”) are made in the context of UNHCR’s supervisory responsibility which is set out under its Statute, Article 35 of the 1951 Convention relating to the Status of Refugees (hereinafter “the 1951 Convention”), and Article II of its 1967 Protocol. These comments are limited to those provisions of the proposal which relate to UNHCR’s mandate.⁷²

3.4.5.1. UNHCR’S INTEREST REGARDING HUMAN TRAFFICKING

While not all victims or potential victims of trafficking fall within the scope of the refugee definition, the Trafficking Protocol highlights this possibility in the saving clause contained in its Article 14, which states: “1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of

⁷¹ UN High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked, 7 April 2006, HCR/GIP/06/07, available at: <https://www.refworld.org/docid/443679fa4.html> [accessed 8 March 2021]

⁷² Available at: <https://www.refworld.org/pdfid/4c0fa7092>, Accessed on 8 March 2021

States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.” The obligation of European Union Member States to consider the international protection needs of victims of trafficking is strengthened by paragraph 377 of the Explanatory Report accompanying the Council of Europe Convention against Trafficking, to which all Member States are party. The paragraph states in relation to Article 40 of this Convention: “The fact of being a victim of trafficking in human beings cannot preclude the right to seek and enjoy asylum and Parties shall ensure that victims of trafficking have appropriate access to fair and efficient asylum procedures. Parties shall also take whatever steps are necessary to ensure full respect for the principle of nonrefoulement”.

The Office of the UN High Commissioner for Human Rights (OHCHR)⁷³ in its Recommended Principles and Guidelines on Human Rights and Trafficking also addresses the importance of ensuring that procedures and processes are in place for the consideration of asylum claims from trafficked persons, and that the principle of non-refoulement is respected and upheld at all times. Likewise, the Agenda for Protection, adopted by the Executive Committee of UNHCR in 2003, calls upon States to ensure that their asylum systems are open to receiving claims from individual victims of trafficking. Some victims or potential victims of trafficking may fall within the definition of a refugee contained in Article 1A(2) of the 1951 Convention or within the wider definition of persons eligible for subsidiary protection as per Article 15 of the EU Qualification Directive,⁷⁴ and may therefore be entitled to international protection. In their flight, refugees often have to rely on smugglers, who are often closely related to traffickers, with both preying on the vulnerabilities of

⁷³ <https://www.ohchr.org/en/about-us/high-commissioner>, Accessed on 12 March 2021

⁷⁴ <https://euaa.europa.eu/sites/default/files/public/Article-15c-Qualification-Directive-201195EU-A-judicial-analysis>, Accessed on 15 March 2021

people seeking international protection. They are thus affected by criminal activity. In addition to refugees, other victims of trafficking may be unable to return to their countries of origin for fear of further human rights violations. They may fear re-victimization at the hands of traffickers, risk being re-trafficked, or being stigmatized for their participation in sex work, albeit involuntary, which may amount to persecution. The non-state actors involved in trafficking may act as agents of persecution. UNHCR's Guidelines on victims of trafficking and persons at risk of being trafficked provide guidance on the adjudication of asylum applications presented by victims or potential victims of trafficking. The Guidelines also cover issues concerning victims of trafficking arising in the context of the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. UNHCR's Guidance Note on Refugee Claims Relating to Victims of Organized Gangs further clarifies that, in the absence of effective State protection, victims of gang violence - which can include victims of trafficking, may qualify for international protection.

3.4.5.2. Respect for fundamental rights and principle of non-refoulement

UNHCR values the efforts and shares the legitimate interest of States in combating trafficking in persons, a crime which entails serious violations of the human rights of its victims. In this context, UNHCR welcomes the proposal for a Directive on preventing and combating trafficking, and in particular the objective of protecting, assisting and supporting victims. This Directive would represent an important development which would help to ensure that the rights of victims of trafficking are effectively addressed in binding European Union rules. As such, UNHCR welcomes the various references made in the proposal to the Charter of Fundamental Rights of the European Union (hereinafter the "EU Charter"), in particular Article 5 (3) on trafficking, and Article 24 on Rights of the Child, and the mention of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The European

Commission's Experts Group on Trafficking in its 2004 report stated that "the integration of a human rights perspective is fundamental for the analysis of trafficking in human beings and the development of an effective response to it." In the words of the Group, "a human rights perspective should be part and parcel of any policy". UNHCR specifically calls for a human rights-based approach to human trafficking which goes beyond prosecuting the perpetrators, and includes measures to identify (potential) victims of trafficking and address their protection needs beyond criminal investigation and proceedings. UNHCR therefore considers it essential to reiterate in the proposed Directive the fundamental principle of non-refoulement, which binds the European Union and all Member States under the terms not only of the 1951 Convention, but also the EU Charter and other relevant treaties. UNHCR specifically draws attention to Article 19 of the EU Charter on protection in the event of removal, expulsion or extradition, which re-affirms the principle of non-refoulement i.e. ensuring that no-one is sent back to persecution. Measures will be needed to ensure its respect in law and in practice.

3.4.5.3. Legal basis

The legal basis for the proposed Directive as named in the proposal is derived from Articles 82(2) and 83(1) of the Treaty on Functioning of the European Union (TFEU), in Chapter 4, on Judicial Cooperation in Criminal Matters. However, in UNHCR's view, a reference should also be made to Article 79(2) (d) TFEU (Chapter 2, Policies on Border Checks, Asylum and Immigration).⁷⁵ Article 29(2)(d) requires the adoption of measures inter alia in the area of 'combating trafficking in persons, in particular women and children'. Given that the explanatory memorandum of this Directive proposal refers specifically to protective measures, including for women and children, it may be helpful to cite this in the proposal, in connection with the legal basis or within the Preamble, in order to emphasize the importance of the protection element.

⁷⁵ <https://www.unhcr.org/uk/615ff04d4>., Accessed on 16 March 2021

This would also reflect the fact that combating trafficking entails not only criminal law measures, but also protection for victims and safeguards to ensure their access, among other things, to processes for seeking asylum where needed.

Women and girls indeed represent the overwhelming majority of exploited persons as a result of trafficking in human beings. Moreover, the gender of (potential) victims of trafficking constitutes an additional factor of vulnerability for these persons.

Inherent in the trafficking experience are such forms of severe exploitation as abduction, incarceration, rape, sexual enslavement, enforced prostitution, forced labour, removal of organs, physical beatings, starvation, the deprivation of medical treatment. Such acts constitute serious violations of human rights which will generally amount to persecution. UNHCR encourages the Council and Parliamentary legislators to mainstream a gender approach in the Directive, in particular in the definition of “particularly vulnerable persons”, to include vulnerability on grounds of gender. UNHCR also calls for this definition to be extended to persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.

3.4.5.4. Protection beyond criminal proceedings

The holistic course of action underpinned by the 3 “P”s (Prevention, Protection, Prosecution) also requires a human-rights based approach,⁷⁶ which places “the rights of victims at the centre and takes into account the additional challenges for specific groups, such as women and children”, as advised by the Council of the European Union. Similarly, the Experts Group on Trafficking advised “that in order to effectively address trafficking, a holistic and integrated approach is needed which builds on the respect and promotion of human rights as its fundament.” Of note for this Directive is the fact that victim-centered

⁷⁶ Meier BM, Evans DP, Phelan A. Rights-Based Approaches to Preventing, Detecting, and Responding to Infectious Disease. *Infectious Diseases in the New Millennium*. 2020 May 16;82:217–53. doi: 10.1007/978-3-030-39819-4_10. PMID: PMC7226904., Accessed on 16 March 2021

approaches also support the measures to combat trafficking through the trust and confidence they foster. If protected and assisted, victims are less likely to abscond with the risk of being re-victimized and re-trafficked, and they are likely to be more open to participating voluntarily in criminal proceedings by giving evidence against traffickers, once trust has been built with support services and authorities. In the proposal, however, protection measures provided to victims of trafficking are restricted to short-term assistance and support offered within the criminal justice system to victims of crimes (Article 11).

3. 4.5.5. Assistance and support

UNHCR very much welcomes the new provisions introduced by Article 10 of the proposal with regard to assistance and support for victims of trafficking in human beings. These provisions represent a step forward from the existing Framework Decision, in particular the assistance and support afforded to victims of trafficking “for an appropriate time after criminal proceedings” (Article 10 (1)).⁷⁷ UNHCR strongly supports the proposal at Article 10 (3) to “ensure that assistance and support for a victim are not made conditional on the victim’s willingness to act as a witness.” UNHCR also welcomes the provision of assistance and support in a language victim can understand (Article 10 (5)).⁷⁸ In the context of trafficking related procedures, where so much depends on the testimony of an individual, effective communication with the victim, in a language s/he understands, is essential.

Despite the definition of “particularly vulnerable persons”, the proposal does not include any provision for the specific protection, assistance or support of these persons with the exception of minors (Articles 12 to 14). In addition, in light of the need for a gender-sensitive approach to combating trafficking, and specific protection, assistance or support for women and girls, it is recommended

⁷⁷ <https://www.unhcr.org/human-trafficking/>, Accessed on 15 March 2021

⁷⁸ Ibid.

to clarify that assistance and support should be provided in a gender-sensitive manner.

3.5. Conclusion-

In the light of above mentioned facts and legal instruments of international we observed that international treaty, regional treaty, protocols, non- treaties instruments and guide lines of international organizations which is concerned human trafficking.

International law may be relevant to the criminal cases of foreign national trafficking survivors because a trafficking crime can occur in more than one country and the recruiters and traffickers can also send their victims to other countries for commercial gain.

Trafficking for sexual exploitation is the most commonly reported form of human trafficking in the European Union. It is a form of gender-based violence that disproportionately affects women. 95% of registered victims of trafficking for sexual exploitation in the EU are women or girls. Trafficking in women and girls remains a structural form of violence against women. Member States are obliged by law to take gender specific measures to assist and protect victims.

The United Nations Convention against Transnational Organized Crime, 2000 is the main international instrument in the fight against transnational organized crime. The Convention is further supplemented by three Protocols, which target specific areas and manifestations of organized crime: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition.

In December 2000, the United Nations General Assembly approved the Protocol to Prevent, Suppress, and Punish Trafficking Persons, known as the U.N. TIP Protocol or “Palermo Protocol”. The TVPA has parallels to the international standard so the U.S. is able to collaborate with other nations to combat human trafficking on a global level. The UN Convention against Transnational Organized Crime promotes international cooperation to prevent and fight trafficking.

The CEDAW is the only human rights treaty which affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations. It affirms women's rights to acquire, change or retain their nationality and the nationality of their children. States parties also agree to take appropriate measures against all forms of traffic in women and exploitation of women. The Optional Protocol on the sale of children, child prostitution and child pornography supplements the Convention on the rights of the Child by providing States with detailed requirements to end the sexual exploitation and abuse of children. The United Nations Convention on the Rights of the Child (CRC), 1989 some important provisions concerned to trafficking such as-

Article 34 (Sexual exploitation): Governments should protect children from all forms of sexual exploitation and abuse. This provision in the Convention is augmented by the Optional Protocol on the sale of children, child prostitution and child pornography.

Article 35 (Abduction, sale and trafficking): The government should take all measures possible to make sure that children are not abducted, sold or trafficked. This provision in the Convention is augmented by the Optional Protocol on the sale of children, child prostitution and child pornography.

Article 36 (Other forms of exploitation): Children should be protected from any activity that takes advantage of them or could harm their welfare and

development. The guidelines finalized by the ASEAN Ad-Hoc Working Group on Trafficking in Persons, 25 June 2007, Vientiane, Lao PDR; and endorsed by the 7th ASEAN Senior Officials Meeting on Transnational Crime, Vientiane, Lao PDR, 27 June 2007. The overall objective of these Practitioner Guidelines is to assist the criminal justice agencies of ASEAN Member Countries in their goal of securing justice for victims and ending the impunity of traffickers.

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4.1. INTRODUCTION

“Women is the companion of man, gifted with equal mental capacities. She has the right to participate in the minutest details in the activities of man and she has an equal right of freedom and liberty with him. She is entitled to a supreme place in her own sphere of activity as man is in his. This ought to be the natural condition of things and not as a result only of learning to read and write. By sheer force of a vicious custom, even the most ignorant and worthless men have been enjoying a superiority over woman which they do not deserve and ought not to have. Many of our movements stop halfway because of the condition of our women.”

Mahatma Gandhi

Once women and girls become involved in the sex trafficking industry, it becomes very difficult for them to escape. Victims may face legal barriers, where the traffickers will confiscate or sequester all forms of immigration and citizenry documentation.¹ Language barriers, fear, limited knowledge, and lack of money are other barriers that women and girls may face to prevent them from escaping the sex trafficking ring. In many parts of the world, legacy prostitution, or the involuntary enslavement of future generations of girls in the sex trafficking industry, becomes an expected societal norm.

The global sex trade is the fastest growing form of commerce, worth \$32 billion annually. In fact, human trafficking is the fastest growing area of organized crime and the third largest income revenue for organized crime after narcotics and arms sales. What makes this business unique is that women and girls sold into sex trafficking earn profits for their pimps and traffickers over a great number of years, unlike the profits earned from drugs and narcotics that are sold and used only once.

¹ https://www.ohchr.org/sites/default/files/Documents/Publications/FS36_en.

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The two most common purposes for human trafficking are sexual exploitation and forced labor. Victims² of sex trafficking are forced into one or more forms of sexual exploitation. It is important to note that sex trafficking and prostitution are not synonymous and that prostitution is simply one type of work performed by victims of sex trafficking. Sex trafficking is an umbrella term that may include commercial sex work such as prostitution, but also pornography, exotic dancing, stripping, live sex shows, mail-order brides, military prostitution, and sexual tourism. Although victims of sex trafficking can be of any age and of either sex, the majority are women and adolescent girls. Although many nations have outlawed the trafficking of females, it is still widely prevalent on a global scale.³

Human trafficking is a modern-day form of slavery that involves the illegal trade of human beings for the purpose of some form of forced exploitation. The United Nations Office On Drugs and Crime (UNODC)⁴ defines human trafficking as any form of recruiting, transporting, transferring, harboring, or receiving a person by means of threat or use of force or other forms of coercion, abduction, fraud, or deception. There are approximately 800,000 people trafficked across international borders annually and, of these, 80% are women or girls and 50% are minors. Although the degree of trafficking among countries and continents is variable, it is clear that global trafficking has become a growing problem.⁵

In Indian context, the Criminal Law (Amendment) Act, 2013 amended section 370 of the Indian Penal Code defined trafficking and included punishments.⁶ According to this section- (2) the person who 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 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

² https://www.justice.gc.ca/eng/rp-pr/cj-jp/tp/rr06_3/rr06_3.

³ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3651545/>

⁴ <https://www.unodc.org/>

⁵ <https://www.ncbi.nlm.nih.gov/pmc>, Sex Trafficking of Women and Girls-PMC-NCBI

⁶ The Indian Penal Code, 1860, 96 (Central Law Publication, Allahabad, 2022)

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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 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.⁷

Sec. 370- A⁸. Exploitation of a trafficked person- (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.

The World Conference on Human Rights, held in Vienna in 1993, also stresses the importance of working towards the elimination of all forms of sexual harassment, exploitation and trafficking in women. India has also signed the said convention on 30th July, 1980 and ratified on the 9th July, 1993. India is one of the parties to Child Right Convention, 1989 as well to the first Optional Protocol on Involvement of Children in Armed Conflict 2000 and the Second Optional Protocol on the Sale of Children Child Prostitution and Child Pornography, 2000. She has to fulfill the international obligation by implementing the provisions of the CRC, 1989 and its

⁷ Ibid.

⁸ Ins. By Criminal Law (Amendment) Act, 2013, Sec.8 (w.r.e.f. 3-2-2013).

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optional protocols under international law and practice. India has finally ratified the UN protocol on human trafficking on the 5th May 2011, along with conventions against internationally organized crime and corruption. In fact, ratification of this convention means that it is now binding on India to develop a law that conforms to the international convention and its provisions. Nevertheless, traffickers of forced labour now come within the purview of the law in the country. Thus, the criminal gangs involved in large-scale kidnappings, abductions and forced labour of children go scot-free as the laws in the country are more biased towards prosecuting the employers or pimps in the case of prostitution. At the regional level, the SAARC Convention on Preventing and Combating Trafficking in Women and Children was unanimously adopted by the SAARC countries on the 5th January 2002⁹ in Kathmandu. The purpose of this Convention is to promote cooperation amongst Member States so that they may effectively deal with the various aspects of prevention, interdiction and suppression of trafficking in women and children; the repatriation and rehabilitation of victims of trafficking and prevent the use of women and children in international prostitution networks, particularly where the countries of the SAARC region are the countries of origin, transit and destination. The Constitution of India, general criminal laws and special laws prohibits and criminalises human trafficking. Article 23 of the constitution of India prohibits trafficking in human being and other similar forms of forced labour and pronounce that such acts are offences punishable in accordance with law.¹⁰ Article 24 of the constitution also provides that no child, below the age of 14 years, shall be employed to work in any factory or mine or engaged in any other hazardous employment. It is further provided by the article 37 of the constitution that the state shall direct its policy towards securing that children are given adequate opportunities and facilities to develop in a healthy manner, so that children and the youths are protected against such exploitation.¹¹

Besides IPC, the Immoral Traffic Prevention Act, 1956, Protection of Children from Sexual Offences Act, 2012, Juvenile Justice (Care and Protection of Children)

⁹ <https://www.jus.uio.no/english/services/library/treaties/02/2-04/saarc-traff-women-children.xml>

¹⁰ Jain, M. P., *Indian Constitutional law* 251 (LexisNexis, Haryana, India, 8th edn., 2018).

¹¹ *Supra* p.366

Act, 2015, the draft Trafficking of Persons (Prevention, Protection, and Rehabilitation) Draft Bill, 2016 are some of the important mechanisms for combating human trafficking. On top of it, many policies are also formulated for rehabilitation and reintegration of the victim of human trafficking. So, India has now a steel frame of laws which can prosecute those who are involved in committing the crime of human trafficking and policies for rehabilitation and reintegration of the victim. However, India has been a source, destination and transit country for human trafficking.

The Union Home Minister Shri Rajnath Singh, while inaugurating the National Conference on Anti Human Trafficking 2015, has stated that human trafficking is a very sensitive and serious issue and termed it as a borderless organised crime. He cited that more than 1.5 lakh people (as per UN Office on Drugs and Crime) were reported as victims in a single year in South Asia. It is reported that India is the main recipient of an estimated 150,000 women and girls trafficked into India from South Asia to feed the commercial sex industry. In addition, India is also reported to be the source and transit country for the sex trafficking of women and children from and for the Middle East. On the other hand, more than two million women and children are trapped in commercial sex work in the red-light districts of India.

This chapter focuses on the discussion and describes the legal efforts pertaining to human trafficking of women for sexual exploitation, which are given below –

4.2. LEGAL FRAMEWORKS RELATING TO HUMAN TRAFFICKING

Indian Penal Code 1860: Interestingly the Indian Penal Code which came into existence in 1860 addresses the problem of human trafficking in human beings. It is addressed in Section 370 and 370 A of the Indian Penal Code.¹² It prohibited trafficking of women and girls and prescribed ruthless punishments for the criminals. It lays down that anyone who buys or sells the person under the age of 18 years for the purpose of prostitution and for sexual exploitation and for other immoral purposes

¹² Supra 6 Pp. 96,97

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shall be liable to imprisonment for up to 10 years and also be liable to fine. It also recognizes cross border trafficking into prostitution and whoever imports into India from any country outside India any girl under the age of twenty one years with the 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.¹³

The Juvenile Justice (Care and Protection of Children) Act, 2000¹⁴ According to this Act there is no difference between a minor and a child. All the persons under the age of eighteen years are considered children.

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 many victims of trafficking belong to marginalized groups. Traffickers target only such area which is backward in social and literacy sense. This gives an additional tool to safeguard women and young girls belonging to scheduled Caste and scheduled Tribes and also to create a greater burden on the trafficker or offender to prove his lack of connivance in the matter. If the offender has the knowledge that victim belongs to these communities then this act can be effectively used to counter the offence of trafficking.

Section 3 of this act deals with atrocities committed against people belonging to Scheduled Caste and Scheduled Tribes. It covers some forms of trafficking such as forced or bonded labors and sexual exploitation of women. A minimum punishment of ix months is provided which may extend to five years if the offence is covered under section 3.

Immoral Traffic Prevention Act 1986¹⁵ The government of India ratified the International Convention for the Suppression of Immoral Traffic in persons and the exploitation of the Prostitution of others in 1950. As a consequence of this ratification of the convention the Government of India passed the Suppression of Immoral Traffic in Women and Girls Act (SITA) in the year 1956. In the year 1986 the act was further

¹³ <https://acadpubl.eu/hub/2018-120-5/5/404>.

¹⁴ The Juvenile Justice (Care and Protection of Children) Act, 2000

¹⁵ Immoral Traffic Prevention Act, 1986; Kataria R.P & Saeed Manzar, *Law Relating to Prevention of Immoral Traffic in India*, 9(Orient Publishing Company New Delhi*Allahabad, Ed Second, 2016)

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amended and changed which was known as the Immoral Traffic Prevention Act, 1986 (ITPA). This is an interesting law because according to its preamble the purpose of this Act is to give effect to the Trafficking Convention and to prohibit the immoral human trafficking. This act deals with trafficking and it has its objective as to abolish traffic in women and girls for the purpose of sexual exploitation. The offences included are taking persons for prostitution, detaining persons in premises where prostitution is carried on, seducing or soliciting for prostitution, making life on the earnings of prostitution, seduction of a person in custody, keeping a brothel or allowing premises to be used as a brothel, prohibits employment of children in certain conditions of work of children. The Immoral Traffic (Prevention) Amendment Bill, 2006 also focuses on trafficking which is done for the purpose for sexual exploitation. So there is no proper domestic legislation in India which combats all forms of human trafficking.

ADVISORY ON PREVENTING AND COMBATING HUMAN TRAFFICKING IN INDIA- For the propose of prevention and control human trafficking in India, the central government has issued a large advisory in the light of Supreme Court Judgment Vishal Jeet Vs Union of India, 2009. That Advisory given below-

F.NO.15011/6/2009-ATC (Advisory)

GOVERNMENT OF INDIA/BHARAT SARKAR

MINISTRY OF HOME AFFAIRS/GRIH MANTRALAYA

NORTH BLOCK NEW DELHI /CS DIVISION

New Delhi, the 09.09.2009

OFFICE MEMORANDUM

Subject: Advisory on Preventing and Combating Human Trafficking in India

Introduction: The Trafficking in Human Beings (THB) is a crime committed in order to target, lead or drive a human being into an exploitative situation with the aim to make profits. Such exploitation may take many forms, for example commercial sexual exploitation, child labour, forced labour, bonded labour or illegal organ removal etc. The country is witnessing cross-border as well as internal (intra-country) trafficking.

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Human Trafficking and Indian Laws:

Trafficking in Human Beings (THB) is prohibited under the Constitution of India under Article 23 (1).¹⁶ Following specific legislations deal with Trafficking in Human¹⁷ Beings (THB)

- Laws relating to trafficking in women and children being administered by the MWCD (wcd.nic.in)

Immoral Traffic (Prevention) Act, 1956,¹⁸

ii. Prohibition of Child Marriage Act (PCMA), 2006.

- The “Bonded Labour System (Abolition) Act, 1976”, being administered by Ministry of Labour and Employment (labour.nic.in), provides for abolition of the system of bonded labour and the rehabilitation of released labourers. Child Labour (Prohibition and Regulation) Act, 1986 is also being administered by Ministry of Labour.
- Further, commercial dealing in human organs is a punishable offence under the Transplantation of Human Organs act, 1994, being administered by Ministry of Health and family Welfare (mohfw.nic.in). The appropriate authorities appointed under the Act are responsible and empowered to check the illegal activities of human organs traffickers.
- Specific Sections in the IPC, e.g., Sections 372 and 373 dealing with selling and buying of girls for the purposes of prostitution.¹⁹

‘Public Order’ and ‘Police’ as per the 7th Schedule of the Constitution of India,²⁰ are State subjects and, as such, detection, registration, investigation and prevention of crime is primarily the responsibility of the State Governments. However, Central Government supplements the efforts of the State Governments by providing policy guidelines, financial assistance for modernization of the State Police Forces in terms

¹⁶ <https://indiankanoon.org/doc/705639/>

¹⁷ Supra 15

¹⁸ Supra, 15

¹⁹ <http://ncw.nic.in/ncw-cells/legal-cell/new-bills-laws-proposed/legal-amendments-proposed/indian-penal-code-1860#:~:text=Amendments%20by%20NCW-,Ss.,obtaining%20possession%20of%2C%20such%20child.>

²⁰ The Constitution of India, 1950, Supra 10 p 1161-1168

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of weaponry, communication, equipment, mobility, training and other infrastructure under the Scheme of Modernization of State Police Forces.

A working Group comprising of Directors General of Police of some of the affected States was constituted in 2004 by MHA to study the issues relating to cross border trafficking. The recommendations of this group were sent to the State Governments and they were advised to evolve a comprehensive strategy for effectively dealing with the problem of trafficking. Also an “Integrated National Plan of Action to Prevent and Combat Trafficking in Human Beings Specially Women and Children” (nhrc.nic.in/planofaction.doc), which has been worked out through a consultation process of all related Ministries and other stakeholders, has been adopted by Government of India in the Ministry of Women and Child Development. This plan deals with all aspects of prevention, rescue, registration of cases, investigations, prosecution, conviction, cross border trafficking issues, rehabilitation, repatriation and reintegration of victims etc. Based on these the recommendations of DGPs and the integrated action plan stated above the State Governments may evolve a holistic approach towards combating Trafficking in Human Beings (THB), encompassing all aspects of prevention, rescue and rehabilitation. Convergence should be adopted between various state departments and stakeholders for effective of handling of crime of Trafficking in Human Beings (THB).

Following key points of advice have been worked out in collaboration with the related Ministries of Women and Child Development, Labour and Employment, and Health and family Welfare where the assistance/ action by the State Government/ Police would be required for the effective implementation/ enforcement of laws relating to Trafficking in Human Beings (THB):

Constitution of the State Advisory Committee for Preventing and Combating Trafficking of Women and Children for Commercial Sexual Exploitation.

According to the Supreme Court order dated 2/05/09 (Vishal Jeet Vs Union of India),²¹ every State Government should set-up a State Advisory Committee for Preventing and Combating Trafficking of Women and Children for Commercial

²¹ Supra 15 p. 19

Sexual Exploitation. Ministry of Women & Child Development (MWCD) has already issued an advisory in this regard to all the State Governments.

2. Implementation of Immoral Traffic (Prevention) Act (ITPA), 1956.

2.1. Since ITPA is the main Act that can be used to book trafficking for commercial sexual exploitation, its implementation is essential for counter-trafficking. Under Section 23, the State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of the Act. Such rules may be formulated, notified and intimated to MWCD with a copy to MHA.²²

2.2. Under Section 13, the State Government may appoint ‘Special Police Officers (SPOs)’ and the ‘Non-official advisory bodies’ to advise the SPOs for dealing with offences under the Act.

2.3. Under Section 21, the State Governments may set-up ‘Protective homes’ and ‘Corrective institutions’ for ensuring proper implementation of the provisions of the Act. The information regarding these homes may be circulated to all Police Stations and officers dealing with the trafficking cases.

2.4. Under Section 22-A, the State Government may, by notification in the Official Gazette, and after consultation with the High Court, establish one or more Courts for providing speedy trial of the offences under the Act.

2.5. It is generally noticed that sections 8 and 20 of ITPA, which focuses on the victims, are more often invoked as a result of which the victim is re-victimized and the exploiters are not punished. It is, therefore, advised that sections 3, 6 and 7 which pertains to pimps, brothel owners, clients who are actual perpetrators of the crimes need to be invoked rather than sections 8 and 20. Law enforcement agencies need to adopt a victim centric approach in the investigations.

23. Implementation of Juvenile Justice Act (JJ Act), 2000: Juvenile Justice Act provides comprehensive mechanism for care and protection of children including rehabilitation and social integration of children. Therefore, its implementation is

²² <https://www.indiacode.nic.in/handle/123456789/1661?>

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essential to address trafficking of children. Following provisions of the Act are concerned with the Home Department/ Police and require action by the State Governments.²³

3.1. Under Section 62-A, the State Government shall constitute 'Child Protection Units' for the State and districts to fulfill its responsibilities as stipulated under the Act.

3.2. Under Section 63, in each police station, at least one police officer may be designated as the 'Juvenile or Child Welfare Officer' to handle a juvenile or child in coordination with the police.

3.3. Under Section 68, the State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of the Act.

4. Implementation of Prohibition of Child Marriage Act (PCMA), 2006:²⁴ Prohibition of Child Marriage Act (PCMA) was enacted in 2006 repealing Child Marriage Restraint Act, 1929. It is reported that traffickers in some pockets in the country are exploiting evil custom of child marriage to target innocent girls for trafficking. Therefore, it is essential to implement the Act to address this modus operandi of traffickers.

4.1. As per PCMA, State Governments under Section 19 (1), may, by notification in the Official Gazette, make rules for carrying out the purposes of the Act.

4.2. Under Section 16, the State Government may appoint 'Child Marriage Prohibition Officers' to fulfill the mandate as stipulated in the Act. State Governments may intimate the MWCD about the status of appointment of Prohibition Officers and Rules.

4.3. The State Governments are to maintain MIS and send quarterly information on number of cases registered under PCMA and convictions.

4.4. On receiving a complaint about child marriage, police are required to follow the procedure laid down in the Code of Criminal Procedure, 1973, which include registering an FIR and carrying out investigation.²⁵

²³ Supra 14

²⁴ <https://legislative.gov.in/sites/default/files/A2007-06>.

²⁵ The Code of Criminal Procedure, 1973, 69(Central Law Publication, Allahabad, 2020)

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4.5. The offences under PCMA are cognizable and non-bailable, hence, immediate arrest of offenders is necessary.

4.6. Extra vigilance should be maintained during festivals such as 'Akshya Tritha' to ensure that no child marriage takes place.

5. Capacity building of the State machinery: Implementation of the legal provisions in relation to applicable Acts- CLPRA, BLSA, IPTA, JJA and IPC involves not only police but many other officials dealing with the Criminal Justice System - notably the executive magistrates, the labour officials, CWC members and in-charges of Homes. Therefore, the State government may initiate a time bound action plan to build the required capacity of the state investigation and prosecution machinery in this regard. Some of the key areas identified for capacity building are listed below.

5.1. Identification of victims of trafficking for the purpose of commercial sexual exploitation, child/bonded/forced labour and for illegal organ removal.

5.2. Recognition of all applicable legal provisions of the law to a case of trafficking (not just one Act or two) by law enforcement machinery.

5.3. Understanding of legal and administrative provisions for inter-state and cross border investigation.

5.4. Understanding of legal provisions for closure of places of exploitation.

5.5. Understanding of legal provisions for confiscation of proceeds of crime.

5.6. Understanding of the mechanism in place for victim support and assistance.

5.7. Integrated actions on prosecution, prevention and protection by building linkages with other Government departments and agencies, including NGOs.

5.8. For capacity building the Bureau of Police Research and Development (BPR&D)²⁶, at the behest of MHA, has prepared a training manual on Human Trafficking Handbook for Investigators and this has been circulated to the States for use in the police Training Institutes. All the training materials have also been

²⁶ www.bprd.gov.in

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uploaded on BPR&D website. BPR&D has already translated the training material in Hindi, Telugu and Marathi languages. 12 Resource Books on ‘Training and Investigation on Anti-Human Trafficking’ prepared as a result of pilot project between MHA and UNODC²⁷ have also been uploaded on BPR&D website. These resource materials should be used by State Governments for the capacity building of all agencies involved in prevention of human trafficking.

5.9. Also MWCD, in collaboration with National institute of Public Co-operation and Child Development (NIPCCD) and UNICEF, has developed manuals for training of stakeholders such as ‘Judicial Handbook on Combating Trafficking of Women and Children for Commercial Sexual Exploitation²⁸’, ‘Manual for Medical Officers for dealing with Child Victims of Trafficking and Commercial Sexual Exploitation’, counseling services for Child survivors of trafficking’, Counseling services for Child survivors of trafficking’, Social workers.

5.10. States may organize training/workshops/awareness campaign to sensitize their SHOs/Dy. SP/ACP and other law enforcement agencies towards the crime, safety and security of women and children.

5.11. The Compendium of Best Practices in handling cases of human trafficking has already been circulated to all the State Governments and UT Administrations for information and appropriate use.²⁹

6. Prevention of Trafficking:

6.1. It has been noticed that people, especially women and children are vulnerable to trafficking during ‘distress migration’ and from ‘disaster prone areas’- such as during floods, earthquakes, crop failures, riots, terrorist activities etc. Therefore, it is important to establish extra vigilance in this regard around transit points and at borders- interdistrict/inter-state and international.

6.2. Police should work closely with immigration authorities, Border Security Force (BSF), Railways and other transport authorities, provincial/ territorial and municipal

²⁷ www.unodc.org/india/ind_s16.html

²⁸ <https://www.nipccd.nic.in/uploads/report/ar2014epdf-71208a76e9ffc08704330b31e4b36090>.

²⁹ www.unodc.org/india/ind_s16.html

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agencies, with Social Services, child welfare authorities and with any NGOs involved in service delivery for spotting and rescuing the victims.

6.3. Effective patrolling and vigil at locations prone to trafficking such as highways, dhabas, railway stations and bus stations for suspicious movement of traffickers and victims and monitoring, through involvement of village community, the suspicious/unnecessary movements of strangers in the villages.

6.4. Pro-active policing through information exchange with representatives from the local Government, community, NGOs with a view to raise awareness and garner active support of the community.

6.5. Periodical checks on transporters to prevent physical transportation of the trafficked persons.

6.6. Prevention at the demand area by understanding/ addressing new forms of demand. For example, placement agencies providing domestic child labourers.

6.7. Facilitating inter-State collaboration by sharing data on missing children/kidnappings³⁰ and suspected offenders. Development of victim and offender profiles on an interagency basis.

6.8. Sensitization programmes/workshops for police officers/railway police force and prosecutors on various legislations mentioned above in relation to trafficking. State nodal officers may hold periodical meetings to review and monitor the efforts taken to prevent and combat the crime of trafficking.

6.9. In case of child trafficking, following provisions also need to be kept in view:-

6.9.1. Identification of children at risk, (e.g. following raids on off-street sites, responding to referrals from other agencies, NGO or members of the public, following up reports of missing children).

6.9.2. Report instances of children in need of protection to relevant child protection agencies. For this purpose the Police Stations could be sensitized.

³⁰ Supra 6, p. 93

6.9.3. The development of victim profiling with other agencies.

6.9.4. Undertaking joint interviews with social workers of children identified as victims or potential victims to assess risk and assist in the development of protection plans.

6.9.5. Carry out checks on sponsors and people who claim to be the relatives of children identified as being at risk of trafficking.

6.9.6. Participating in local child protection networks with related organizations (immigration, social services, NGOs, health, education) to develop joint approaches to the issue at local level and contribute to wider forums as appropriate.

6.9.7. If children disappear, initiate missing person's procedures, investigate circumstances and circulate information/ undertake investigations, linking with other agencies as required.

6.9.8. Ministry of Labour & Employment has developed a detailed protocol for prevention, rescue, repatriation, rehabilitation and reintegration of migrant and trafficked child labour. The protocol has been issued to all State Governments for implementation.

7. Investigation & Prosecution:³¹

7.1. Standard operating procedures for Investigation have been developed under the pilot project between MHA and UNODC as mention in para 5.8 above, which can be used for effective investigation in trafficking related crimes ³².

7.2. One of the effective means of securing better conviction rates of perpetrators of crime of trafficking is to base the case on documentary, forensic and material evidence. At present, most of the time, the victim is being used as a witness and more often than not, he/she can easily be intimidated. State Governments are advised to

³¹ Supra 25, p. 80

³² https://www.unodc.org/documents/human_trafficking/India_Training_material/SOP_on_Investigation_of_Crimes_of_Trafficking_for_Commercial.

encourage the law enforcement agencies to build full proof investigation against the traffickers, so that, convictions can be guaranteed.

7.3. Use of fast track courts and video conferencing to the extent possible.

8. Rescue and Rehabilitation

8.1. Police should work with other agencies and stakeholders to ensure that those who are rescued or who choose to return are not re-trafficked; this should include a risk assessment of the danger to returning victims (child care authorities would prepare risk assessment for children).

8.2. Identifying support services and referring victims/ potential victims to specialist NGO's and safe accommodation, where these are available. The Ministry of Women and Child Development runs short stay homes Swadhar shelter homes for women in difficult circumstances (wcd.nic.in/Comscheme.doc). These cater to trafficked women/girls rescued or runaway from brothels or victims of sexual crimes who are disowned by family or who do not want to go back to respective family for various reasons. The schemes provide for shelter, food, clothing for women and children below the age of 18 years, counseling, clinical, medical, legal and other support, training and economic rehabilitation and helpline facilities.

8.3. A new scheme - UJJAWALA- a comprehensive scheme for prevention of trafficking, rescue, rehabilitation, reintegration and repatriation of the victims of commercial sexual exploitation has been launched on 04.12.2007 by the Ministry of women and Child Development which should be effectively used by the State Governments.³³

9. MHA has already established an Anti Trafficking Cell (ATC)³⁴ under the Director (SR) which deals with the following major subject matters:

9.1. All matters pertaining to the criminal aspect of trafficking in human beings especially of women and children, which is the fastest growing organised crime and an area of concern.

³³ <https://wcd.nic.in/schemes/ujjawala-comprehensive-scheme-prevention-trafficking-and-rescue-rehabilitation-and-re>

³⁴ <http://uphome.gov.in/anti-human-trafficking.htm>

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9.2. To act as the Nodal cell for dealing with the criminal aspect of Human Trafficking in India, hold regular meetings of all States and UTs, communicating various decisions and follow up on action taken by the State Governments.

9.3. To interface with other Ministries like MWCD, MSJE, MEA, MOIA, MOLE, MOL, MOT and NCRB³⁵ regarding the criminal aspect of human trafficking.

9.4. All matters relating to the UNODC, UNIFEM, their meetings, conferences, conventions, reports etc. in the context of the criminal aspect of Human Trafficking.

10. The Anti Trafficking Nodal Cell of MHA has developed an MIS proforma for the monitoring of the action taken by various State Governments regarding the criminal aspect of human trafficking as well as crime against women. The State Governments are requested to send quarterly information on 1st January, 1st April, 1st July and 1st October of the year in the prescribed proforma.

11. Are requested to issue suitable directions to all concerned under intimation to this Ministry. It is further requested that action taken in this regard may be regularly / periodically reviewed by the State Governments and UT administrations and a report indicating the present status sent to this Ministry within a month.

12. This advisory is being issued in consultation with the Ministry of Women and Child Development and Ministry of Labour and Employment.

The receipt of this letter may kindly be acknowledged immediately.³⁶

Yours faithfully,

-Sd- (Nirmaljeet Singh Kalsi)

Joint Secretary to the Government of India

Ministry of Home Affairs, North Block

New Delhi - 110001

Tel. No. 23092630

³⁵ <https://ncrb.gov.in/>

³⁶ <https://www.mha.gov.in/sites/default/files/Advisory-on-HTrafficking-150909>.

To,

The Chief Secretaries & The Principal Secretary / Secretary (Home) All State Governments and Union Territory Administrations – for information and necessary action.³⁷

Copy for information and necessary action to:

- i. The DGs / IGs (In-charge of Prisons)/ - All State Governments / UTs for information and necessary action.
- ii. Ministry of Women and Child Development (Mrs. Manjula Krishnan, Advisor & Joint Secretary, MWCD, Ms. P. Bolena, Joint Secretary) Shastri Bhawan, New Delhi.
- iii. Ministry of Labour (Shri S.K. Dev Verman, Jt. Secy.), Shram Shakti Bhavan, New Delhi.
- iv. Ministry of Social Justice and Empowerment (Sh. D.V.S. Ranga, Joint Secretary), Shastri Bhawan, New Delhi.
- v. Ministry of Overseas Indian Affairs (Shri G. Gurucharan, Jt. Secy.), New Delhi.
- vi. Ministry of External Affairs, (Joint Secretary SAARC and Joint Secretary UNES) South Block, New Delhi.
- vii. Chairperson, National Commission for Women, 4, Deen Dayal Upadhyaya Marg, New Delhi-110 002.
- viii. Chairperson, National Commission for Protection of Child Rights, 5th Floor, Chandralok Building, Janpath, New Delhi-110 001.
- ix. Chairperson, National Human Rights Commission, Copernicus Marg, New Delhi.
- x. Director General, NCRB, RK Puram, New Delhi.
- xi. Director General, BPR&D, New Delhi.
- xii. Director General Border Security Force, New Delhi
- xiii. Director, CBI, New Delhi.
- xiv. JS (UT)/ JS (NE) /JS (K), MHA, North Block, New Delhi.
- xv. Under Secretary (Parliament), MHA, North Block, New Delhi.

-Sd- (Nirmaljeet Singh Kalsi)

Joint Secretary to the Govt. of India

³⁷ <https://www.mha.gov.in/sites/default/files/Advisory-on-HTrafficking-150909>.

4.3. HUMAN TRAFFICKING IN INDIA

Trafficking in persons is a serious crime and a grave violation of human rights. Every year, thousands of women and children fall into the hands of traffickers in their own countries and abroad. Almost every country in the world is affected by trafficking, whether as a country of origin, transit or destination for the victims. Human trafficking has been identified as the third largest source of profit for organized crime, following arms and drug trafficking, generating billions of dollars annually at the global level.³⁸ An estimated 6 to 8 lakh women and children are trafficked each year globally. This estimate does not include those trafficked within their own countries or missing children. Women and children are generally trafficked for begging, organ trade, drug smuggling, bonded labour, domestic work, agricultural labour, construction work, carpet industry, forced prostitution, sex tourism, pornography and also for entertainment and sports which include beer bars, camel jockey and circus troops.

4.3.1. HUMAN TRAFFICKING- Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons of the United Nations³⁹ defines Trafficking as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or the use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving 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.

4.3.2. LEGISLATIVE FRAMEWORK ON HUMAN TRAFFICKING The Constitution of India: There are three articles in the Constitution of India relating to this subject;. Article 23 which prohibits trafficking in human beings⁴⁰ and begar and

³⁸ https://www.unodc.org/documents/human-trafficking/An_Introduction_to_Human_Trafficking_-_Background_Paper.

³⁹ https://www.unodc.org/documents/treaties/Special/2000_Protocol_to_Prevent_2C_Suppress_and_Punish_Trafficking_in_Persons.

⁴⁰ Supra 10.

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other similar forms of forced labour and Article 39(e) and 39(f) which ordain that the health and strength of individuals are not abused and that no one is forced by the economic necessity to do work unsuited to their age or strength and that childhood and youth should be protected against exploitation.⁴¹

Immoral Traffic Prevention Act, 1956: It is the only legislation which specifically addresses Trafficking and is currently pending amendment. It penalizes trafficking of women and children for commercial sexual exploitation. Other Legislations: There are some more legislations which directly or indirectly deal with human trafficking like:- Indian Penal Code, 1860; Bonded labour system (Abolition) Act, 1976; Child labour (Prohibition and Regulation) Act, 1986; Juvenile Justice Act, 2000; Goa Children Act, 2002; Prohibition of Child Marriage Act, 2006 and Protection of Children from Sexual offences (POCSO) Act, 2012.

The Criminal Law (Amendment) Act 2013, known as the Nirbhaya Act has come into force wherein Section 370 of the Indian Penal Code has been substituted with 370A (IPC) which provides for comprehensive measures to counter the menace of human trafficking including trafficking of children for exploitation in any form including physical exploitation or any form of sexual exploitation, slavery, servitude or the forced removal of organs.⁴²

4.3.3. REPORTED INCIDENTS OF CRIME: A total of 8,132 incidents of crime under various provisions of laws relating to human trafficking were reported with a crime rate of 0.6 in the country during 2016. 15,379 victims (5,229 males and 10,150 females) were trafficked and 23,117 victims (10,347 males and 12,770 females) were rescued out of which 22932 victims belonged to India, 38 victims were from Sri Lanka and Nepal each and 36 victims were from Bangladesh during 2016. A maximum number of victims were trafficked for the purpose of Forced Labour (10,509 victims) followed by Sexual Exploitation for Prostitution (4,980 victims) and other forms of Sexual Exploitation (2,590 victims) A look into the incidences of human trafficking shows that there is a trend of steady rising of such cases during the period from 2012–2016. From 3,554 cases relating to human trafficking reported

⁴¹ <https://indiankanoon.org/doc/555882/>

⁴² https://prsindia.org/files/bills_acts/acts_parliament/2013/the-criminal-law-ordinance-2013.

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during 2012, it rose to 3,940 cases in 2013. It further rose to 5,235 cases in 2014, 7143 cases in 2015 and 8,132 cases in 2016. For State wise details of cases of trafficking reported/disposed during 2016.⁴³

4.3.4. THE UN OFFICE ON DRUG AND CRIME (UNODC's) Response to Human Trafficking: The UNODC offers practical help to States, not only helping to draft laws and creating comprehensive national anti-trafficking strategies but also assisting with resources to implement them. States receive specialized assistance including the development of local capacity and expertise, as well as practical tools to encourage cross-border cooperation in investigation and prosecution.⁴⁴ The adoption in 2000 by the UN General Assembly of the Protocol to Prevent, Suppress and Punish Trafficking In Persons, Especially Women and Children marked a significant milestone in international efforts to stop the trade in people. As the guardian of the Protocol, the UNODC addresses human trafficking issues through its Global Programme against Trafficking in Persons.

4.4. GOVERNMENT MEASURES AGAINST TRAFFICKING

Project on “strengthening the law enforcement response in India against trafficking in persons through training and capacity building”: The Government of India through the Ministry of Home Affairs, in association with the United Nations Office on Drugs and Crime has initiated a two year project for training the Law Enforcement Officers on human trafficking in four States, namely Maharashtra, Goa, West Bengal and Andhra Pradesh.⁴⁵ A Project Steering Committee has been constituted for steering, guiding and monitoring the project. Through a series of training programmes, the project is expected to raise the awareness levels of the Law Enforcement Officers (police & prosecutors) on the problem of human trafficking and further build up their capacity to better investigate the crime and prosecute the offenders perpetrating such crime.

4.4.1. Coordination Meetings: The Ministry of Home Affairs conducts regular coordination meetings with the Nodal Officers of Anti Human Trafficking Units

⁴³ <https://ncrb.gov.in/en/crime-india>

⁴⁴ <https://www.unodc.org/>

⁴⁵ https://www.mha.gov.in/Division_of_MHA/Women_Safety_Division/anti-trafficking-cell

(AHTUs) of States/UTs. These meetings are instrumental in according priority to the crime of human trafficking at the ground level and for effective Inter-State coordination and have been useful as the Government has been regularly monitoring the implementation of the (AHTUs) and the Ministry of Home Affairs outlines various action areas to each State which becomes the focus of the work in these States. The Nodal Officers meetings have also led to the exchange of information among various States and strengthening of inter-State investigations.

4.4.2. IGNOU Certificate Course: To develop a comprehensive and functional understanding on anti human trafficking and coordination amongst learners about various stakeholders/agencies associated with the process of human trafficking directly and to build awareness and practical skills in the area of law, policies, rehabilitation and prevention aspects of human trafficking, a Certificate Course has been launched by the Indira Gandhi National Open University (IGNOU) in partnership with the Ministry of Home Affairs⁴⁶. The said course has been made mandatory for the Officers/Officials who are dealing with the subject of human trafficking. In this regard an advisory dated 12 January 2011 had been issued.

4.4.3. Anti Trafficking Cell:

The Ministry of Home Affairs has set up a Nodal Cell for dealing with matters relating to trafficking in human beings. Since ‘Police’ is a State subject, registration, investigation and prevention of human trafficking is primarily the responsibility of State Governments. However, the Government of India has taken various steps for combating the menace of human trafficking. The Home Ministry has issued several advisories to the States and UTs from time to time providing guidance on addressing the issue of trafficking in an effective manner.⁴⁷

4.4.4. Anti –Human Trafficking Units (AHTUs):

As stated earlier, the MHA’s project on “Strengthening law enforcement response in India against Trafficking in Persons through Training and Capacity Building”, approved a proposal to establish 332 Anti Human Trafficking Units

⁴⁶<https://pib.gov.in/newsite/PrintRelease.aspx?relid=68413>

⁴⁷ https://www.mha.gov.in/division_of_mha/anti-trafficking-cell

(AHTUs)⁴⁸ in various districts across the country. The Ministry provides financial assistance to the States for setting up the AHTUs. So far, 264 AHTUs have been set up all over the country.

4.4.5. The National Anti-Human Trafficking Authority (NAHTA):

The NAHTA shall be the apex body responsible for combating trafficking and ensuring through proper plan of action that the right to reparation of each victim is fulfilled. It also ensures that proper preventive mechanisms are implemented throughout the country. NAHTA in India as well as in Bangladesh shall coordinate on matters related to cross-border trafficking. In order to facilitate repatriation between India and Bangladesh, NAHTA shall establish Repatriation and Reintegration Task Force. The Task Force units shall also be established in those states that share borders with Bangladesh such as West Bengal.⁴⁹

NAHTA shall also work at policy level to channelize the projects and initiatives of different ministries either for the prevention of Trafficking or for providing support to the victims. For example, the project of the Education Ministry- ‘Kasturba Gandhi Balika Vidyalaya (KGBV)’⁵⁰ is a scheme for providing education to adolescent girls in a residential environment. Girls are kept in hostels where they get tuition and other academic support while during day time they attend a nearby school, which is recognized under the scheme. This scheme can be used for the prevention of trafficking in vulnerable groups like Nutt or Berya amongst whom inter-generational prostitution is practiced. NAHTA can also join together with other ministries for working out other developmental schemes for combating trafficking.

4.4.6. State-level Conference and Judicial Colloquiums:

Financial assistance is offered to States and UTs to hold Conferences on Human Trafficking to sensitize and generate awareness among the law enforcement agencies and other stakeholders for curbing the menace of trafficking. Financial

⁴⁸ <https://www.scribd.com/doc/193331183/VICTIMS-OF-SEXUAL-ABUSE-AND-TRAFFICKING>

⁴⁹ Dr. Sarfaraz Ahmed Khan, *Transnational Sex-Trafficking An Integrated Reparation Model* 348 (Thomson Reuters South Asia Private Limited, Gurgaon, First Edition, 2019).

⁵⁰ <http://ssa.nic.in/girls-education/kasturba-gandhi-balika-vidyalaya>

assistance is offered to Judicial Academies of the High Courts to hold Judicial Colloquiums in order to sensitize Magistrates and Judicial Officers for expeditious disposal of trafficking cases.⁵¹ Advisory/Standard Operating Procedure (SOP) to State Governments on Human Trafficking: The Government of India has issued exhaustive and consolidated advisories enumerating various steps for improving effectiveness in tackling the crime of human trafficking and increasing the responsiveness of the law enforcement machineries from time to time to all States/UTs; the latest was issued in July 2015. In addition, a Standard Operating Procedure (SOP) to handle trafficking of children and measures to be taken for rescue of trafficked children and action against traffickers/employers was issued on 12 August 2013.

The main points of the SOP are:

- (i) The Anti-Human Trafficking Units (AHTUs) shall take all necessary steps to investigate cases relating to trafficked persons with special emphasis on organized crime and to target the economics of crime syndicates through sealing, attachment and confiscation of property etc.
- (ii) Rescue teams should be multi-disciplinary comprising of representatives of Police or Labour, SDM or his representative, NGO/complainant, lady police/volunteer, and member of Child Welfare Boards
- (iii) Repatriation of rescued children should be a prime objective in the investigation to ensure that the child goes back to safety.
- (iv) Statement of victims should be recorded under Section 164 of CrPC and charge sheet should be filed soon after investigation.
- (v) There should also be an inquiry for home verification under the Juvenile Justice Act before repatriation and the Child Welfare Committee in the home district shall be responsible for the well being of the child.

⁵¹ http://164.100.47.193/Refinput/New_Reference_Notes/English/Human%20trafficking%20in%20india.

(vi) The Labour Department should initiate proceedings for an immediate recovery of a fine of 20,000 and the said amount shall go to the Rehabilitation Cum Welfare Society of Child Labour in the native district of the child for his/her socio-economic and educational rehabilitation. The Department of Labour shall also initiate proceedings for the recovery of back wages of the child as per the Minimum Wage Act, 1948.

4.4.7. Web Portal on Anti-Human Trafficking:

A Website on Anti Human Trafficking (stophumantrafficking-mha.nic.in) was launched in February 2014. It is a vital IT tool for sharing information among stakeholders, States/UTs and civil society organizations for effective implementation of Anti-Human trafficking measures.⁵²

4.4.8. Ujjawala Scheme: The Ministry of Women and Child Development is implementing “Ujjawala”- a Comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation, Re-integration and Repatriation of Victims of Trafficking for Commercial Sexual Exploitation⁵³. The number of beneficiaries under the scheme in the year 2017-18 and 2016-17 each is 6,175. The Schemes provide shelter, food and clothing, counseling, medical care, legal aid and other support, vocational training and income generation activities for the victims. Trafficked victims are also given shelter in Short Stay Homes and Swadhar Homes, meant for women in difficult circumstances. The Details of the funds allocated during the last three years and current year are as under: Year Budget Estimates (Rs. in Crores) 2014-15 16.00 2015-16 20.00 2016-17 35.00 2017-18 as on 05.03.2018 50.00 Integrated Child Protection Scheme (ICPS): The Ministry of Women and Child Development is implementing the Integrated Child Protection Scheme (ICPS) for creation and management of infrastructure and human resources necessary for establishing a safe and secure environment for children, especially for children in difficult circumstances. Financial assistance is provided to States/UTs for improving, setting up and maintenance of Homes, Specialised Adoption Agencies (SAAs) and Open Shelters for children in

⁵² <https://evaw-global-database.unwomen.org/en/countries/asia/india/2014/web-portal-on-anti-human-trafficking>

⁵³ <https://wcd.nic.in/schemes/ujjawala-comprehensive-scheme-prevention-trafficking-and-rescue-rehabilitation-and-re>

need of care and protection. Besides, financial assistance is also provided for setting up of dedicated service delivery structures at State and District levels, with staff exclusively engaged for providing services to children including need assessment, training and sensitization, awareness generation, etc. The Scheme also focuses on non-institutional care through adoption, foster-care and aftercare.

4.4.9. Bilateral and Multilateral Mechanisms: India has signed Bilateral Memoranda of Understanding with Bangladesh and UAE for prevention of human trafficking. India has been engaging with several countries and has responded positively to the proposals for entering into MOUs on human trafficking with interested countries to curb the menace.⁵⁴ India is a signatory to the SAARC Convention on Prevention and Combating Trafficking in Women and Children in Prostitution. India has ratified the UN Convention on Transnational Organized Crime (UNTOC), which has as one of its Protocols, “Prevention, Suppression and Punishment of Trafficking in Persons, particularly Women and Children”.

4.4.10. New Legislation:

Presently trafficking of persons is dealt under the provisions of various Acts but there still remain some deficiencies in the existing legislations and after considering the issue relating to prevention, rescue and rehabilitation of victims of trafficking, the Union Government has drafted a comprehensive legislation, namely, the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018, covering all aspects related to trafficking of persons and is expected to be introduced in the monsoon session of Parliament.⁵⁵

4.4.11. The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021

The Ministry of women and Child development has invited suggestions for the draft. The objective of the bill is to prevent and counter trafficking in persons, especially women and children.

⁵⁴ <https://www.oneindia.com/feature/india-uae-sign-mou-combat-human-trafficking-2072547.html>

⁵⁵ <https://prsindia.org/billtrack/the-trafficking-of-persons-prevention-protection-and-rehabilitation-bill-2018>

Anti Trafficking Cell, Ministry of Home Affairs has established to deal with matters relating to law enforcement response on trafficking in human beings.⁵⁶

4.5. CONCLUSION:

The Constitution of India, 1950 prohibits trafficking in persons and guarantees many of the internationally acknowledged various human rights norms such as the right to life and personal liberty, the right to equality, right to freedom, the right to constitutional remedies. The right to be free from exploitation is also assured as one of the most essential fundamental rights of any person living in India.

Trafficking in human beings, especially Women and girls, is not new. It is a form of modern day slavery and requires a holistic, multi-sectoral approach to address the complex dimension of the problem. It is a problem that violates the rights and dignity of the victims and therefore requires essentially a women rights perspective, while working on its eradication. In the fight against trafficking, governmental organizations, non-governmental organizations, civil society, pressure groups and international bodies, all have to play an important role and work in concert. Law cannot be the only instrument to address complex social problems.

⁵⁶ <https://www.mha.gov.in/mandate...>

CHAPTER-V
ROLL OF JUDICIARY TO
COMBAT HUMAN
TRAFFICKING OF WOMEN FOR
SEXUAL EXPLOITATION



CHAPTER-V

**ROLL OF JUDICIARY TO COMBAT HUMAN TRAFFICKING OF
WOMEN FOR SEXUAL EXPLOITATION**

5.1. INTRODUCTION:-

“No nation, with all its boasts, and all its hopes, can ever morally be clean till all its women are really free - free to live without sale of their young flesh to lascivious wealth or commercializing their luscious figures....”

JUSTICE V.R. KRISHNA IYER

Human Trafficking is a threat to human dignity, rights and liberty. The Indian judiciary ensures that people’s rights are not trampled upon by the State or any other agency. The superior courts enforce Fundamental Rights by issuing writs. The highest court in India, the SC, acts as the guardian of the Constitution.¹ The conflicts of jurisdiction between the central government and the state governments or between the legislature and the executive are decided by the court. Any law or executive order which violates any provision of the constitution is declared unconstitutional or null and void by the judiciary. This is called ‘judicial review.’² Judicial review has the merit of guaranteeing the fundamental rights of individuals and ensuring a balance between the union and the units in a federal state.³ The chief function of the judiciary is to apply the law to specific cases or in settling disputes. When a dispute is brought before the courts it ‘determines the facts’ involved through evidence presented by the contestants. The law then proceeds to decide what law is applicable to the case and applies it. If someone is found guilty of violating the law in the course of the trial, the court will impose a penalty on the guilty person.

This chapter deals with Judicial Pronouncements of the Apex Court on human trafficking, sex trafficking and combating human trafficking of women for sexual exploitation. These are given below-

¹ M. P. Jain, *Indian Constitutional law*, A-50(LexisNexis, Haryana, India, 8th edn., 2018).

² Ibid. P. 548

³ <https://www.legalserviceindia.com/legal/article-746-judicial-review-in-india.>, Visited on January 05, 2021

5.2. Trafficking Cases and Judicial Interpretation:

In the case of **Raj Bahadur v. State of W.B.**⁴ court held that, it was clearly laid down as early as in 1953, that traffic in human beings mean to deal in men and women like goods, such as to sell or let or otherwise dispose of. It would include traffic in women and children for immoral or other purposes.

The main issue in State of **Maharashtra v. Jugamander Lal**⁵ was that if only a fine could be imposed on the accused under Section 3 of SITA, where legislation explicitly and mandatorily asks for punishment of imprisonment along with fine. The Supreme Court held that by using expression ‘shall be punishable’ the legislature has made it clear that offender shall not escape penal consequences of rigorous imprisonment.

In **Narmada Govind Kamble and etc. v. State of Maharashtra**,⁶ court reduced the sentence of the traffickers from 10 years imprisonment to 7 years, in which the trial court had given the highest punishment prescribed by law. The High Court observed that ‘the learned trial Court did not give any special reason as to why maximum sentence prescribed under the law was required to be awarded... it appears that the sentence awarded by the trial Court is on the higher side taking into consideration all the circumstances’. However, while reducing the sentence from 10 years to 7 years the High Court itself did not give any special reasons except saying that the court took into consideration all the circumstances and age of the victim before reducing the sentence. It is important to mention that the age of the victim was 16 years and the same victim was trafficked and forced into prostitution at the same brothel when she was merely 15 years old. This implies that every customer that engaged in any sexual act with the girl had committed rape and the traffickers were instrumental in the thousands of rape that had been committed against her. It may be questioned if it is not grievous enough so as to deserve the highest punishment?

⁴ 1953 SCC OnLine Cal 129

⁵ AIR 1966 SC 940.

⁶ 2010CriLJ 1220.

Heinous Nature of the Crime vis-à-vis Moral Culpability

In the important case of **Vishal Jeet v. Union of India**⁷, The Court observed that:

“The causes and evil effects of prostitution maligning the society are so notorious and frightful that none can gainsay it. It is highly deplorable and heartrending to note that many poverty stricken children and girls in the prime of youth are taken to ‘flesh market’ and forcibly pushed into the ‘flesh trade’ which is being carried on in utter violation of all canons of morality, decency and dignity of humankind. There cannot be two opinions—indeed there is none—that this obnoxious and abominable crime committed with all kinds of unthinkable vulgarity should be eradicated at all levels by drastic steps.”

In the important directional case on Human Trafficking and Child Prostitution known as **Vishal Jeet v. Union of India**⁸, the Court laid down following directions in this regard:

- All the State Governments and the Governments of Union Territories should direct their law enforcing authorities concerned to take appropriate and speedy action in eradicating child prostitution.
- The State Governments and the Governments of Union Territories should set up a separate Advisory Committee within their respective zones to make suggestions regarding the measures to be taken and the social welfare programmes to be implemented for the children and girls rescued from the vices of prostitution.
- All the State Governments and the Governments of Union Territories should take steps in providing adequate and rehabilitative homes manned by well-qualified trained social workers, psychiatrists and doctors.
- The Union Government should set up a committee of its own to evolve welfare programmes on the national level for the care, protection, rehabilitation, etc. of the young fallen victims and to make suggestions of

⁷ (1990) 3 SCC 318

⁸ (1990) 3 SCC 318

amendments to the existing laws for the prevention of sexual exploitation of children.

- The Central Government and the Governments of States and Union Territories should devise a machinery of its own for ensuring the proper implementation of the suggestions that would be made by the respective committees.

Bandhua Mukti Morcha v. Union of India⁹ is the very famous case on the Human Trafficking and Bonded Labour. The Supreme Court in the above case has elucidated the rehabilitation of bonded labour and directed the Government to award compensation to released/rescued bonded labour under the provisions of Bonded Labour System (Abolition) Act, 1976 after taking note of serious violation of fundamental and human rights:

“The rehabilitation of the released bonded labourers is a question of great importance, because if the bonded labourers who are identified and freed, are not rehabilitated, their condition would be much worse than what it was before during the period of their serfdom and they would become more exposed to exploitation and slide back once again into serfdom even in the absence of any coercion. The bonded labourer who is released would prefer slavery to hunger, a world of ‘bondage and illusory security’ as against a world of freedom and starvation.”

It may be pointed out that the concept of rehabilitation has the following four main features as addressed by the Secretary, Ministry of Labor, and Government of India to the various States Governments:

- Psychological rehabilitation must go side by side with physical and economic rehabilitation.
- The physical and economic rehabilitation has 15 major components, namely, allotment of house sites and agricultural land, land development, provision of low cost dwelling units, agriculture, provision of credit, health medical care and sanitation, supply of essential

⁹ (1984) 3 SCC 161

commodities, education of children of bonded laborers and protection of civil rights, etc.

- There is scope for bringing about integration among the various central and State sponsored schemes for a more qualitative rehabilitation and to avoid duplication.
- While drawing up any scheme/programme of rehabilitation of freed bonded labour, the latter must necessarily be given the choice between the various alternatives for their rehabilitation and such programme should be finally selected for execution as would meet the total requirements of the family of freed bonded labourers to enable them to cross the poverty line on the one hand and to prevent them from sliding back to debt bondage on the other.

PUCL v. State of T.N.¹⁰ In This case, the Supreme Court has directed the District Magistrates to effectively implement Sections 10, 11 and 12 of the Bonded Labor System (Abolition) Act, 1976 and expected them to discharge their functions with due diligence, empathy and sensitivity, taking note of the fact that the Act is a welfare legislation.

Krishnamurthy v. Public Prosecutor, Madras,¹¹ In this case, a raid was conducted at a brothel with the help of decoy customers. The prosecution was started against the appellant for running the brothel, but the trial judge convicted the accused for a lower offence of living on earning of prostitution under section 4. Both the accused and state filed an appeal to High Court in which High Court dismissed the appeal of the accused and on the appeal of the state, convicted the accused under section 3 for running the brothel. Against the order of the High Court, the appeal was referred to the Supreme Court. The Supreme Court found that the appellant's house was being used as a brothel. The girls were presented for the purpose of prostitution and the appellant who pocketed the money paid by the customer was definitely for his use and at the same time it can also be

¹⁰ (2013) 1 SCC 585

¹¹ AIR 1967 SC 567.

presumed that a part of the money would be given to the prostituted women. Accordingly in the Court's view, the appellant was justifiably said to be keeping a brothel.

5.3. Human Trafficking and Child Labour

Lakshmi Kant Pandey v. Union of India¹² is the famous case on the Human Trafficking and Child Labour. In this case Supreme Court justice P.N. Bhagwati, J., observed: *"It is obvious that in a civilized society the importance of child welfare cannot be over-emphasized, because the welfare of the entire community, its growth and development, depends on the health and well-being of its children. Children are a 'supremely important national asset' and the future well-being of the nation depends on how its children grow and develop."*

In this connection further, the Supreme Court in **M.C. Mehta v. State of T.N.**¹³, seeing the severe violation of fundamental rights in cases of child labour observed:

"... if there is at all a blueprint for tackling the problem of child labour, it is education. Even if it were to be so, the child of a poor parent would not receive education, if per force it has to earn to make the family meet both the ends. Therefore, unless the family is assured of income aliunde, problem of child labour would hardly get solved; and it is this vital question which has remained almost unattended.

... if employment of child below the age of 14 is a constitutional indictment insofar as work in any factory or mine is concerned, it has to be seen that all children are given education till the age of 14 years in view of this being a fundamental right now, and if the wish embodied in Article 39(e) that the tender age of children is not abused and citizens are not forced by economic necessity to enter avocation unsuited to their age, and if children are to be given opportunities and facilities to develop in a healthy manner and childhood is to be protected against exploitation as visualised by Article 39(f), it seems to us that the least we ought

¹² (1984) 2 SCC 244

¹³ (1996) 6 SCC 756

to do is see to the fulfilment of legislative intendment behind enactment of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986.”

In view of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 the offending employer must be asked to pay compensation for every child employed in contravention of the provisions of the Act a sum of Rs 20,000 which is to be deposited in Child Labour Rehabilitation-cum-Welfare Fund.

5.4. Constitution of Committee to Combat Trafficking in Humans

Very Important verdict delivered by Apex Court in **Gaurav Jain v. Union of India**¹⁴ case on Constitution of Committee to Combat Trafficking in Humans.

In the above case, the Supreme Court passed an order directing, inter alia, the constitution of a committee to make an in-depth study of the problems of prostitution, child prostitution, and children of prostitutes, to help evolve suitable schemes for their rescue and rehabilitation.

The Supreme Court observed: *“The ground realities should be tapped with meaningful action imperatives, apart from the administrative action which aims at arresting immoral traffic of women under the Immoral Traffic (Prevention) Act through inter-State or Interpol arrangements and the nodal agency like the CBI is charged to investigate and prevent such crimes.”*

The Central Government pursuant to the directions issued by the Supreme Court in Gaurav Jain case constituted a “Committee on the Prostitution, Child Prostitutes and Plan of Action to Combat Trafficking and Commercial and Sexual Exploitation of Women and Children”.

5.6. Vocational Trainings and Social Welfare Boards

Budhadev Karmaskar v. State of W.B.,¹⁵ It is an important pronouncement of the Court on the Vocational Trainings and Social Welfare Boards.

The Supreme Court in the above case had issued notice to all States while noting down the concern on the pathetic conditions of sex workers:

¹⁴ (1997) 8 SCC 114

¹⁵ (2011) 11 SCC 538

“... we strongly feel that the Central and the State Governments through Social Welfare Boards should prepare schemes for rehabilitation all over the country for physically and sexually abused women commonly known as prostitutes as we are of the view that the prostitutes also have a right to live with dignity under Article 21 of the Constitution of India since they are also human beings and their problems also need to be addressed.

A woman is compelled to indulge in prostitution not for pleasure but because of abject poverty. If such a woman is granted opportunity to avail some technical or vocational training, she would be able to earn her livelihood by such vocational training and skill instead of by selling her body. Hence, we direct the Central and the State Governments to prepare schemes for giving technical/vocational training to sex workers and sexually abused women in all cities in India.”

Recently, the court has laid down directions on Judicial Stereotyping in case involving a sexual offence against a woman in **Aparna Bhat v. State of Madhya Pradesh**¹⁶, Supreme Court: In a plea concerning imposition of certain conditions in a case involving a sexual offence against a woman, at any stage of judicial proceedings, that trivialize the trauma undergone by survivors and adversely affect their dignity, the bench of AM Khanwilkar and S. Ravindra Bhat, JJ has held that the use of reasoning/language which diminishes the offence and tends to trivialize the survivor, is especially to be avoided under all circumstances.

Reminding the courts of their duty, the Court said,

“The role of all courts is to make sure that the survivor can rely on their impartiality and neutrality, at every stage in a criminal proceeding, where she is the survivor and an aggrieved party. Even an indirect undermining of this responsibility cast upon the court, by permitting discursive formations on behalf of the accused, that seek to diminish his agency, or underplay his role as an active participant (or perpetrator) of the crime, could in many cases, shake the

¹⁶ 2021 SCC OnLine SC 230

confidence of the rape survivor (or accuser of the crime) in the impartiality of the court.”

On Judicial Stereotyping-

Judges can play a significant role in ridding the justice system of harmful stereotypes. They have an important responsibility to base their decisions on law and facts in evidence, and not engage in gender stereotyping. This requires judges to identify gender stereotyping, and identify how the application, enforcement or perpetuation of these stereotypes discriminates against women or denies them equal access to justice. Stereotyping might compromise the impartiality of a judge’s decision and affect his or her views about witness credibility or the culpability of the accused person.

The challenges Indian women face are formidable:¹⁷ they include a misogynistic society with entrenched cultural values and beliefs, bias (often subconscious) about the stereotypical role of women, social and political structures that are heavily malecentric, most often legal enforcement structures that either cannot cope with, or are unwilling to take strict and timely measures. Therefore, reinforcement of this stereotype, in court utterances or orders, through considerations which are extraneous to the case, would impact fairness.

‘Judicial stereotyping’¹⁸ refers to the practice of judges ascribing to an individual specific attributes, characteristics or roles by reason only of her or his membership in a particular social group (e.g. women). It is used, also, to refer to the practice of judges perpetuating harmful stereotypes through their failure to challenge them, for example by lower courts or parties to legal proceedings. Stereotyping excludes any individualized consideration of, or investigation into, a person’s actual circumstances and their needs or abilities.

¹⁷ <https://scroll.in/latest/989958/challenges-indian-women-face-are-formidable-excerpts-from-sc-judgement-on-rakhi-case>, Visited on January 05, 2021

¹⁸ Tiasha Mukherjee, Judicial Stereotyping in India and the Need to Combat Institutional Gender Bias, JURIST -Student Commentary, October 19, 2020, <https://www.jurist.org/commentary/2020/10/tiasha-mukherjee-judicial-stereotyping/>, Visited on January 05, 2021

The stereotype of the ideal sexual assault victim disqualifies several accounts of lived experiences of sexual assault. Rape myths undermine the credibility of those women who are seen to deviate too far from stereotyped notions of chastity, resistance to rape, having visible physical injuries, behaving a certain way, reporting the offence immediately, etc.

On Stereotype opinions that should be avoided

Courts should desist from expressing any stereotype opinion, in words spoken during proceedings, or in the course of a judicial order. Some of the instances are:

- that the survivor had in the past consented to such or similar acts or
- that she behaved promiscuously, or by her acts or clothing, provoked the alleged action of the accused,
- that she behaved in a manner unbecoming of chaste or “Indian” women, or that she had called upon the situation by her behavior, etc.
- women are physically weak and need protection;
- women are incapable of or cannot take decisions on their own;
- men are the “head” of the household and should take all the decisions relating to family;
- women should be submissive and obedient according to our culture;
- “good” women are sexually chaste;
- motherhood is the duty and role of every woman, and assumptions to the effect that she wants to be a mother;
- women should be the ones in charge of their children, their upbringing and care;
- being alone at night or wearing certain clothes make women responsible for being attacked;
- a woman consuming alcohol, smoking, etc. may justify unwelcome advances by men or “has asked for it”;
- women are emotional and often overreact or dramatize events, hence it is necessary to corroborate their testimony;

- testimonial evidence provided by women who are sexually active may be suspected when assessing “consent” in sexual offence cases; and
- lack of evidence of physical harm in sexual offence case leads to an inference of consent by the woman.

The Court, however, clarified that these instances are only illustrations of an attitude which should never enter judicial verdicts or orders or be considered relevant while making a judicial decision; they cannot be reasons for granting bail or other such relief.

On the conditions that shouldn't be imposed.

Similarly, imposing conditions that implicitly tend to condone or diminish the harm caused by the accused and have the effect of potentially exposing the survivor to secondary trauma are forbidden, such as-

- mandating mediation processes in non-compoundable offences,
- mandating as part of bail conditions, community service (in a manner of speaking with the so-called reformatory approach towards the perpetrator of sexual offence) or
- requiring tendering of apology once or repeatedly, or in any manner getting or being in touch with the survivor.

“The law does not permit or countenance such conduct, where the survivor can potentially be traumatized many times over or be led into some kind of non-voluntary acceptance, or be compelled by the circumstances to accept and condone behavior what is a serious offence.”

However, the Court made clear that the instances spelt out in the judgment are only illustrations; the idea is that the greatest extent of sensitivity is to be displayed in the judicial approach, language and reasoning adopted by the judge.

“Even a solitary instance of such order or utterance in court, reflects adversely on the entire judicial system of the country, undermining the guarantee of fair justice to all, and especially to victims of sexual violence (of any kind from the most aggravated to the so-called minor offences).”

Directions to be considered while granting bail in sexual offences-

CHAPTER-V: ROLL OF JUDICIARY TO COMBAT HUMAN TRAFFICKING OF WOMEN FOR SEXUAL EXPLOITATION

- a) Bail conditions should not mandate, require or permit contact between the accused and the victim. Such conditions should seek to protect the complainant from any further harassment by the accused;
- b) Where circumstances exist for the court to believe that there might be a potential threat of harassment of the victim, or upon apprehension expressed, after calling for reports from the police, the nature of protection shall be separately considered and appropriate order made, in addition to a direction to the accused not to make any contact with the victim;
- c) In all cases where bail is granted, the complainant should immediately be informed that the accused has been granted bail and copy of the bail order made over to him/her within two days;
- d) Bail conditions and orders should avoid reflecting stereotypical or patriarchal notions about women and their place in society, and must strictly be in accordance with the requirements of the Cr. PC. In other words, discussion about the dress, behavior, or past “conduct” or “morals” of the prosecutrix, should not enter the verdict granting bail;
- e) The courts while adjudicating cases involving gender related crimes, should not suggest or entertain any notions (or encourage any steps) towards compromises between the prosecutrix and the accused to get married, suggest or mandate mediation between the accused and the survivor, or any form of compromise as it is beyond their powers and jurisdiction;
- f) Sensitivity should be displayed at all times by judges, who should ensure that there is no traumatization of the prosecutrix, during the proceedings, or anything said during the arguments, and
- g) Judges especially should not use any words, spoken or written, that would undermine or shake the confidence of the survivor in the fairness or impartiality of the court.

Directions on training and sensitization of judges and lawyers

A module on gender sensitization be included, as part of the foundational training of every judge. This module must,

CHAPTER-V: ROLL OF JUDICIARY TO COMBAT HUMAN TRAFFICKING OF WOMEN FOR SEXUAL EXPLOITATION

- aim at imparting techniques for judges to be more sensitive in hearing and deciding cases of sexual assault, and eliminating entrenched social bias, especially misogyny.
- should emphasize the prominent role that judges are expected to play in society, as role models and thought leaders, in promoting equality and ensuring fairness, safety and security to all women who allege the perpetration of sexual offences against them.
- the use of language and appropriate words and phrases should be emphasized as part of this training.

The National Judicial Academy¹⁹ should devise, speedily, the necessary inputs which have to be made part of the training of young judges, as well as form part of judges' continuing education with respect to gender sensitization, with adequate awareness programs regarding stereotyping and unconscious biases that can creep into judicial reasoning. The syllabi and content of such courses shall be framed after necessary consultation with sociologists and teachers in psychology, gender studies or other relevant fields, preferably within three months. The course should emphasize upon the relevant factors to be considered and importantly, what should be avoided during court hearings and never enter judicial reasoning. Public Prosecutors and Standing Counsel too should undergo mandatory training in this regard. The training program, its content and duration shall be developed by the National Judicial Academy, in consultation with State academies. The course should contain topics such as appropriate court-examination and conduct and what is to be avoided.

Bar Council of India (BCI)²⁰ should consult subject experts and circulate a paper for discussion with law faculties and colleges/universities in regard to courses that should be taught at the undergraduate level, in the LL.B program. The BCI shall also require topics on sexual offences and gender sensitization to be mandatorily included in the syllabus for the All India Bar Examination.

¹⁹ <https://nja.gov.in/>, Visited on January 05, 2021

²⁰ <http://www.barcouncilofindia.org/>, Visited on January 12, 2021

Each High Court should, with the help of relevant experts, formulate a module on judicial sensitivity to sexual offences, to be tested in the Judicial Services Examination.

5.7. CONCLUSION:

The majority of victims of human trafficking are women, who are mostly destined for sexual exploitation. It needs to be prevented and eradicated through proper enforcement of laws, internationally as well as nationally by identifying the flaws and deficiencies in the existing laws, taking corrective measures and adopting policies for effectively implementing cooperation among countries. A strong legal response to human trafficking, identifying the deficiencies in laws and resolving the problems faced in dealing with human trafficking is a priority now and needs to be addressed immediately.

Traditionally, in cases of sexual offences, courts gave nominal punishment and gender biases were common in determining the person who was guilty. Against this phenomenon demands were raised to bring about legal reforms and subsequently several reforms were made including amendment of some Sections of IPC. Chapter XVI of the IPC which is more than a century old codified law defines offences affecting human body and punishment thereof without any gender discrimination. Rather, Section 354, 366, 372, 373 and 376 have been especially enacted to safeguard the dignity of women and give adequate protection to female persons.

In response to nation-wide agitation against growing sexual offences in India, Justice Verma Committee was formed to recommend criminal law reform. In order to implement the recommendations of Justice Verma Committee Report the Criminal Law (Amendment) Act, 2013 was passed, which attempted to fill the gap in the existing criminal law relating to sexual offences including sex-trafficking. The Committee admitted that one of the main reasons for trafficking is commercial sexual exploitation.

CHAPTER-VI

**DATA ANALYSIS OF HUMAN
TRAFFICKING OF WOMEN FOR
SEXUAL EXPLOITATION OF
LUCKNOW CITY**



DATA ANALYSIS OF HUMAN TRAFFICKING OF WOMEN FOR SEXUAL EXPLOITATION OF LUCKNOW CITY

6.1. INRODUCTION-

This chapter is based on data analysis. Data was collected by the Researcher for the purpose of availing true findings on the title; human trafficking of women for sexual exploitation of Lucknow city. The researcher has adopted tools like observation, interview, questionnaire and mailed questionnaire (RTI application) methods for the collection of Data. The researcher has visited Aapki Sakhi Asha Jyoti Kendra, one stop center Lucknow, police station Krishna Nagar, Krishna Nagar, Lucknow. The researcher requested the office bearer (manager) that she wants some information/data for her entire research work, on the request of the researcher, the manager of the above mentioned center provides a copy of FIR (0172/2019, U/s 370 of the IPC, 1860, P/S Krishna Nagar, Lucknow) thereafter the researcher went to the District & Session Court, Lucknow situated at Kaiser Bagh, Lucknow for inquiry and availing data of the above cases, after the inquiry in concerned trial court office, information was retrieved regarding bail application Number 7718 of 2019 which was presented before the Hon'ble high court, Allahabad at Bench Lucknow in the case. The researcher went to the High Court at Lucknow bench, Viram Khand, Gomti Nagar, Lucknow for availing information and opinion of the high court on the bail application presented in this case.

The researcher has taken the interview of three victims of human trafficking; the summary of interview is described further in this chapter.

The researcher moved an RTI application under Sec. 5 of Right to information Act, 2005 to public information officer, department of home/ police, Police Commissionerate, Lucknow for availing data relating to research work. After the one month moving RTI application some data send through registered post in replying, which is further described in this chapter.

The researcher prepared an e-questionnaire on the research topic/ title/ subject in Google Docs file for gathering data for her research work. The nature of question in

the questionnaire were objective in nature in easy to reply format by the respondents and easy to access on results. The questionnaire has been divided into two part (1) first part relating to the description of the respondents and (2) second part based on the multiple choice question on the allied research topic.

6.2. OBSERVATION-

The appendix –I of the thesis as copy of FIR, which is given by the shelter home authority named as ‘Aapki Sakhi Asha Jyoti Kendra’, one stop center Lucknow, Police Station Krishna Nagar, Krishna Nagar, Lucknow. The brief story of this case: as a written application moved by the manager of shelter home/ center dated 8/4/2019. It was relating to the crime of human trafficking. The human trafficking victim rescued by the both team GRP, P/s Char bagh, railway station and ASAJK, Krishna Nagar, Lucknow. After the rescued victim of human trafficking is reached Asha jyoti center by the GRP, P/s Char Bagh, Lucknow dated 4/4/2019. At the time of counseling of the victim, she said to the manager of center ‘she is a human trafficking victim and according to her statement one gang is operative in this city for human trafficking’ and this fact is mentioned in the appendix–I copy of FIR 0172/2019, Police Station, Krishna Nagar, Police Commissionerate Lucknow.

The Researcher went to the District & Session Court, Lucknow situated at Kaiser Bagh, Lucknow for inquiry and availing data of the above mentioned FIR No 0172/2019, Police Station, Krishna Nagar, Lucknow, After the inquiry in concerned trial court office, information has was retrieved regarding bail application Number 7718 of 2019 which is present before the Hon’ble high court, Allahabad at Lucknow Bench, Lucknow in same case. Thereafter the researcher went to the High Court at lucknow bench, Viram Khand, Gomti Nagar, Lucknow for availing information and opinion of the high court on the bail application presented in this case. The researcher met the learned counsel of the bail applicant and requested for providing information about above bail application, the learned counsel considered request of the researcher give The appendix –II of the thesis as copy of bail order dated 28/09/2021. The researcher after observing the bail order found the opinion of the high court, The court granted bail to the accused and issued directions to trial court concerned to

expedite the trial of the above case and conclude the case within one year, from the date of this order. It is a laudable stand taken by the Hon'ble High court for the criminal justice administrative system in this human trafficking case.

The researcher has done informal interviews of three victims of human trafficking. Before taking the interview they were informed about all the particulars of research including the topic of research, aim and objectives of the research and the purpose of research. Their informed consent has been taken prior to the interview. They agreed to share the data only on the promise that their identity should not be revealed in any circumstance and no harm should be caused to them or to their relatives.

Researcher has taken every possible step to keep their identity secret and all other conditions required for the interview are followed by the researcher to protect the identity of the victims. In order to protect their identity the name, place of residence and every other information that could reveal them are kept secret.

6.3. INTERVIEWS-

First interview

In the first case a girl of 8 years belonging to a poor family from a small village of West Bengal was taken by two persons for ten thousand rupees after giving assurance to girl's parents that they will provide her proper education, food, clothing, and residence. The girl said, that those two persons who took them were portraying themselves as well educated and intended to help the poor people. Her family was too poor to arrange two meals a day, even some time they had to sleep without food and ten thousand were so much for the family. Her family was also totally convinced that they are good persons and they will do as they are promising. So they gave her to those persons.

The girl was trafficked from West Bengal to Delhi and then she was sold by those people to the family. The family who purchased her was a rich and influential family where a male member of the family was a skin doctor (hereinafter referred to as Mr. X) and her husband was also a doctor. She was not given education as it was

promised to her parents. She told that initially things were fine though she had to do all the household work of the family. She was living there as a maid for the family.

After a few years as she entered in her teenage lots of things started then, Mr X had a bad intention towards her, he used to touch her improperly without her consent. Later on those things went worse, he used to hold her, touch her and molest her, she tried a lot to resist but due to her young age it was not possible for her to resist. Soon he started raping her, all this was done when his wife was not at home. This was not the only thing, sometimes when she resisted him, he used sharp metallic instrument to cut her leg deeply, she showed her cut marks to the researcher. It appeared like someone tried to peel out her flesh, the mark clearly showed the level of cruelty she was subjected to. She told the researcher that after any injury she was not taken to the hospital because Mr X was a doctor so he used to treat her, also he feared that the incident will come to the knowledge of other peoples which will harm his reputation. After almost eight years, one day she somehow managed to escape from the house to the nearest Christian school, she told about the incident to the sisters working there. They reported the matter to the police, a FIR was logged against the husband and wife, the girl whose age was almost 18 years now has been returned back safely to her family. The doctor was punished for his crimes and is now in jail.

Second case

The Second victim was trafficked from the State of West Bengal to Lucknow district of Uttar Pradesh. She also belonged to a poor family of West Bengal, her family was also struggling for their daily meals. Most of days they had only one meal for the day and sometimes they slept without having food. Girl's family was offered Fifteen thousand for the girl, the father of the girl thought that with this amount of money they can have proper food for so many days, and wherever they took the girl at least the girl will get proper meals to eat. For this family arranging the food was biggest task, their only concern was to survive even if they have to sell their daughters.

Finally she was sold for the money and trafficked to Lucknow in a family where one retired army person (hereinafter referred to as Mr X) his son who was engineer and daughter in law was living together. She was bought to the family when she was eight years old as the maid for the family but within few days all the unfortunate

incidents started with her, she was molested by Mr X who was the eldest member of the family. She was also raped by the Mr X, all these things were happening to her when Mr X's son and daughter in law were out for the job, so they never came to know till she became almost twelve year old.

One day the daughter in law of Mr X came to know all about this. She helped the girl to report about the incident to the police by making a phone call. Later on the girl's family came to rescue her and she was taken back by the family. The age of the girl was twelve years when she was given back to the family. Again she had to face the same problem of food every day and she died within two years due to decease and malnutrition.

Third case

Third case is related to a girl of age fifteen years from West Bengal, she was sold in fifteen thousand rupees to the traffickers. She was belonging to a poor family. The guy who took her gave assurance to her parents that the family will also be paid according to the work that she will perform. Finally that guy took her form West Bengal and brought her to Lucknow.

She was sold in a family which promised to pay eight thousand per month for the house hold works. In this family Mr X was a retired person who is also the accused also in this case. Mr X used to touch her inappropriately, he used to abuse her and punish her if she refuse his unwanted favors. The girl in this case was of 15 years so she understood the situation and escaped from the house herself. She went to her family in West Bengal again and after that she was married and is living happily married since then.

6.4. MAILED QUESTIONNAIRE (RTI APPLICATION)-

The researcher has moved an application under section 5 of The Right to Information Act, 2005 for Demanding/obtaining the desired information from The Public Information Officer/ Additional Sub-Commissioner of police, Police Commissionerate, Lucknow, UP, India. And wants to obtain information for the Academic/Research purposes -

1. That is how many (total) first Information report (FIR) lodged in the Police Stations which are under the jurisdiction of **Lucknow City** in the

- years 2018-19, 2019-20, 2020-21 related to the offence of **Human trafficking** under the IPC and Other Special Penal Laws. Kindly provide a true certified copy of the list and status of FIR, year Police Station wise.
2. That is how many (total) first Information report (FIR) lodged in the Police Stations which are under the jurisdiction of **Lucknow City** in the years 2018-19, 2019-20, 2020-21 related to **Kidnapping** and **Abduction** offence under IPC and Other Special Penal Laws. Kindly provide a true certified copy of list and status of FIR, year and Police Station wise.
 3. The application Fee for Rs 10 IPO No..... has been paid and any other cost of copy, paid by applicant in prescribed manner at the time of demand by authority in future.
 4. That is if any demanded/desired information falls under section 8 (Exemption from disclosure of information) of The Right to Information Act, 2005 then that condition the true certified copy of such document.

In the reply of RTI application as the appendix –III of the thesis which is sent to the researcher for availing data for her entire research work, the PIO/ACP, Police Commissionerate, Lucknow give the above mentioned information/data related Human trafficking cases as per RTI application point no 1. As per the provided total no. of 8 FIRs lodged in various police stations of Lucknow City in the years 2018-19, 2019-20, 2020-21 related to the offence of **Human trafficking**. Two FIR have been lodged in the year 2018, first FIR, CCN- 155/2018, Under Sec.370 of IPC, 1860, P/s Indra Nagar, lucknow and second FIR, CCN- 341/2018, Under Sec.370 of IPC, 1860 and 3/5 Immoral Tread Act P/s Gomti Nagar, lucknow. The third FIR has been lodged in the year 2019, first FIR, CCN- 172/2019, Under Sec.370 of IPC, 1860, P/s Krishna Nagar, lucknow, second FIR, CCN- 120/2019, Under Sec.370 of IPC, 1860 and Sec. 16/17, 7/8 POCSO Act P/s Mahila Thana, AHTU, lucknow and third FIR, CCN- 172/2019, Under Sec.365,370,370A of IPC, 1860 and Sec. 16/17 POCSO Act, P/s Gajipur, lucknow. One FIR has been lodged in the year 2020, FIR, CCN- 573/2020, Under Sec.370 of IPC, 1860 and 4/5/6/7 Immoral Tread Act, P/s Vibhuti Khand, lucknow. Two FIRs have been lodged in the year 2021, first FIR, CCN- 375/2021,

CHAPTER-VI: DATA ANALYSIS OF HUMAN TRAFFICKING OF WOMEN FOR SEXUAL EXPLOITATION OF LUCKNOW CITY

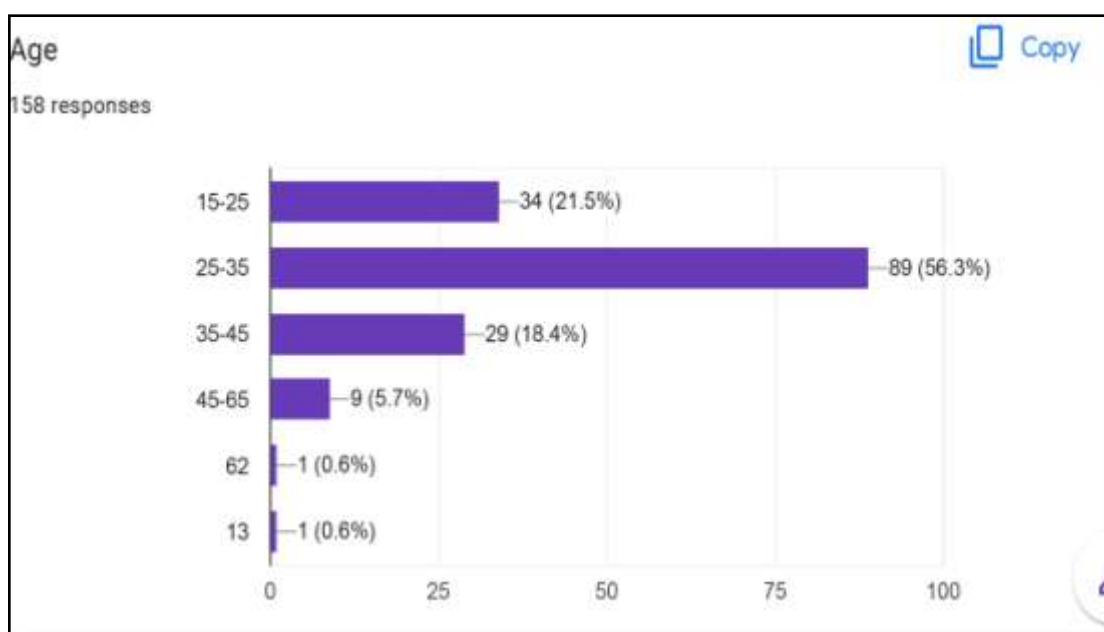
Under Sec.372,373 of Human Trafficking Act, P/s Gomti Nagar, lucknow and second FIR, CCN- 456/2021, Under Sec.370 (5) of IPC, 1860 P/s Chinhat, lucknow. It has made the picture clear that the crime of Human trafficking is committed in the city of lucknow against the women.

6.5. QUESTIONNAIRE AND DATA ANALYSIS-

As per the appendix –IV of the thesis mentioned e-questionnaire has been prepared by the Researcher on the research topic ‘human trafficking of women for sexual exploitation of Lucknow city’ in Google Form Docs file for the data collection on her research work. The nature of questions in the questionnaire is based on the objective and descriptive types. Question numbers 1 to 8 are a combination of both objective and descriptive type of questions. See the questions no. 1-8, it is very easy to reply by the respondents because it is based on the personal information viz; Name, age, occupation etc. and the question no. 9 to 24 are based on the multiple choice questions allied with the research topic. It is easy way of access to obtaining the information about the research work. This e-questionnaire will be used for obtaining information about the Human Trafficking over all India and particularly Lucknow City, exact information/awareness of public dominion in general or particular.

Graphic No 1

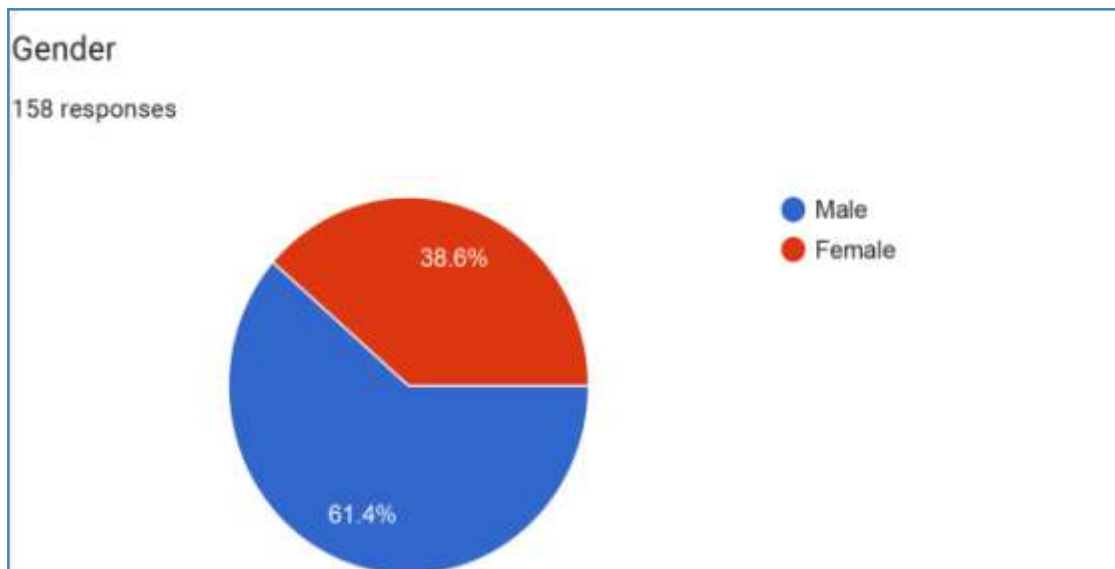
Age Groups



CHAPTER-VI: DATA ANALYSIS OF HUMAN TRAFFICKING OF WOMEN FOR SEXUAL EXPLOITATION OF LUCKNOW CITY

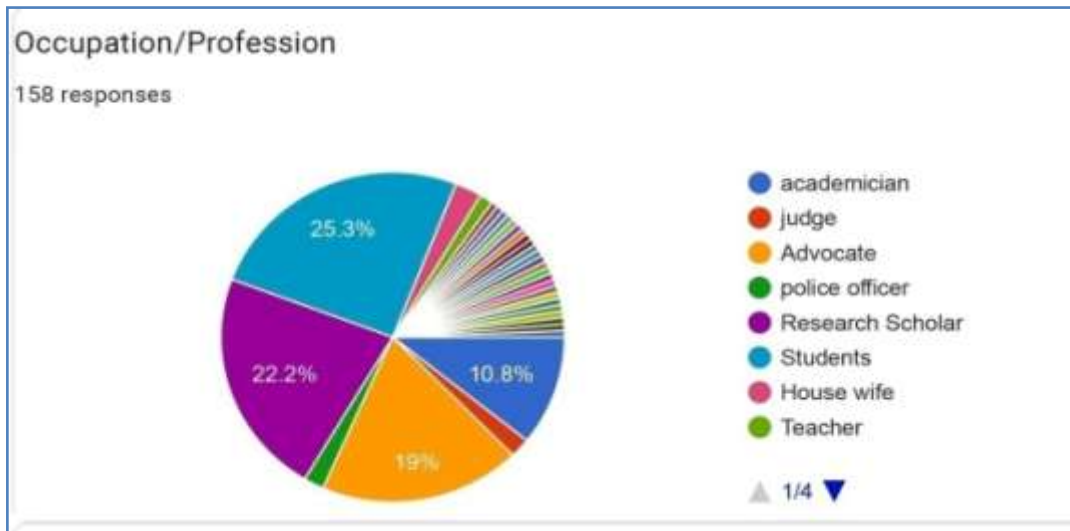
The graphic no. 1 is related to the age group of respondents and it shows that total number of 158 respondents respond on the questionnaire out of 300. The respondents are divided into four age groups; (1) 15-25 year, (2) 25-35 year ,(3) 35-45 year, (4) 45-65. The maximum numbers of respondents 89 (56.3%) out of 158 (100%) are related to the 25-35 year age groups and minimum number of respondents 9 (5.7%) out of 158 (100%) are related to the 45-65 year age groups, it becomes very clear from there that, all the respondents are competent to responding on the questionnaire and are of soundmind and well thinking/understanding persons.

Graphic No 2
Gender



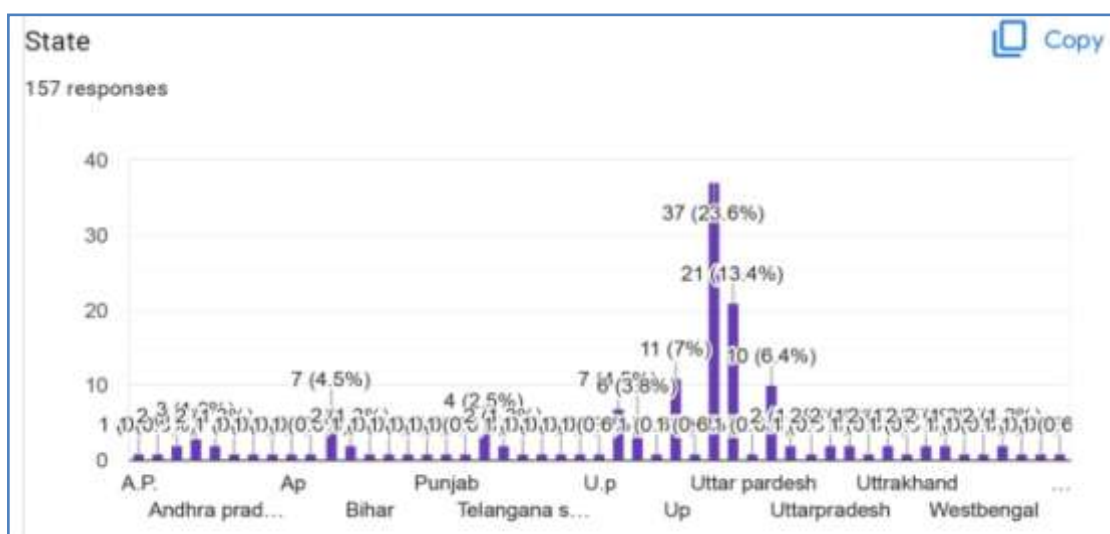
The graphic no. 2 is related to the Gender (Male and Female) of the respondents and it shown that total number of 158 respondents responded on the questionnaire out of 300. The total number of respondents are divided into two categories; male and female. The maximum number out of 158 respondents 98 (61.4%) were meal and 60(36.6) respondents were female. In this image it is very clear that all the respondents are competent to respond the questionnaire, all the reaspondents are of soundmind and all well thinking/understanding persons.

Graphics No 3
Occupation/Profession



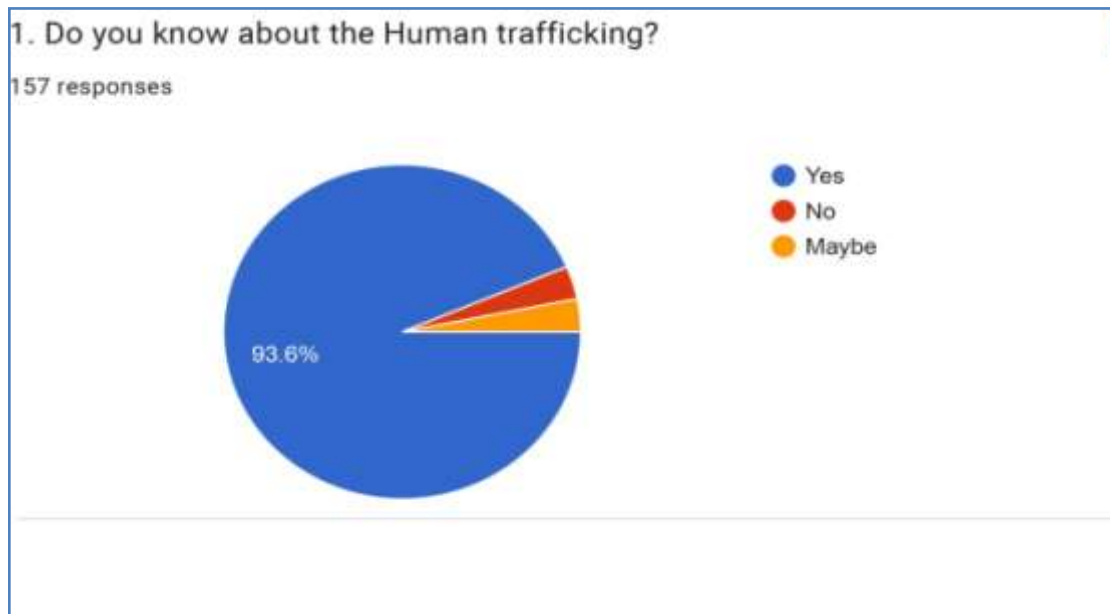
The graphic no. 3 is related to the Occupation/Profession of the respondents and it shows that total number of 158 respondents respond on the questionnaire out of 300. The maximum number out of 158 respondents 122 (77.3%) respondents were students, 22.2% were research scholars, 19% Advocate and 10.8% academician. And minimum number of respondents 36 (22.7%) out of 158 (100%) are judges, police, teachers, houswives etc. In the same image it is very clear that all the respondents are well educated and competent to understanding the nature of questions and to respond to the questionnaire.

Graphic No 4
State



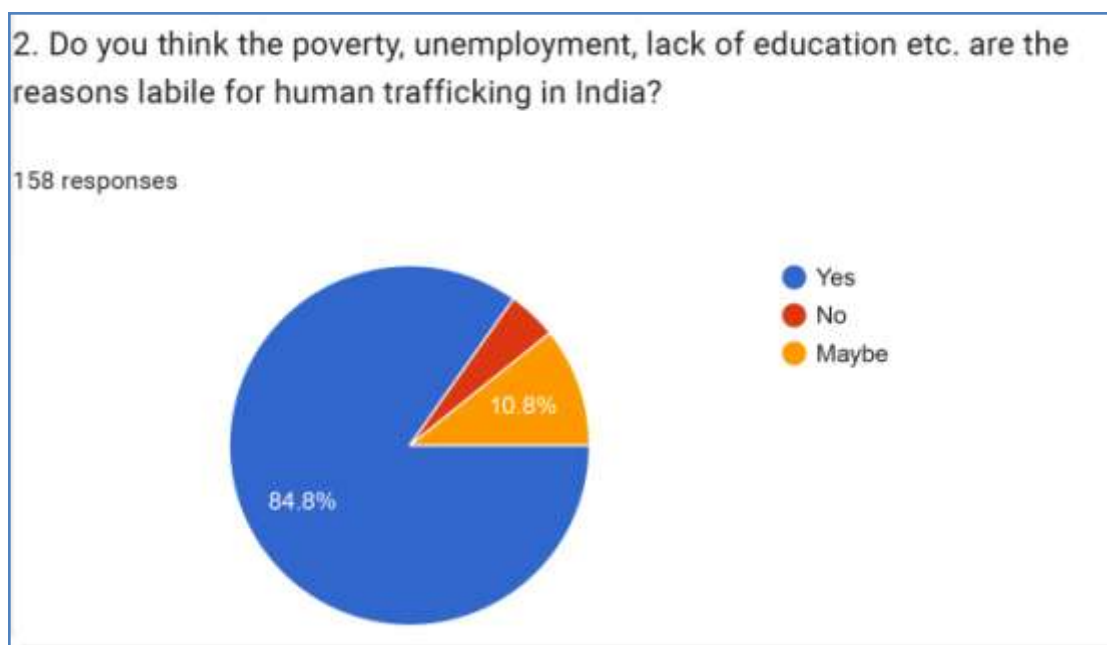
The graphic no. 4 is related to the states to which the respondents belong. It shows that total number of 157 respondents respond on the questionnaire out of 300. The maximum number of respondents belong to the state of Uttar Pradesh and some respondents are belonging to other states of India.

Graphic No 5
About the knowledge of Human Trafficking



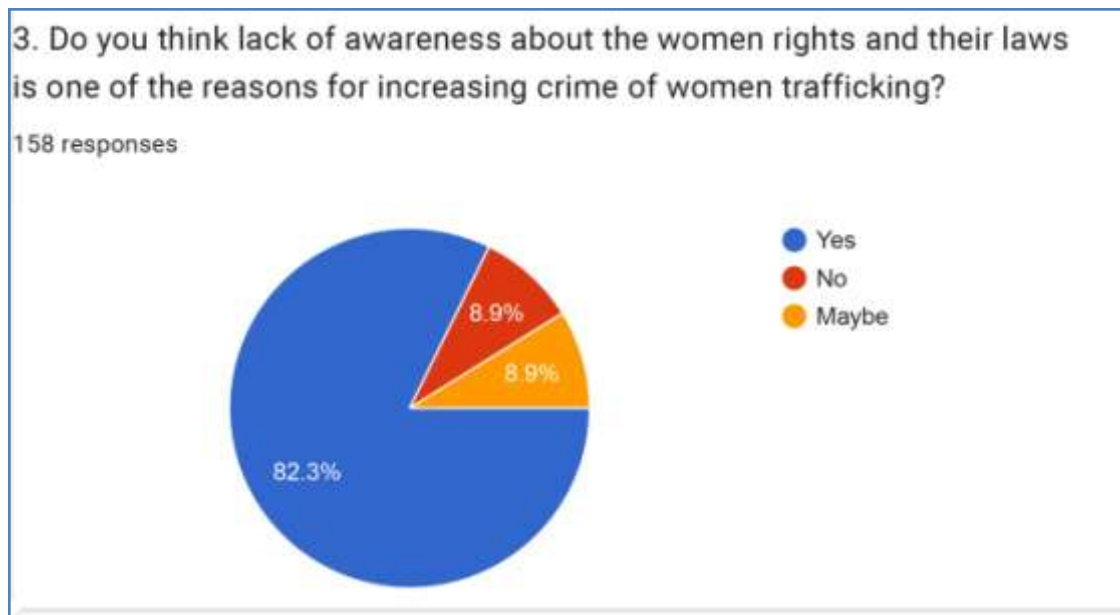
The graphic no. 5 is related to the multiple choice question no. 1 which as ‘Do you know about human trafficking?’ and this question has been prepared by the researcher for awareness. It shows that total number of 157 respondents respond on the questionnaire out of 300. The maximum number of respondents 147 (93.6%) replied in the offermative and selected option ‘yes’ about the above mentioned question. It is very clear that 93.6% people are aware of Human Trafficking.

Graphic No 6



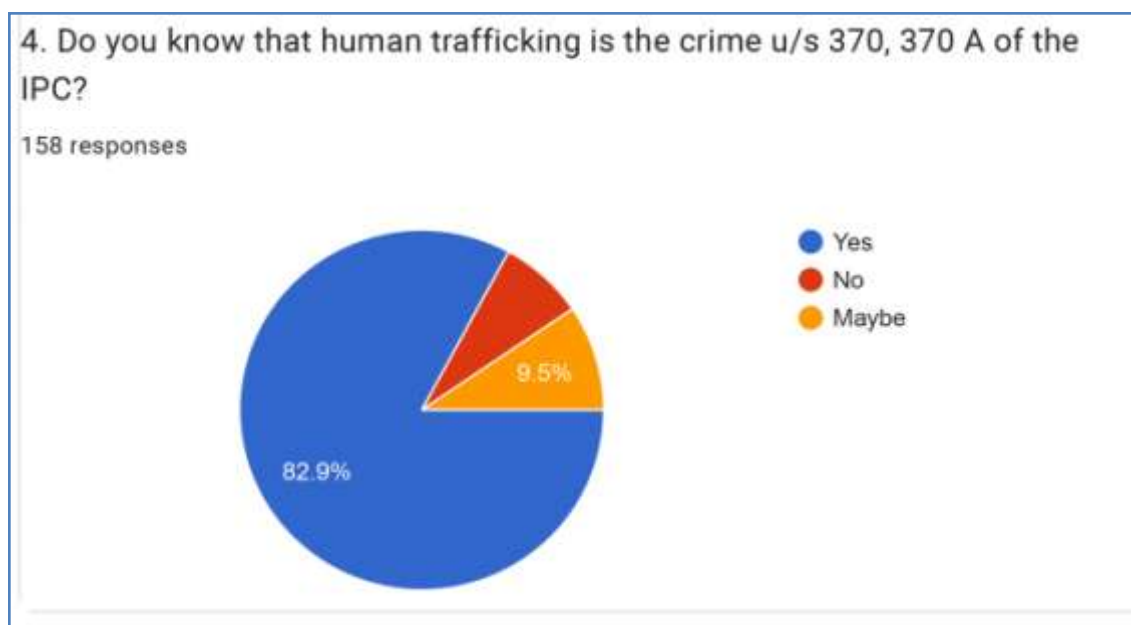
The graphic no. 6 is related to the multiple choice question no. 2 which read as ‘Do you think the poverty, unemployment, lack of education etc. are the reasons liable for Human trafficking in India?’ and this question has been prepared by the researcher for obtaining the reasons liable for Human trafficking in India. It shown that total number of 158 respondents respond to the questionnaire out of 300. The maximum number of respondents are respond in the affirmative and 134 (84.8%), selected the option ‘yes’ about the above mentioned question. It is very clear that 84.8% people think that poverty, unemployment, lack of education etc., are the reasons liable for Human Trafficking in India. Another 10.8% peoples are think it may be possible these reasons are liable for human trafficking in India. It shows that not only poverty, unemployment lack of education etc., are reasons but some other causes are also liable for human trafficking. But according to his Graphics, the researcher observed that, the poverty, unemployment, lack of education etc., are the main reasons liable for Human Trafficking in India.

Graphic No 7



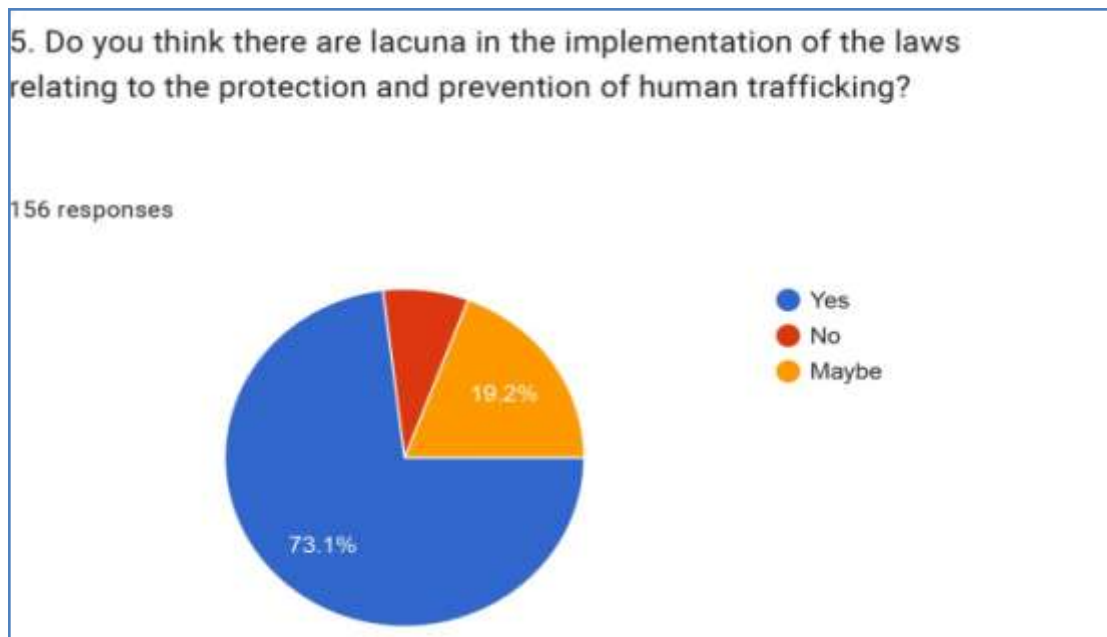
The graphic no. 7 is related to the multiple choice question no. 3 which read as ‘Do you think lack of awareness about the women rights and their laws is one of the reasons for increasing of women trafficking?’ and this question has been prepared by the researcher for obtaining data as to whether lack of awareness is one of the reason for increasing of women trafficking. It shows that total number of 158 respondents respond on the questionnaire out of 300. The maximum number of respondents who respond 134 (82.3%), selected option ‘yes’ about the above mentioned question. It is clear that 82.3% people are aware about the Human Trafficking. That 82.3% peoples are thinking lack of awareness about the women rights and their laws as one of the reasons for the increasing crime of women trafficking. 8.9% people totally denied as believe that, they thought it is not the reason for increasing crime but another 8.9% people think that it may be possible that lack of awareness about the women rights and their laws is one of the reasons for the increasing crime of women trafficking. But according to this Graphics No. 7 the researcher observed that, the lack of awareness about the women rights and their laws is one of the main reasons for increasing crime of women trafficking.

Graphic No 8



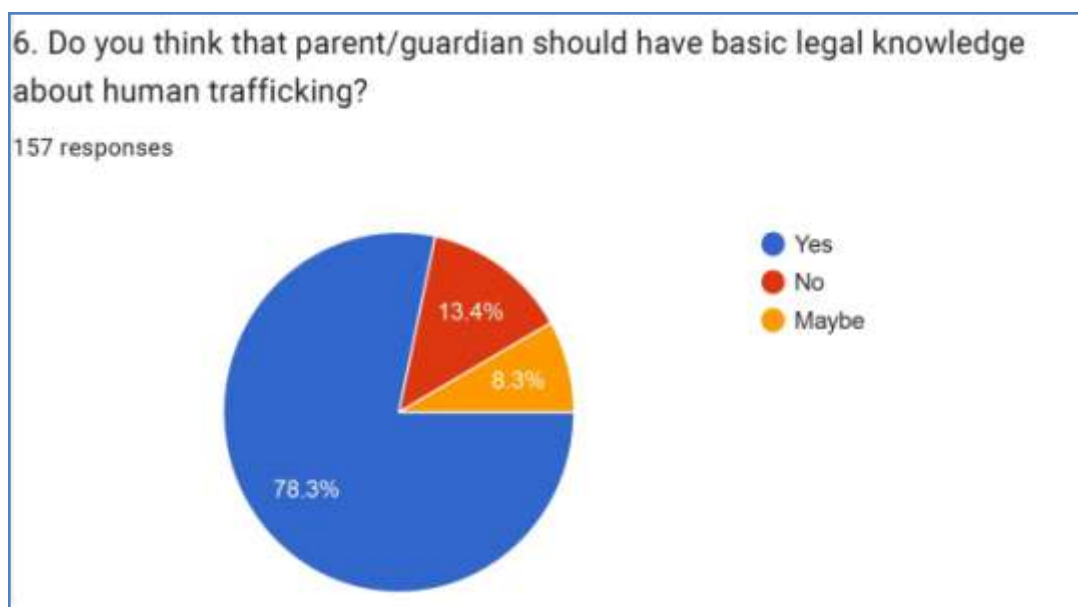
The graphic no. 8 is related to the multiple choice question no. 4 which read as ‘Do you know that human trafficking is crime u/s 370,370 A of the IPC?’ and this question has been prepared by the researcher for obtaining legal knowledge about the Human Trafficking under the IPC, 1860. It shows that total number of 158 respondents respond on the questionnaire out of 300. The maximum number of respondents are respond 135 (82.9%), selected option ‘yes’ for the above mentioned question. It is clear that 82.9% people know that the Human Trafficking is crime u/s 370, 370A of the IPC, 1860. But 9.5% people are clearly not aware about the human trafficking as a crime and u/s 370, 370A of IPC punishment is included. Some peoples actually did not know human trafficking is a crime u/s 370, 370A of the IPC. But according to the researcher Human Trafficking is a crime u/s 370, 370A of the IPC.

Graphic No 9



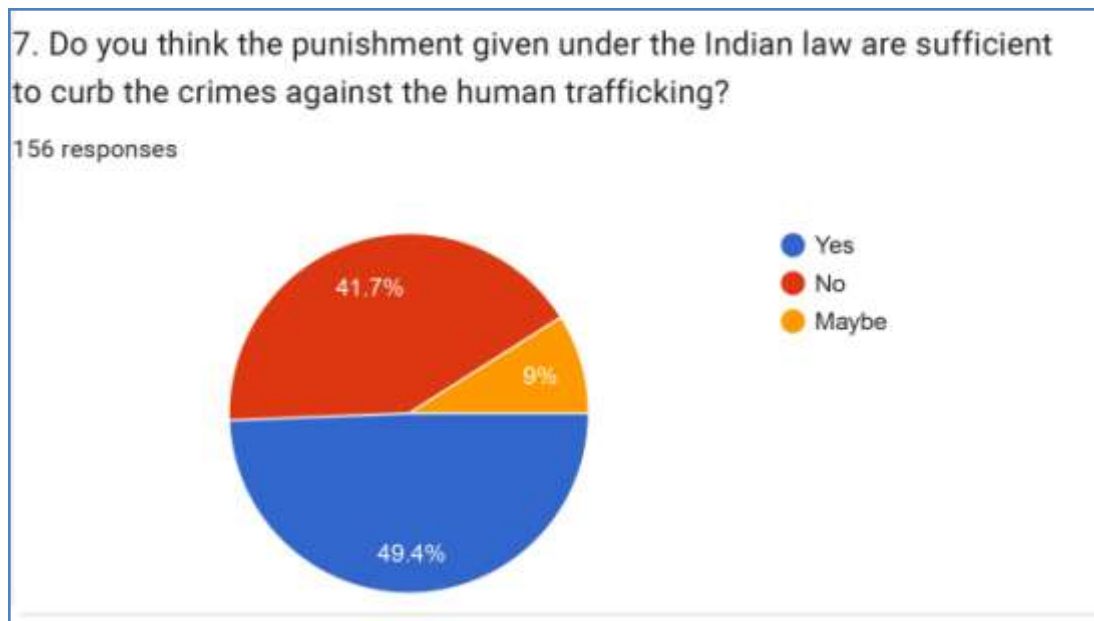
The graphic no. 9 is related to the multiple choice question no. 5 which reads ‘Do you think there are lacuna in the implementation of laws relating to the protection and prevention of Human Trafficking?’ and this question has been prepared by the researcher for obtaining awareness about any lacuna in the implementation of laws about the Human Trafficking. It is shows that total number of 156 respondents respond on the questionnaire out of 300. The maximum number of respondents who respond 114 (73.1%), selected option ‘yes’ for the above mentioned question. It is clear that 73.1 % people admit of the lacuna in the implementation of laws about the Human Trafficking. But 19.2% peoples are clearly not aware about the lacuna in the implimentation of laws about the Human Trafficking. The researcher observed that ‘yes’, there are some lacuna in the implementation of laws about the Human Trafficking.

Graphic No 10



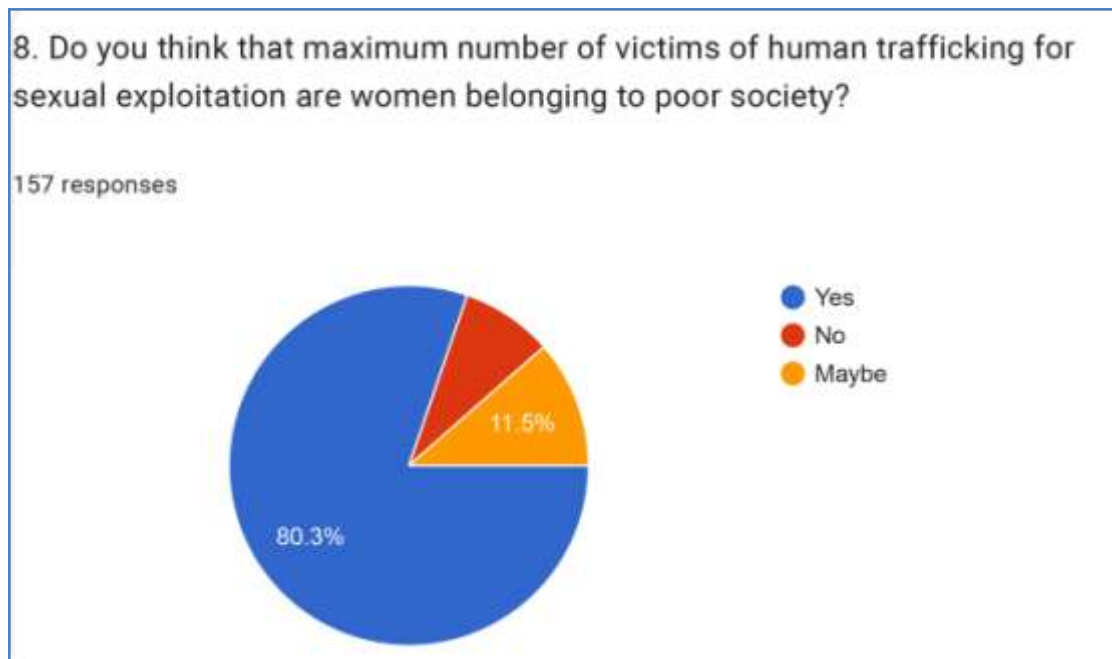
The graphic no. 10 is related to the multiple choice question no. 6 as ‘Do you think that parent/guardian should have legal knowledge about human trafficking?’ and this question has been prepared by the researcher for obtaining information as to whether the parent/guardian should have legal knowledge about human trafficking. It shows that total number of 157 respondents respond on the questionnaire out of 300. The maximum number of respondents who respond i.e. 123 (78.3%), selected option ‘yes’ about the above mentioned question. It is clear that 78.3 % people know that the parent/guardian should have legal knowledge about human trafficking. But 8.2% people are clearly not acquainted about the fact that whether the parent/guardian should have legal knowledge about human trafficking. 13.4% people did not know that the parent/guardian should have legal knowledge about human trafficking. But according to the researcher the parent/guardian should have legal knowledge about human trafficking.

Graphic No 11



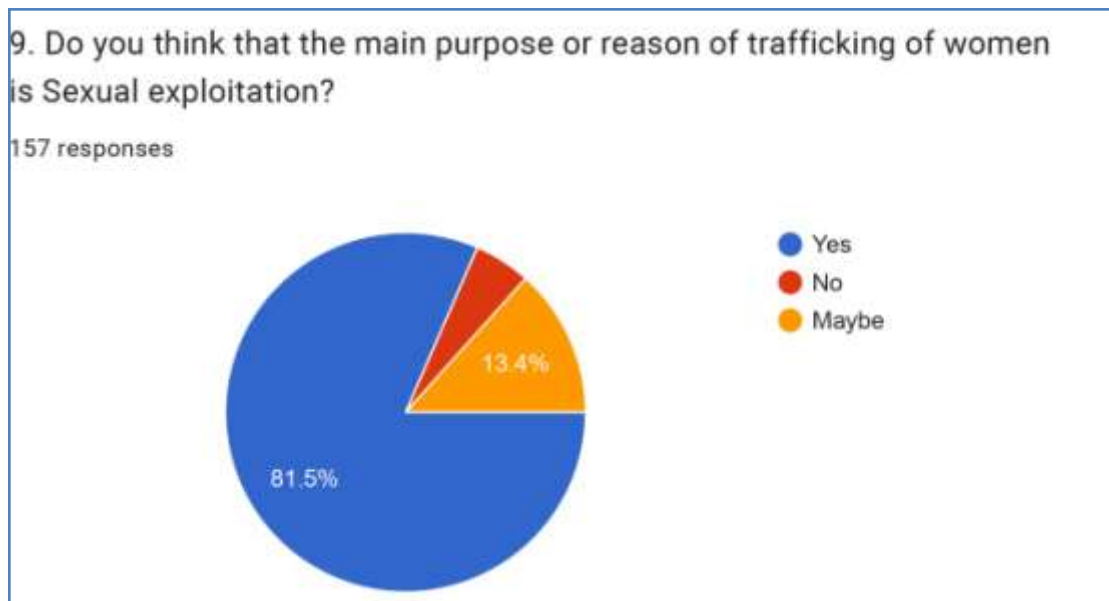
The graphic no. 11 is related to the multiple choice question no. 7 which read as ‘Do you think the punishment given the Indian law are sufficient to curb the crimes against the human trafficking?’ and this question has been prepared by the researcher for obtaining information about the punishment given the Indian law whether are sufficient to curb the crimes against the human trafficking. It shows that total number of 156 respondents respond on the questionnaire out of 300. The maximum number of respondents who respond 77 (49.4%), selected option ‘yes’ about the above mentioned question. It is clear that 49.4% people know about the punishment given the Indian law is sufficient to curb the crimes against the human trafficking. But 9 % peoples clearly do not think that the punishment given the Indian law is sufficient to curb the crimes against the human trafficking. The 41.7% peoples are actually did not know the punishment given the Indian law are sufficient to curb the crimes against the human trafficking. But according to the researcher the punishment given under the Indian law is sufficient to curb the crimes against the human trafficking.

Graphic No 12



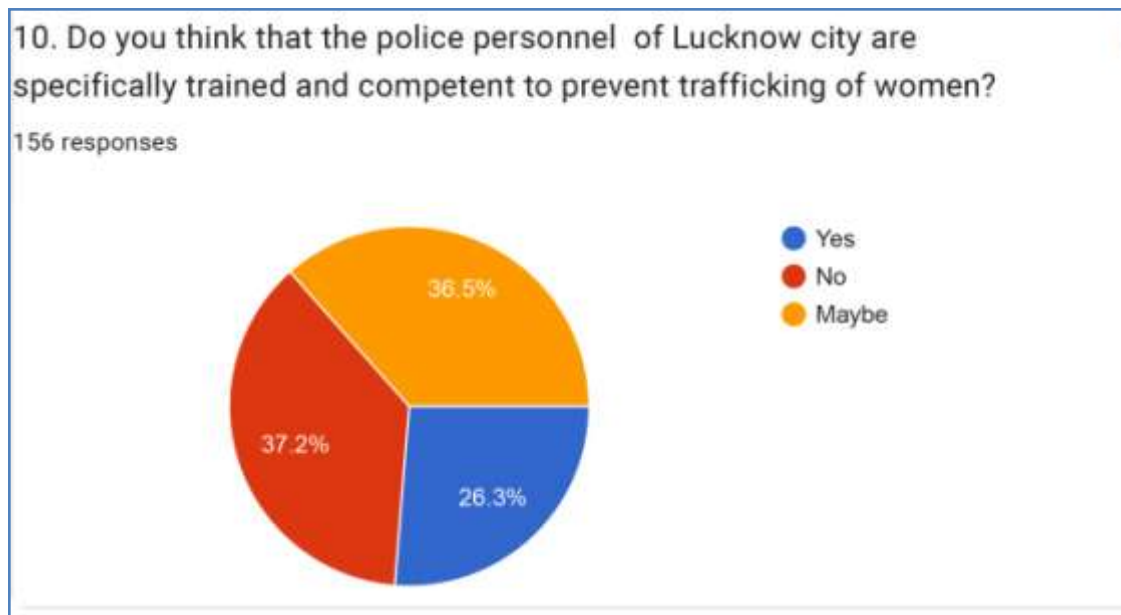
The graphic no. 12 is related to the multiple choice question no. 8 which reads as ‘Do you think that the maximum number of victims of human trafficking for sexual exploitation are women belonging to poor society?’ and this question has been prepared by the researcher for obtaining information as to whether the maximum number of victims of human trafficking for sexual exploitation are women belonging to poor society. It shows that a total number of 157 respondents responded on the questionnaire out of 300. The maximum number of respondents who responded 126 (80.3%), selected option ‘yes’ about the above mentioned question. It is clear that 80.3 % people know that the maximum number of victims of human trafficking for sexual exploitation are women belonging to poor society. But 11.15% people clearly don’t know that the maximum number of victims of human trafficking for sexual exploitation are women belonging to poor society. Some people actually did not know that the maximum number of victims of human trafficking for sexual exploitation are women belonging to poor society. But according to the researcher the maximum number of victims of human trafficking for sexual exploitation are women belonging to poor society.

Graphic No 13



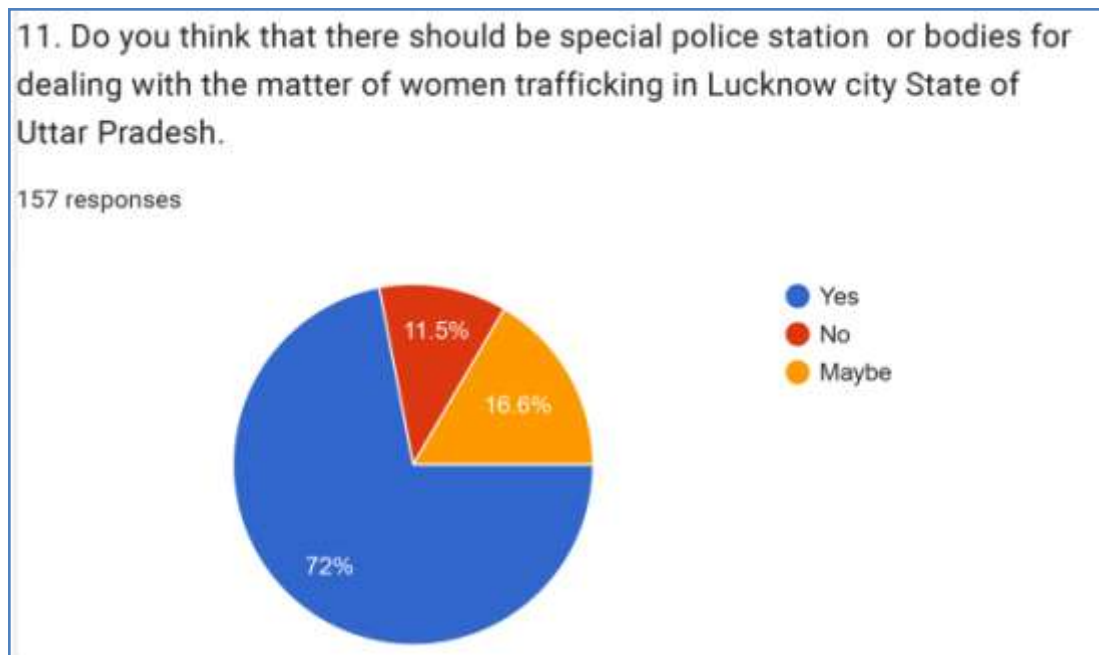
The graphic no. 13 is related to the multiple choice question no. 9 as ‘Do you think that the main purpose or reason of human trafficking of women is sexual exploitation?’ and this question has been prepared by the researcher for obtaining information about the main purpose or reason of human trafficking of women. It shows that total number of 157 respondents respond on the questionnaire out of 300. The maximum number of respondents who respond 123 (81.5%), selected option ‘yes’ about the above mentioned question. It is clear that 81.5 % peoples know that the main purpose or reason of human trafficking of women is sexual exploitation. But 13.4% peoples clearly don’t know that about the main purpose or reason of human trafficking of women is sexual exploitation. Some people actually did not know the the main purpose or reason of human trafficking of women is sexual exploitation. But according to the researcher the main purpose or reason of human trafficking of women is sexual exploitation.

Graphic No 14



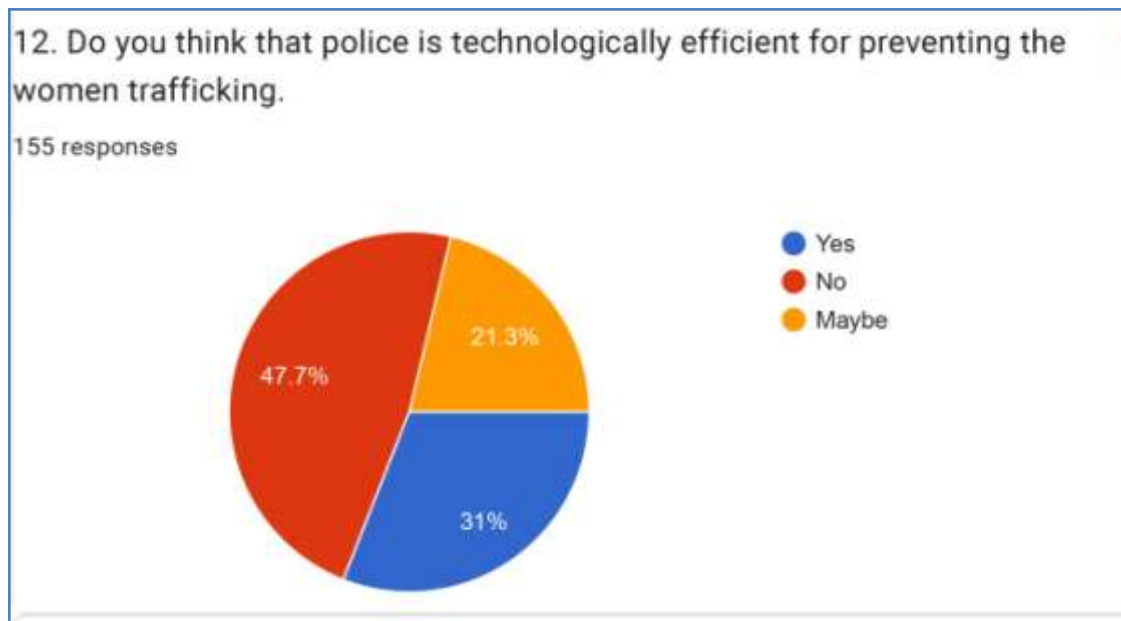
The graphic no. 14 is related to the multiple choice question no. 10 which reads as ‘Do you think that the police personnel of Lucknow city are specifically trained and competent to prevent the trafficking of women?’ and this question has been prepared by the researcher for obtaining information that whether the police personnel of Lucknow city are specifically trained and competent to prevent the trafficking of women and also justification of this research hypothesis. It is shown that total number of 156 respondents respond on the questionnaire out of 300. The maximum number of respondents are respond 72 (37.2%), selected option ‘No’ about the above mentioned question. It is clear that 37.2% people think that the police personnel of Lucknow city are not specifically trained and competent to prevent trafficking of women. But 36.5% people do not clearly know about the police personnel of Lucknow city are specifically trained and competent to prevent trafficking of women. 26.3% people clearly know that the police personnel of Lucknow city are specifically trained and competent to prevent the trafficking of women. But according to the researcher the police personnel of Lucknow city are not specifically trained and competent to prevent trafficking of women which also justifies the hypothesis of this research.

Graphic No 15



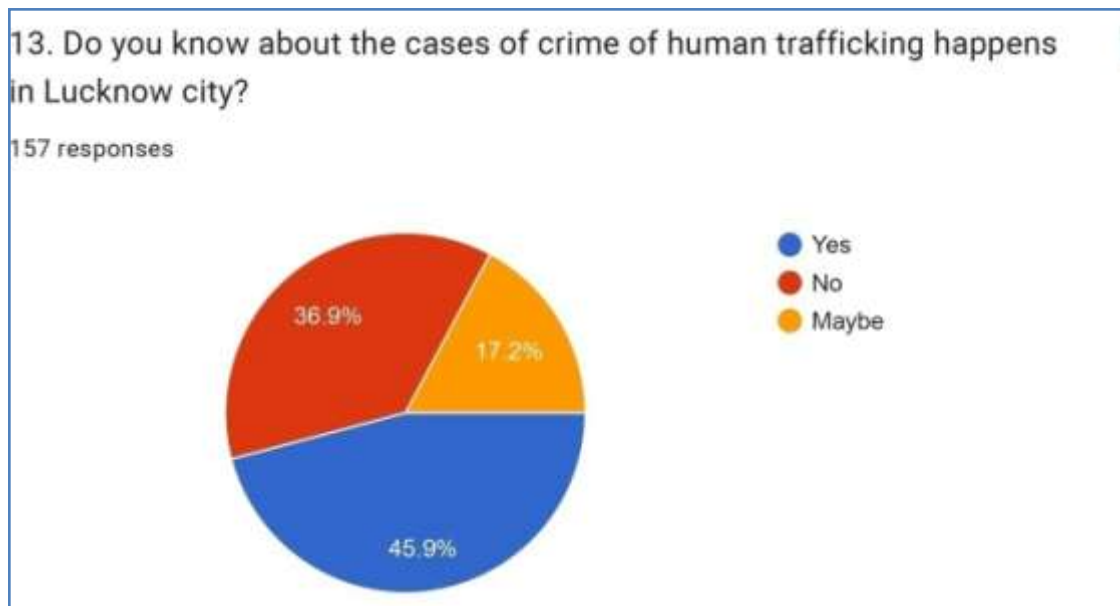
The graphic no. 15 is related to the multiple choice question no. 11 as ‘Do you think that there should be special police station or bodies for dealing with the matter of women trafficking in Lucknow city in the state of Uttar Pradesh?’ and this question has been prepared by the researcher for obtaining information that whether there should be special police station or bodies for dealing with the matter of women trafficking in Lucknow city state of Uttar Pradesh and also justification of this research hypothesis. It shows that total number of 157 respondents respond on the questionnaire out of 300. The maximum number of respondents who respond 113 (72%), selected option ‘yes’ about the above mentioned question. It is clear that 72 % people do not think that there should be special police station or bodies for dealing with the matter of women trafficking in Lucknow city state of Uttar Pradesh. But 16.6 % peoples are clearly not known about the there should be special police station or bodies for dealing with the matter of women trafficking in Lucknow city state of Uttar Pradesh. The 11.5% peoples are actually did not know the there should be special police station or bodies for dealing with the matter of women trafficking in Lucknow city state of Uttar Pradesh. But according to the researcher there should be special police station or bodies for dealing with the matter of women trafficking in Lucknow city state of Uttar Pradesh and it also justifies the hypothesis of this research.

Graphic No 16



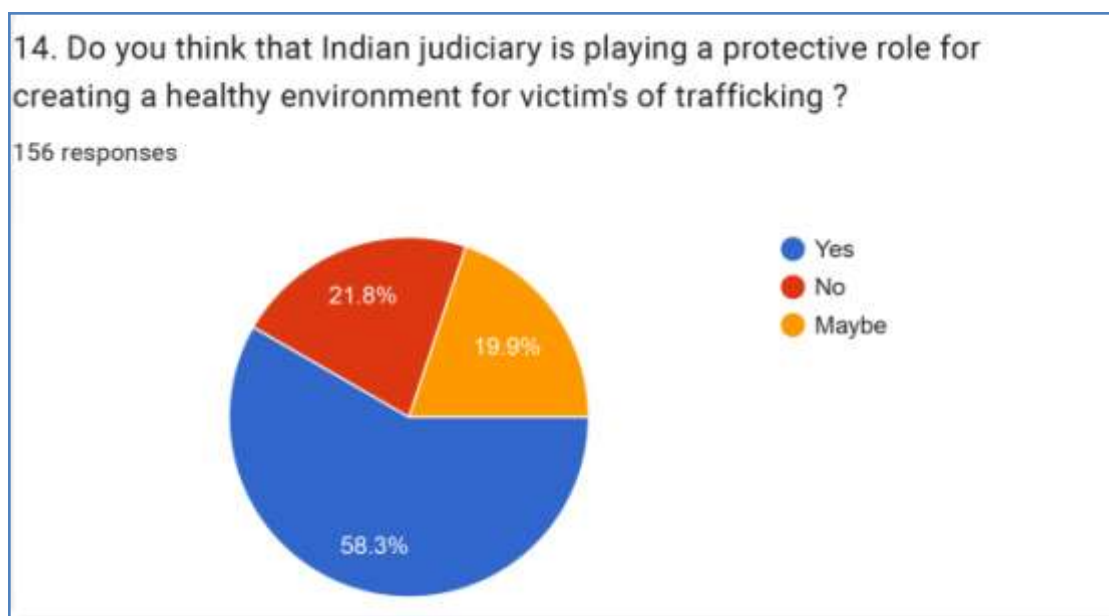
The graphic no. 16 is related to the multiple choice question no. 12 which reads as ‘Do you think that police is technologically efficient for preventing the women trafficking?’ and this question has been prepared by the researcher for obtaining information as to whether the police is technologically efficient for preventing the women trafficking and also justification of this research hypothesis. It is shows that total number of 155 respondents respond on the questionnaire out of 300. The maximum number of respondents who respond 72 (47.7%), selected option ‘No’ about the above mentioned question. It is clear that 47.97% people think that the police is not technologically efficient for preventing the women trafficking. But 31% people clearly do not think that the police is technologically efficient for preventing the women trafficking. 21.3% people do not clearly know whether the police is technologically efficient for preventing the women trafficking. But according to the researcher the police is not technologicly efficient for preventing the women trafficking and also justified of this research hypothesis.

Graphic No 17



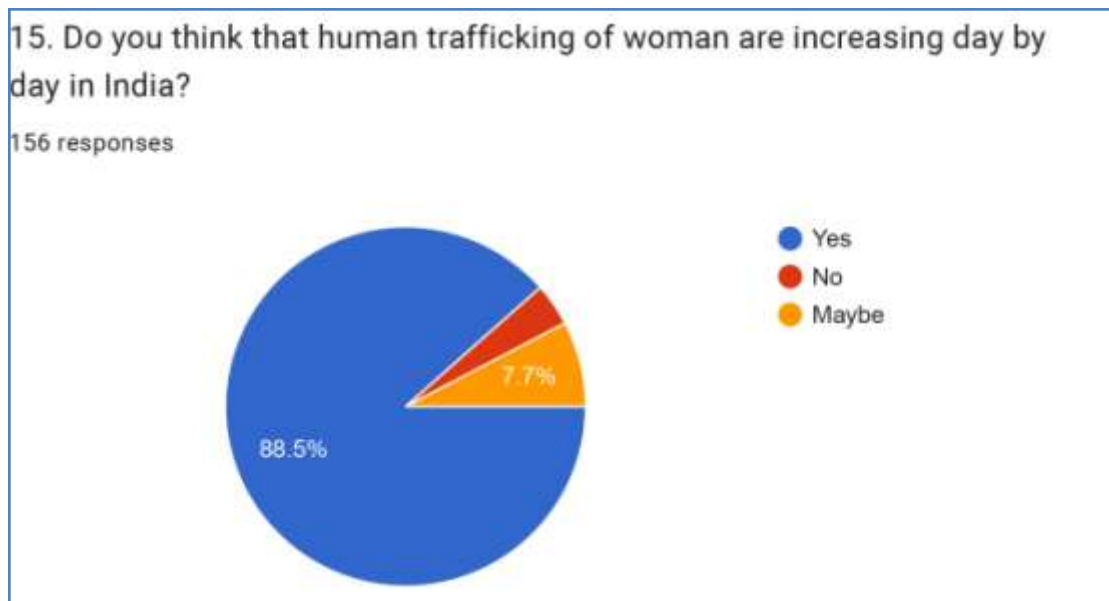
The graphic no. 17 is related to the multiple choice question no. 13 which reads as ‘Do you know about the cases of crime of Human trafficking happens in Lucknow city?’ and this question has been prepared by the researcher for obtaining information about the cases of crime of Human trafficking happens in Lucknow city and also justification of this research hypothesis. It shows that total number of 157 respondents respond on the questionnaire out of 300. The maximum number of respondents who respond 72 (45.9%), selected option ‘yes’ about the above mentioned question. It is clear that 45.9% people know that the cases of crime of Human trafficking happens in Lucknow city. But 36.9% peoples do not know that the cases of crimes of Human trafficking happens in Lucknow city. 17.2% people actually do not know about the cases of crimes of Human trafficking happen in Lucknow city. But according to the researcher the cases of crime of Human trafficking happens in Lucknow city and also justified of this research hypothesis.

Graphic No 18



The graphic no. 18 is related to the multiple choice question no. 14 as ‘Do you think that Indian judiciary is playing a protective role for cerating a helthy environment for victim’s of trafficking?’ and this question has been prepared by the researcher for obtaining information about the parents/guardians should have legal knowlede about human trafficking. It shows that total number of 156 respondents respond on the questionnaire out of 300. The maximum number of respondents are respond 123 (58.3%), selected option ‘yes’ about the above mentioned question. It is clear that 58.3 % peoples think that the Indian judiciary is playing a protective role for cerating a healthy environment for the victims of trafficking. But 19.9% people do not think that about the Indian judiciary is playing a protective role for creating a healthy environment for victims of trafficking. 21.8% people actually did not know that whether the Indian judiciary is playing a protective role for creating a healthy environment for victims of trafficking. But according to the researcher the Indian judiciary is playing a protective role for creating a healthy environment for victims of trafficking.

Graphic No 19



The graphic no. 19 is related to the multiple choice question no. 15 which reads as ‘Do you think that human trafficking of woman are increasing day by day in India?’ and this question has been prepared by the researcher for obtaining information about the actual increasing status of human trafficking. It shows that total number of 156 respondents respond on the questionnaire out of 300. The maximum number of respondents who respond 138 (88.5%), selected option ‘yes’ about the above mentioned question. It is clear that 88.5 % peoples know that human trafficking of woman is increasing day by day in India. But 7.7% people do not know that the human trafficking of woman are increasing day by day in India. Some people actually do not know that the human trafficking of woman are increasing day by day in India. But according to the researcher the human trafficking of woman is increasing day by day in India.

CHAPTER-VII
CONCLUSION, FINDINGS AND
RECOMMENDATIONS



CONCLUSION, FINDINGS AND RECOMMENDATIONS

7.1. INTRODUCTION-

This chapter is related to conclusion, findings and recommendations. Before we access the conclusion of the entire research work, some facts need to be described in this chapter as in brief of Human Trafficking and its reasons, international and national legal provisions, judicial efforts or contributions and thereafter describing the result of the hypothesis of the research work as well as findings and recommendations.

7.2. BRIEF ABOUT THE HUMAN TRAFFICKING-

In the modern world, the situation is same in almost every country facing the problem of human trafficking. Human trafficking is the world's largest criminal activity, the fastest growing organized crime, and a real and dark side of our society.¹ Trafficking of women for sex work reflects a complex social problem. Sex trafficking has been observed in various locations within the sex industry, including residential brothels, escort services, fake massage parlors, strip clubs, and street prostitution etc. Sexual exploitation or sex trafficking particularly affects young women.² Many cases of sexual exploitation include working in the street prostitutes, organized brothels, strip clubs, live sex shows, porn shops and more. Other cases of sexual exploitation take the form of private homes where women and children are forced to work and survive. Victims of sexual exploitation are often tempted by promises of good work in other countries in exchange for their good career, kidnapping, fraudulent proposals, and even victims are sold for domestic work.³ Women's sex tourism, a particular type of commercial sex trade that is a rapidly expanding problem, involves those traveling to other countries to engage in the act. Sex trafficking involves

¹ Dr. Babita Chugh, *Women and Crime* 141(Rajat Publications New Delhi, India, Daryaganj, 1st Published, 2015).

² R Chakraborty, *Anti Human Trafficking Laws* 8 (Kamal Publishers, New Delhi, Edition, 2019).

³ <https://www.unodc.org/toc/en/crimes/human-trafficking.>, (Visited on January 05, 2022).

forcing migrants to engage in sexual activity as a condition of permitting or arranging migrants. Sex trafficking employs the bondage created by physical or sexual coercion, deception, abuse of power, and coercion debt.⁴ For example, trafficked women and children are often promised to do household or service work, but are often taken to brothels where their passports and other identification cards are confiscated. They are beaten or imprisoned and promised freedom only if they earn the purchase price and travel and visa costs through prostitution. Trafficking victims may have been exposed to multiple rapes, imprisonment and other atrocities, failing to protect them by state agencies. In fact, in almost all cases, victims of sex trafficking have been raped to force prostitution. In most cases, victims were always raped early after trafficking, even if they explicitly gave “shadow consent” at the end of their exploitation life. The National Women's Commission reported that organized crime plays an important role in the country's sexual transactions, exposing women, who are frequent victims of trafficking, to blackmail, beatings and rape. The way women are trafficked is very different. Some were violently kidnapped and drugged, but most were trafficked by fake offers for marriage, employment, or housing etc. Organized crime was a common component of all trafficking cases, as was corruption and police conspiracy, but poverty, illiterateness, and lack of employment opportunities contributed to trafficking problems. Corruption was widespread in the country, but no anti-corruption initiatives specifically related to trafficking-related corruption were known during the year.

Traffickers use a variety of methods to manipulate women and girls into sex trafficking in the hope of improving poor economic conditions. These temptations include offers of jobs, marriage, and travel. Each of these occasions is a ruse to lure women into sexual slavery. In some cases, women can be kidnapped or kidnapped, but these tactics are rare compared to most

⁴ <https://humantraffickinghotline.org/type-trafficking/human-trafficking>, (Visited on January 07, 2022).

cases involving lies, deception, and tricks to recruit victims. In some cases, young children are adopted by family friends or community members, or even deliberately sold into slavery by their own parents. Traffickers use a variety of coercive methods and psychological manipulations to control victims, rob them of their free will, and destroy their self-esteem and connection with others to make them submissive and dependent and escape through destruction that makes it virtually impossible to bring them into a physical and mental status, defense, emotional and physical trauma and degradation associated with humiliation and exposure to violence, commoditization, unrelenting abuse and fear are profound effects on the physical, psychological, social and emotional development of trafficking victims. The most important structural causes are: poverty, inequality and the subordination of women and children. Human trafficking demonstrates the low level of education among victimized children. It also shows that parents with little or no education are more likely than other parents to expose their children to trafficking. Children who are illiterate and have limited knowledge of the outside world are easy targets for traffickers who pose as potential friends. In developing countries, girls and women often have lower literacy rates than boys and men, making women more vulnerable to trafficking. New information technologies are helping to expand communication and information. At the same time, human trafficking is facilitated by globalization and modern technology. Traffickers go online to organize mail-order bridal couples and adoption services for pornography and prostitution. Email and internet marketing have made transactions safe and easy.⁵ Human trafficking is a crime of crimes. It is a basket of crimes. In this basket one can dig out the elements of abduction, kidnapping, illegal detainment, illegal confinement, criminal intimidation, hurt, grievous hurt, sexual assault, outraging modesty, rape, unnatural offences, selling and buying of human beings, servitude, criminal conspiracy, abetment etc.⁶ Thus, multiple abuse and abusers, at different times and in different places, together form the

⁵ Supra 1, P. 139

⁶ The Indian Penal Code, 1860

organized crime of human trafficking. Various human rights violations such as denial of privacy, denial of justice, denial of access to justice, and deprivation of basic rights and dignity are another part of exploitation. Therefore, there is no doubt that human trafficking is an organized crime.

7.3. REASON / CONTRIBUTING FACTORS OF HUMAN TRAFFICKING-

The factors which contribute to women trafficking are diverse and complex from country to country. To determine what factors are causing women to be victims of trafficking, not only consider global and regional social and economic changes, but also by country in the country of trafficking.⁷ The situation needs to be analyzed locally. Here are some of the factors that contribute to human trafficking: Situation of armed conflict, Economic deprivation, Forced marriage, Gender discrimination, Globalization, Growth of customs, sex industry, sex tourism, internet porn , Low social status, Lack of employment opportunities, Low level of education and general awareness, Migration, Poverty, Traditional religious and cultural practices, etc.

7.4. INTERNATIONAL AND NATIONAL LEGAL PROVISIONS-

Exploitation of people for profit has a long history, and international efforts to deal with it can be traced back to at least a century, well before the birth of the modern human rights system. However, human trafficking has become a major issue in the last decade.⁸ At the same time, a comprehensive legal framework on this issue was developed. These changes support a fundamental change in the way the international community thinks about preventing human exploitation. We also see changing expectations about what governments and others should do to address and prevent trafficking. Therefore, the victim-centered approach is increasingly favored by the international community.

⁷ <https://borgenproject.org/tag/worst-countries-for-human-trafficking/>, (Visited on January 05, 2022).

⁸ https://apps.who.int/iris/bitstream/handle/10665/77394/WHO_RHR_12.42_eng.pdf;sequence=1, (Visited on January 09, 2022).

Human rights are a central pillar of new understanding, and the need for a human rights-based approach to trafficking is now widely accepted.

Only recently has the concept of “trafficking in persons” begun to be understood internationally.⁹ In fact, it wasn't until the late 1990s that states began to separate human trafficking from other commonly associated practices, such as promoting illegal immigration. The first agreed definition of trafficking in persons was contained in the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially of Women and Children. Human trafficking has received considerable attention in the legal community, where the term is synonymous with legal concepts of slavery and “slavery-like” practices such as prisons, involuntary slavery, debt bondage, and forced labour. In December 2000, the United Nations General Assembly approved a protocol to prevent, suppress and punish trafficking in persons known as the UN TIP Protocol or the “Palermo Protocol”.¹⁰ The Trafficking Victims Protection Act, 2000 (TVPA) parallels international standards and allows the United States to work with other countries to combat human trafficking on a global scale. Article 3 of the United Nations Protocol on Trafficking in Persons (United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially of Women and Children, Supplementing the Convention against Transnational Organized Crime of, December, 2000) states: is defined as Transfer, accommodation or reception of persons by threat, use of force or other forms of coercion, abduction, fraud, deception, abuse of power or vulnerability, or payment or benefit. Consent of a person controlling another person for the purpose of exploitation. Exploitation includes at least prostitution or other forms of sexual exploitation of another person, forced labor or services, slavery or exploitation in practices similar to slavery, slavery or organ harvesting. The Trafficking Victims Protection Act 2000 defines trafficking as: 18 years of age or older, or (2) in involuntary servitude, forced labour, debt bondage, or slavery.

⁹ <https://lt.usembassy.gov/trafficking-in-persons-report-2022/>, (Visited on January 05, 2022).

¹⁰ <https://www.warnathgroup.com/wp-content/uploads/2014/05/PALERMO-PROTOCOL.>, (Visited on January 05, 2022).

7.5. NATIONAL LEGAL PROVISIONS-

Article- 23 of Part III of the Indian Constitution states that trafficking in persons is prohibited. According to Article 23, Prohibition of Trafficking in Persons and Forced Labor:¹¹ (1) Trafficking in persons and begging and other similar forms of forced labor are prohibited and any violation of this Article shall be punishable by law; This includes trafficking in persons for any purpose. The main target groups of traffickers are women and children from poor backgrounds. The Constitution of India, 1950 contains provision to prohibit human trafficking. Under Section 35(a) (ii); has the legislative power and authority to prescribe penalties for acts criminalized in Part III of the Constitution dealing with fundamental rights. The Immoral Trafficking (Prevention) Act of 1956 is an example of legislative exercise of such powers. The Indian Penal Code of 1860 treats trafficking in persons as a punishable offense with some specific provisions. The Criminal Procedure Code, 1973 contains another provision prohibiting trafficking in persons. In the Indian context, the Penal Code (Amendment) Act, 2013 amended Section 370 of the Indian Penal Code to define trafficking in persons and include penalties. Pursuant to this section (2), a person guilty of trafficking in persons shall be subject to a severe imprisonment of at least seven years and a maximum of ten years and a fine. (3) to severe imprisonment not less than ten years, up to life imprisonment and a fine, if the offense involves more than one persons; (4) If the offense concerns the trafficking of minors, it carries a severe sentence of not less than 10 years, up to life imprisonment and a fine. (5) If the offense is related to the trafficking of two or more minors of her, a severe imprisonment of not less than 14 years, up to life imprisonment and a fine shall be imposed. (6) If a person is convicted of trafficking a minor more than once, that person shall be sentenced to life imprisonment, i.e. imprisonment for the rest of her life. (7) If an official or police officer is involved in trafficking in persons, such

¹¹ Jain, M. P., *Indian Constitutional law* 251-256 (LexisNexis, Haryana, India, 8th edn., 2018).

officer or police officer shall be sentenced to life imprisonment, i.e. imprisonment for the remainder of the person's natural life, and a fine.

Section- 370- A (Ins. By Criminal Law (Amendment) Act, 2013),¹² Exploitation of a trafficked person- (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.

Constitution of India: The Constitution of India has three provisions related to this subject. Article 23 prohibits trafficking, begging, and other similar forms of forced labor, and Articles 39 (e) and 39 (f) do not violate human health and physical fitness. It stipulates that no one should be forced. The financial need to do work that is not age- and physical, and childhood and youth should be protected from exploitation.¹³ Immoral Traffic Prevention Act of 1956: The only law specifically dealing with human trafficking, currently is pending amendment.

It penalizes trafficking of women and children for commercial sexual exploitation. Other Legislations: There are some more legislations which directly or indirectly deal with human trafficking like:- Indian Penal Code, 1860; Bonded labour system (Abolition) Act, 1976; Child labour (Prohibition and Regulation) Act, 1986; Juvenile Justice Act, 2000; Goa Children Act, 2002; Prohibition of Child Marriage Act, 2006 and Protection of Children from

¹² The Indian Penal Code, 1860, 96 (Central Law Publication, Allahabad, 2022) Sec.8 (w.r.e.f. 3-2-2013)

¹³ Supra 12, P. 372

Sexual offences (POCSO) Act, 2012. The Criminal Law (Amendment) Act 2013, known as the Nirbhaya Act has come into force wherein Section 370 of the Indian Penal Code has been substituted with 370A (IPC) which provides for comprehensive measures to counter the menace of human trafficking including trafficking of children for exploitation in any form including physical exploitation or any form of sexual exploitation, slavery, servitude or the forced removal of organs.

The Ministry of Home Affairs conducts regular coordination meetings with the Nodal Officers of Anti Human Trafficking Units (AHTUs)¹⁴ of States/UTs. These meetings are instrumental in according priority to the crime of human trafficking at the ground level and for effective Inter-State coordination and have been useful as the Government has been regularly monitoring the implementation of the (AHTUs) and the Ministry of Home Affairs outlines various action areas to each State which becomes the focus of the work in these States. The Nodal Officers meetings have also led to the exchange of information among various States and strengthening of inter-State investigations.

Anti Trafficking Cell: The Ministry of Home Affairs has set up a Nodal Cell for dealing with matters relating to trafficking in human beings. Since ‘Police’ is a State subject, registration, investigation and prevention of human trafficking is primarily the responsibility of State Governments. However, the Government of India has taken various steps for combating the menace of human trafficking. The Home Ministry has issued several advisories to the States and UTs from time to time providing guidance on addressing the issue of trafficking in an effective manner.

Anti-Human Trafficking Units (AHTUs):¹⁵ As stated earlier, the MHA’s project on “Strengthening law enforcement response in India against

¹⁴ Supra 13

¹⁵ <https://www.mha.gov.in/sites/default/files/Scheme-AHTU-SS-271011.>, (Visited on January 05,

Trafficking in Persons through Training and Capacity Building”, approved a proposal to establish 332 Anti Human Trafficking Units (AHTUs) in various districts across the country. The Ministry provides financial assistance to the States for setting up the AHTUs. So far, 264 AHTUs have been set up all over the country.

The National Anti-Human Trafficking Authority (NAHTA): The NAHTA shall be the apex body responsible for combating trafficking and ensuring through proper plan of action that the right to reparation of each victim is fulfilled. It also ensures that proper preventive mechanisms are implemented throughout the country. NAHTA in India as well as in Bangladesh shall coordinate on matters related to cross-border trafficking. In order to facilitate repatriation between India and Bangladesh, NAHTA shall establish Repatriation and Reintegration Task Force. The Task Force units shall also be established in those states that share borders with Bangladesh such as West Bengal.

7.6. JUDICIAL EFFORTS OR CONTRIBUTIONS-

In most of the Human Trafficking of Women for Sexual Exploitation related cases victim’s right to life with human dignity is violated. ***Geeta Kancha Tamang vs. State of Mahras,***¹⁶ In this case the Court while denying the release of a women trafficker, on mercy grounds, who had served 14 months imprisonment stated that the first aspect that the Court has to consider for such a heinous crime is that trafficking in persons is prohibited under Article 23 of the Constitution of India. It is, therefore, the Fundamental Right of every Indian citizen not to be trafficked. Such act constitutes the grossest violation of the Human Rights of the victim child.

Bachpan Bachao Andolan vs. Union of India,¹⁷ This case addresses the vital issues of flourishing businesses in women and child trafficking evolves

2022).

¹⁶ Criminal Appeal No. 858 of 2009

¹⁷ (2011) 5 SCC 1

strategies for combating sexual exploitation. It culminates with directions regarding child care and protection. It touches upon the deplorable condition of women and children and deals with Supersession of Immoral Trafficking Act, Geneva Convention on Immoral Trafficking of women and Children, 1956, Right of Children to free and Compulsory Education Act, 2009, Juvenile Justice Authority, Central Adoption Resource Agency (CARA), National Child Labour Project (NCLP) for rehabilitation of child labourers and Schemes for working children in need of care and protection. The Court directed the Central Government to file a comprehensive affidavit of compliance. The Court decided to deal with the menace of child exploitation systematically by issuing appropriate directions.

7.7. THE RESULT OF HYPOTHESIS OF RESEARCH WORK-

The researcher has adopted tools and methods for the data collection such as observation, interview, questionnaire and mailed questionnaire (RTI application). The researcher has taken some initiatives for gaining testing result of the research hypothesis which are given below:-

7.7.1. OBSERVATION-

The Researcher visited and observed the shelter home, Krishna Nagar, Lucknow for the purpose of her research work. During that time a copy of FIR was given by the shelter home authority named as ‘Aapki Sakhi Asha Jyoti Kendra’, one stop center Lucknow, Police Station Krishna Nagar, Krishna Nagar, Lucknow. At the time of counseling of the victim, she stated to the manager of center that ‘she is a human trafficking victim and according to her statement one gang is operative in this city for human trafficking’ and this fact is mentioned in the above copy of FIR 0172/2019, Police Station, Krishna Nagar, Police Commissnerate Lucknow.

The researcher after observing the bail order found the opinion of the high court, the court has granted bail to accused and issued directions to trial court

concerned to expedite trial of the above case and conclude the case within the one year, from the date of this order. It is a laudable stand of the Hon'ble High court for the criminal justice administrative system in this human trafficking case.

7.7.2. INTERVIEW-

The researcher has taken interview of three victims of human trafficking, the summary of which is described in chapter VI. The researcher has done informal interviews of three victims of human trafficking and before taking their interview they were informed about all the particulars of the research including the topic of research, aim and objectives of the research and the purpose of research. Researcher has taken every possible step to keep their identity secret and all other conditions required for an interview are followed by the researcher to protect the identity of the victims. In order to protect their identity the name, place of residence and every other information that could reveal them are kept secret.

7.7.3. MAILED QUESTIONNAIRE (RTI application)

The researcher moved an RTI application under Sec. 5 of Right to information Act, 2005 to public information officer, department of home/ police, Police Commissnerate, Lucknow for availing data relating to research work. The researcher moved the application under section 5 of The Right to Information Act, 2005 for Demanding/obtaining desired information from The Public Information Officer/ Additional Sub-Commissner of police, Police Commissnerate, Lucknow, UP, India. and wanted to obtain information about the question- That is how many (total) first Information report (FIR) lodged in the Police Stations which are under the jurisdiction of **Lucknow City** in the years 2018-19, 2019-20, 2020-21 related to **Human Trafficking** offence under IPC and Other Special Penal Laws. Kindly provide a true certified copy of list and status of FIR, year and Police Station wise. As per the data provided in

reply, researcher found that, total no of 8 FIRs are lodged in various police station of the Lucknow City in the years 2018-19, 2019-20, 2020-21 related to **Human Trafficking** offence.

7.7.4. QUESTIONNAIRE-

The researcher has specifically framed some questions for testing the research hypothesis in e-questionnaire on the research topic 'HUMAN TRAFFICKING OF WOMEN FOR SEXUAL EXPLOITATION IN LUCKNOW CITY' in Google Form Docs file. The responses of the respondents are given below-

The graphics no. 9 is related to the multiple choice question, no. 5 as 'Do you think there are lacuna in the implementation of laws relating to the protection and prevention of Human Trafficking?' and this question has been prepared by the researcher for finding lacuna in the implementation of laws about the Human Trafficking also justification of this research hypothesis. It is shows that total number of 156 respondents are responded on the question out of 300. The maximum number of respondents who responded 114 (73.1%), selected option 'yes' about the above mentioned question. It is clear that 73.1 % people admits lacuna in the implementation of laws about the Human Trafficking. The researcher, observed that 'Yes' there are lacuna in the implementation of laws about the Human Trafficking and also justified of this research hypothesis.

The graphics no. 12 is related to the multiple choice question no. 8 as 'Do you think that maximum number of victims of human trafficking for sexual exploitation are women belonging to poor society?' and this question has been prepared by the researcher for obtaining information about the maximum number of victims of human trafficking for sexual exploitation are women belonging to poor society and also justification of this research hypothesis. It is shows that total number of 157 respondents responded on the questionnaire out of 300. The maximum number of respondents who responded 126 (80.3%), selected option 'yes' about the above mentioned question. It is clear that 80.3

% people know that maximum number of victims of human trafficking for sexual exploitation are women belonging to poor society. According to the researcher, 'Yes' the maximum number of victims of human trafficking for sexual exploitation are women belonging to poor society and also justified of this research hypothesis.

The graphics no. 13 is related to the multiple choice question no. 9 as 'Do you think that the main purpose or reason of human trafficking of women is sexual exploitation?' and this question has been prepared by the researcher to obtain information about the main purpose or reason of human trafficking of women is sexual exploitation. It shows that total number of 157 respondents responded on the questionnaire out of 300. The maximum number of respondents who responded 123 (81.5%), selected option 'yes' about the above mentioned question. It is clear that 81.5 % people know that the main purpose or reason of human trafficking of women is sexual exploitation. The researcher observed, 'Yes', the main purpose or reason of human trafficking of women is sexual exploitation.

The graphic no. 14 is related to the multiple choice question no. 10 as 'Do you think that the police personnel of Lucknow city are specifically trained and competent to prevent trafficking of women?' and this question has been prepared by the researcher for obtaining information that whether the police personnel of Lucknow city are specifically trained and competent to prevent trafficking of women and also justification of this research hypothesis. It shows that total number of 156 respondents responded on the questionnaire out of 300. The maximum number of respondents who responded 72 (37.2%), selected option 'No' about the above mentioned question. It is clear that 37.2% people believe that the police personnel of Lucknow city are not specifically trained and competent to prevent the trafficking of women. According to the researcher the police personnel of Lucknow city are not specifically trained and competent

to prevent the trafficking of women and also justified of this research hypothesis.

The graphics no. 17 is related to the multiple choice question no. 13 as ‘Do you know about the cases of crime of Human trafficking happening in Lucknow city?’ and this question has been prepared by the researcher for obtaining information about the cases of crime of Human trafficking happening in Lucknow city and also justification of this research hypothesis. It is shows that total number of 157 respondents responded on the questionnaire out of 300. The maximum number of respondents who responded 72 (45.9%), selected option ‘yes’ about the above mentioned question. It is clear that 45.9% people know the cases of crime of Human trafficking happening in Lucknow city. The researcher found out, ‘Yes’ the cases of crime of Human trafficking happens in Lucknow city and also justified of this research hypothesis.

The graphics no. 18 is related to the multiple choice question no. 14 as ‘Do you think that Indian judiciary is playing a protective role for creating a healthy environment for victims of trafficking?’ and this question has been prepared by the researcher for obtaining information about the Indian judiciary is playing a protective role for creating a healthy environment for victim’s of trafficking and also justification of this research hypothesis. It shows that total number of 156 respondents responded on the questionnaire out of 300. The maximum number of respondents are responded 123 (58.3%), selected option ‘yes’ about the above mentioned question. It is clear that 58.3 % people know that the Indian judiciary is playing a protective role for creating a healthy environment for victim’s of trafficking. According to the researcher, ‘Yes’ the Indian judiciary is playing a protective role for cerating a helthy environment for victim’s of trafficking and also justified of this research hypothesis.

7.8. CONCLUSION/ FINDINGS-

After the comprehensively analyzing the above mentioned facts both doctrinal and empirical, Conventions, treaties, protocol, laws, policies, rules, Institutions at International level and as well as also National level and after the data analysis the hypotheses were tested and the following conclusion was draws:

HYPOTHESES

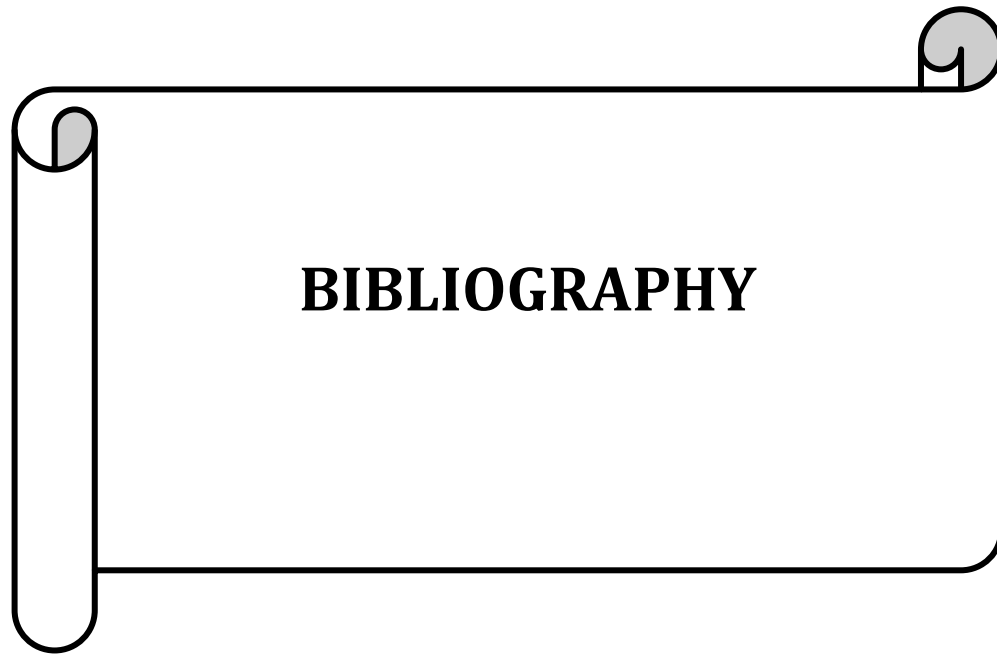
- Human trafficking of women for sexual exploitation occurs due to lack of effective laws which leads to human rights violation on massive scale. This hypothesis has been justified as per the finding of graphics no. 9 of the chapter VI.
- The Most of the victims of human trafficking for sexual exploitation are women mainly belonging to poor society. This hypothesis has been justified as per the finding of graphics no. 12 of the chapter VI.
- Police-personnel are not specifically trained as to how to rescue and protect women victims of human trafficking. This hypothesis has been justified as per the finding of graphics no. 14 of the chapter VI.
- Governmental rehabilitation policies for sexually exploited women are not effective. This hypothesis has not been justified due to non reliable data available about it.
- Present justice system is not adequate to provide speedy justice to victims of human trafficking for sexual exploitation. This hypothesis has been justified as per the finding of graphics no. 18 of the chapter VI and also direction of bail order dated 28/09/2021 of the Hon'ble high court, Allahabad at Lucknow Bench, Lucknow.

RECOMMENDATIONS-

These are some of the recommendations given by the Researcher given below:

- The Government should review the laws related to Human Trafficking and implement the new policy.

- The Government should develop the national as well as State level help line 3 or 4 digits emergency contact/response number to prevent the Human Trafficking.
- The Government should make policy for speedy trial of Human Trafficking cases. System should be transparent and action be taken immediately.
- The Government should organize awareness program about prevention of human trafficking, local bodies should work especially for poor and uneducated people.



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Useful Links:

Asia Regional Trafficking in Persons Project (ARTIP) <http://www.artipproject.org/artip-tip-cjs/tip.html>

India, Ministry of Women and Child Development <http://www.wcd.nic.in>

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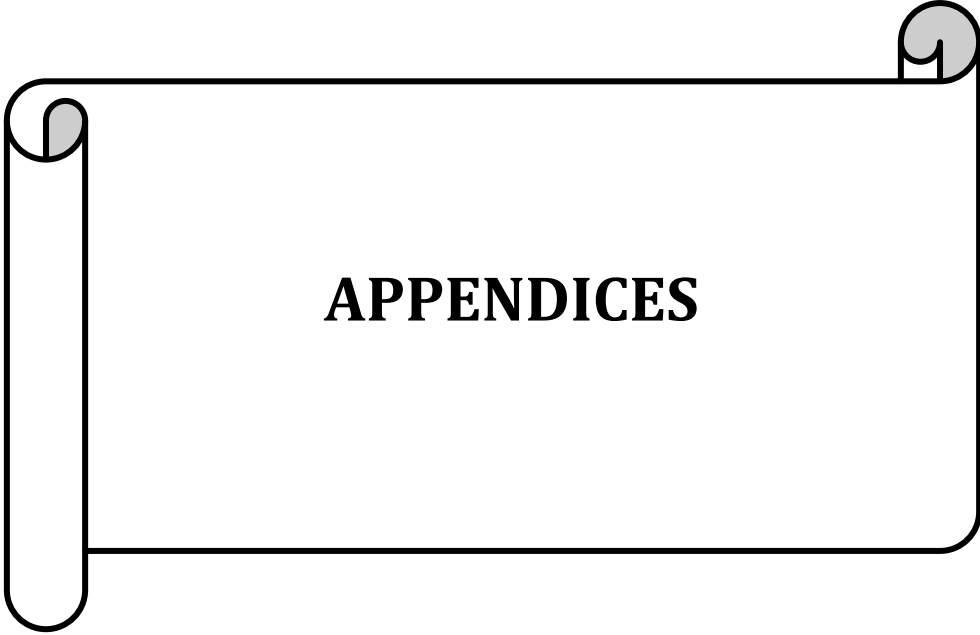
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- <https://www.oneindia.com/feature/india-uae-sign-mou-combat-human-trafficking-2072547.html>
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APPENDIX-I

COPY OF FIR

N.C.R.B (एन.सी.आर.बी)

FIRST INFORMATION REPORT (Under Section 154 Cr.P.C.)

प्रथम सूचना रिपोर्ट

(धारा 154 दंड प्रक्रिया संहिता के तहत)

1. District (जिला): लखनऊ मध्य P.S. (थाना): कृष्णानगर Year (वर्ष): 2019
(कमिश्नरेट लखनऊ)

FIR No. (प्र.सू.रि. सं.): 0172

Date and Time of FIR (प्र.सू.रि. की दिनांक
और समय): 10/04/2019 08:03 घंटे

S.No. (क्र.सं.)	Acts (अधिनियम)	Sections (धारा(एँ))
1	आ दं सं 1860	370

3. (a) Occurrence of offence (अपराध की घटना):

1 Day (दिन): Date from (दिनांक से): Date To (दिनांक तक):

Time Period (समय अवधि): Time From (समय से): Time To (समय तक):

(b) Information received at P.S. (थाना जहां सूचना प्राप्त हुई): Date (दिनांक): 10/04/2019 Time (समय): 08:03 बजे

(c) General Diary Reference (रोजनामचा सदर्थ): Entry No. (प्रविष्टि सं.): 028 Date and Time (दिनांक और समय): 10/04/2019 08:03 बजे

4. Type of Information (सूचना का प्रकार): लिखित

5. Place of Occurrence (घटनास्थल):

1. (a) Direction and distance from P.S. (थाना से दूरी और दिशा): , कि. मी. Beat No. (बीट सं.):

(b) Address (पता): दि0 घटना व, समय अ0त0, अदम तहरीर ,

(c) In case, outside the limit of this Police Station, then Name of P.S. (यदि थाना सीमा के बाहर है तो थाना का नाम):

District (State) (जिला (राज्य)):

6. Complainant / Informant (शिकायतकर्ता / सूचनाकर्ता):

(a) Name (नाम): श्रीमती अर्चना सिंह सेन्टर मैनेजर आपकी सखी आशा ज्योति केन्द्र

(b) Father's/Husband's Name (पिता/पति का नाम):

(c) Date/Year of Birth (जन्म तिथि / वर्ष): 1983 (d) Nationality (राष्ट्रीयता): भारत

(e) UID No. (यूआईडी सं.):

(f) Passport No. (पासपोर्ट सं.):

Date of Issue (जारी करने की दिनांक): Place of Issue (जारी करने का स्थान):

(g) ID Details (Ration Card, Voter ID Card, Passport, UID No., Driving License, PAN) (पहचान विवरण (राशन कार्ड, मतदाता कार्ड, पासपोर्ट, यूआईडी सं., ड्राइविंग लाइसेंस, पैन कार्ड))

S. No. (क्र.सं.)	ID Type (पहचान पत्र का प्रकार)	ID Number (पहचान संख्या)

(h) Occupation (व्यवसाय):

(i) Address (पता):

S.No. (क्र.सं.)	Address Type (पता का प्रकार)	Address (पता)
1	वर्तमान पता	पता- सेन्टर मैनेजर, आपकी सखी आशा ज्योति केन्द्र, वन स्टाप सेन्टर लखनऊ, थाना कृष्णानगर लखनऊ, कृष्णानगर, लखनऊ मध्य (कमिश्नरेंट लखनऊ), उत्तर प्रदेश, भारत

2	स्थायी पता	पता- सेन्टर मैनेजर, आपकी सखी आशा ज्योति केन्द्र , वन स्टाप सेन्टर लखनऊ , थाना कृष्णानगर लखनऊ , कृष्णानगर, लखनऊ मध्य (कमिश्नरेट लखनऊ), उत्तर प्रदेश, भारत
---	------------	--

(i) Phone number (दूरभाष सं.): Mobile (मोबाइल सं.): 0

7. Details of known / suspected / unknown accused with full particulars (जात / संदिग्ध / अजात अभियुक्त का पूरे विवरण सहित वर्णन):

Accused More Than (अजात आरोपी एक से अधिक हों तो संख्या): 0

S. No. (क्र.सं.)	Name (नाम)	Alias (उपनाम)	Relative's Name (रिश्तेदार का नाम)	Present Address(वर्तमान पता)
1	रुमाना बेगम गिरोह की मुखिया			1. पता अजात,अजात
2	मो0 7080399660 का धारक नाम अजात			1. पता चौक क्षेत्र जनपद लखनऊ,चौक,लखनऊ पश्चिमी (कमिश्नरेट लखनऊ),उत्तर प्रदेश,भारत

8. Reasons for delay in reporting by the complainant / informant (शिकायतकर्ता / सूचनाकर्ता द्वारा रिपोर्ट देरी से दर्ज कराने के कारण):

वादिनी के द्वारा स्वयं

9. Particulars of properties of interest (संबन्धित सम्पत्ति का विवरण):

S. No. (क्र.सं.)	Property Category (सम्पत्ति श्रेणी)	Property Type (सम्पत्ति के प्रकार)	Description (विवरण)	Value(In Rs/-) (मूल्य (रु में))

10.

Total value of property (In Rs/-) (सम्पत्ति का कुल मूल्य(रु में)):

11. Inquest Report / U.D. case No., if any (मृत्यु समीक्षा रिपोर्ट / यू.डी.प्रकरण सं., यदि कोई हो):

S. No. UIDB Number (यू.डी.प्रकरण सं.)
(क्र.सं.)

12. First Information contents (प्रथम सूचना तथ्य):

नकल तहरीर हिन्दी लिखित टाइपशुदा- गोपनीय / अति आवश्यक आपकी सखी आशा ज्योति केन्द्र (वन स्टाप सेन्टर) कार्यालय लखनऊ पत्रांक -2871/आ0स0आ0 ज्यो0के0/सूचना /2018 -19 दिनांक 8/4/19 प्रेषक सेन्टर मैनेजर आपकी सखी आशा ज्योति केन्द्र लखनऊ (HM/CM अभियोग पंजीकृत करे ह0 अग्रेजी अपठनीय 9/4/19 SHO सेवा मे थाना अध्यक्ष कृष्णानगर लखनऊ विषय- पीडीता अनुयार बेगम की मानव तस्करी के सदर्थ मे । महोदय सविनय निवेदन है कि दिनांक 04-04-2019 को महिला अनियार बैगम को थाना जी0आर0पी0 चारबाग रेलवे स्टेशन द्वारा केन्द्र पर आश्रय हेतु लाया गया । महिला के मोबाइल मे कुछ सदिग्ध नंबर मिले जिन पर काल किये जाने पर मालूम पडा कि महिला मानव तस्करी से जुडी हुयी है एवं स्वयं मानव तस्करी का शिकार है। महिला ने काउंसलिंग के दौरान अपनी गिरोह की मुखिया रुमाना बेगम के बारे मे बताया साथ ही महिला द्वारा यह भी बताया की लखनऊ मे चौक क्षेत्र मे एक व्यक्ति है जो कि सभी महिलायो /बालिकाओ का फिटनेस मेडिकल करवाता (मो0 7080399660) है। महिला ने आगे यह भी बताया कि उसके परिवार के सदस्य (चचेरे भाई) इस्लाम मुदीन के कहने पर वह पुलिसवालो (जी0आर0पी0 चारबाग रेलवे स्टेशन) के पास गयी जिसका साक्ष्य रिकार्डिंग के रुप मे मौजूद है ।जिसके बाद जी0आर0पी0 चारबाग रेलवे स्टेशन की टीम द्वारा महिला को आपकी सखी आशा ज्योति केन्द्र लाया गया। इसके बाद इनके चचेरे भाई को टीम द्वारा संपर्क तथा केन्द्र पर बुलाया गया। महिला से भाई से वार्ता के दौरान यह पता चल कि महिला मानव तस्करी का शिकार है महिला के मोबाइल से प्राप्त नंबरो पर महिला रुमाना को लगातार काल करके अपने विश्वास मे लेते हुए केन्द्र पर आने के लिए प्रेरित किया गया। चारबाग रेलवे स्टेश पर पहुंचने के बाद महिला रुमाना ने पुन आशा ज्योति केन्द्र की टीम को गुमराह करने का प्रयास किया गया । जिस पर तत्काल कार्यवाही करते हुए आपकी सखी आशा ज्योति केन्द्र एवं पुलिस टीम द्वारा महिला को चारबाग रेलवे स्टेशन से रेस्क्यू किया गया । महिला से बात करने एवं

तलाशी के दौरान उनके पास से कल्याण जंक्सन (मुंबई, महाराष्ट्र) से लखनऊ का टिकट प्राप्त हुआ साथ ही मुद्रा विनिमय की पर्ची (सउदी रियाल) भी प्राप्त हुयी है। महिला अनुयार के भतीजे काजल मो0 8732053040 से दूरसंचार के द्वारा यह जानकारी प्राप्त हुयी कि रुमाना ने मुंबई मे जाकर 8 बालिकाओ को बेचा है जिसमे से एक बालिका का नाम व पता भी टीम को प्राप्त हो चुका है और अन्य पर कार्यवाही जारी है। महोदय उक्त प्रकरण को सजान मे लेकर आवश्यक कार्यवाही करने का कष्ट करे। भवदीया ह0 अग्रेजी अपठनीय (अर्चना सिंह) सेन्टर मेनेजर आपकी सखी आशा ज्योति केन्द्र /वन स्टाप सेन्टर लखनऊ प्रतिलिपि - सादर सूचनार्थ / आवश्यक कार्यवाही हेतु प्रेषित 01-प्रमुख सचिव (गृह) उत्तर प्रदेश शासन लखनऊ 02-पुलिस महानिदेशक उत्तर प्रदेश 03-वरिष्ठ पुलिस अधीक्षक लखनऊ04-अधीक्षक क्राइम लखनऊ 05-जिलाधिकारी लखनऊ 06-निदेशक महिला कल्याण विभाग लखनऊ 07-जिला प्रोबेशन अधिकारी लखनऊ 08-क्षेत्राधिकारी थाना कृष्णानगर लखनऊ भवदीया ह0 अग्रेजी अपठनीय 08/4/2019 (अर्चना सिंह) सेन्टर मेनेजर आपकी सखी आशा ज्योति केन्द्र /वन स्टाप सेन्टर लखनऊ नोट इस मुकदमे की कायमी हे0का0 86 राकेश कुमार यादव व नकल तहरीर अक्षरस मुझ का0 3940 रविकुमार के द्वारा की गयी

13. Action taken: Since the above information reveals commission of offence(s) u/s as mentioned at Item No. 2.

(की गयी कार्यवाही : चूंकि उपरोक्त जानकारी से पता चलता है कि अपराध करने का तरीका मद सं. 2 में उल्लेख धारा के तहत है.):

- (1) Registered the case and took up the investigation (प्रकरण दर्ज किया गया और जांच के लिए लिया गया): / or (या)
- (2) Directed (Name of I.O.) (जांच अधिकारी का Rank (पद): उपनिरीक्षक/ नाम): Geeta Singh अवर निरीक्षक
No. (सं.): 940820140 to take up the Investigation (को जांच अपने पास में लेने के लिए निर्देश दिया गया) or (या)
- (3) Refused investigation due to (जांच के लिए): or (के कारण इंकार किया या)
- (4) Transferred to P.S. (थाना): District (ज़िला):

on point of jurisdiction (को क्षेत्राधिकार के कारण हस्तांतरित).

F.I.R. read over to the complainant / informant, admitted to be correctly recorded and a copy given to the complainant /informant, free of cost.

(शिकायतकर्ता / सूचनाकर्ता को प्राथमिकी पढ़ कर सुनाई गयी, सही दर्ज हुई माना और एक कॉपी निशुल्क शिकायतकर्ता को दी गयी)

R.O.A.C. (आर.ओ.ए.सी.)

Signature of Officer in charge,
Police Station (थाना प्रभारी के
हस्ताक्षर)

14. Signature / Thumb impression
of the complainant / informant
(शिकायतकर्ता / सूचनाकर्ता के
हस्ताक्षर / अंगूठे का निशान)

Name (नाम): Dinesh Chandra
Mishra

Rank (पद): I (Inspector)

No. (सं.): 902250712

15. Date and time of dispatch to the court (अदालत में प्रेषण की दिनांक और
समय):

Attachment to item 7 of First Information Report (प्रथम सूचना
रिपोर्ट के मद 7 संलग्नक):

Physical features, deformities and other details of the
suspect/accused: (If known / seen)

(संदिग्ध / अभियुक्त की शारीरिक विशेषताएँ, विकृतियाँ और
अन्य विवरण: (यदि ज्ञात / देखा गया))

S. No. (क्र.सं.)	Sex (लिंग)	Date / Year Of Birth (जन्म तिथि / वर्ष)	Build (बनावट)	Height (cm) (से.मी.)	Complexion (रंग)	Identification Mark(s) (पहचान चिन्ह)
1	2	3	4	5	6	7
1	महिला			-		चेचक: नहीं
2	अज्ञात			-		चेचक: नहीं
Deformities / Peculiarities (विकृतियाँ / विशिष्टताएँ)		Teeth (दाँत)	Hair (बाल)	Eye (आँखें)	Habit(s) (आदतें)	Dress Habit (s) (पहनावा)
8		9	10	11	12	13
Language/ Dialect (भाषा/बोली)	Place of (का स्थान)			Others (अन्य)		
	Burn Mark (जले हुए का निशान)	Leucoderma (लुकोदेर्मा (सफ़ेद धब्बे))	Mole (मस्सा)	Scar (घाव)	Tattoo (गूदे हुए का)	
14	15	16	17	18	19	20

These fields will be entered only if complainant/informant gives any one or more particulars about the suspect/accused.

(यह क्षेत्र तभी दर्ज किए जाएंगे यदि शिकायतकर्ता / सूचनाकर्ता संदिग्ध / अभियुक्त के बारे में कोई एक या उससे अधिक जानकारी देता है)

APPENDIX –II

COPY OF BAIL ORDER OF HIGH COURT, ALLAHABAD, LUCKNOW BENCH, LUCKNOW

Court No. - 19

Case :- BAIL No. - 7718 of 2019

Applicant :- Smt. Rumana Begum

Opposite Party :- State of U.P.

Counsel for Applicant :- Shiv Shankar Singh, Rampyare Singh

Counsel for Opposite Party :- G.A.

Hon'ble Jaspreet Singh, J.

Heard learned counsel for the applicant and the learned AGA for the respondent-State.

The submission of the learned counsel for the applicant is that as per the averments made in the FIR, it is alleged that the victim Anuyar Begam, who was admitted in the shelter home by the GRPF at Charbagh, Lucknow made a statement and from her telephone, certain numbers were traced, which were found to be suspicious. Calling upon the aforesaid numbers, the mobile phone of the applicant was also tracked and as per the allegations in the FIR, the applicant is charged with human trafficking.

It is the case of the prosecution that the applicant is leading a gang along with another person, who is alleged to be a resident of chowk, Lucknow. The modus operandi has been such that the applicant used to lure young girls on the pretext of providing them with jobs and after getting their medical examination done, some of the girls have also been sent to Saudi Arabia. It is in the aforesaid manner that the victim, who is said to be lured by the applicant, however, since her medical examination could not be done and, therefore, she was brought to Lucknow.

During her stay at Lucknow, it is alleged that she received a call from her cousin namely Islamuddin and at that time she divulged, the entire story to him, who advised the victim to seek police help and she thereafter went to GRPF Police at Charbagh, Lucknow, who was then informed and in this manner the applicant has been apprehended and is languishing in jail since 11.04.2019.

It is further submitted by the learned counsel for the applicant that there is no criminal history of the applicant and even during the course of investigation nothing has been traced out which can indicate any involvement of the applicant in any human trafficking. There are certain names of the girl mentioned in the statement recorded under Section 161 Cr.P.C., of the victim, however, the same has not been corroborated with the version

as set up by the prosecution in the FIR.

It has also been submitted that actually there was a dispute regarding money between the applicant and the victim and since she was unable to return the same, she has falsely implicated the applicant.

It has also been urged that the other co-accused has also been enlarged on bail vide order dated 04.07.2019 passed by a Coordinate Bench of this Court in Bail Application No.6400 of 2019.

In the aforesaid circumstances, it has been prayed that the applicant be enlarged on bail.

On the other hand, learned A.G.A. has vehemently opposed the prayer for bail and has submitted that the applicant is a part of a gang involved in human trafficking and upon the statement of the victim Anuyar Begam, the manner in which the gang was being operated by luring young girls on the pretext of getting them jobs and trafficking them is clearly established.

Upon the investigation, there are recording indicating that the applicant is involved in the aforesaid operation.

In the aforesaid facts and circumstances, the applicant is not entitled to be enlarged on bail which deserves to be rejected.

Having heard learned counsel for the parties and perused the record as well as the Court had to benefit of perusing the case diary which was provided by the learned AGA and from the perusal thereof, it indicates that apart from the statement of the victim and her cousin Islamuddin recorded under Section 161 Cr.P.C., there is no evidence at this stage to implicate applicant. There is a mention of a C.D. recording, however, whether it relates to the applicant or not is the subject matter to be seen in trial.

Learned AGA despite having filed the counter affidavit could not dispute the fact that the applicant does not have any criminal history. Moreover, the names of the two girls which are mentioned in the statement of the victim under Section 161 Cr.P.C., no further investigation has been done to corroborate the aforesaid statement or the fact to link it with the applicant. At this stage, merely on the basis of the statement of the victim without any deeper corroboration as well as the fact that the applicant has been languishing in jail since 11.04.2019. Moreover, the learned AGA could not dispute that the charge-sheet has been filed and the applicant is not needed for any

interrogation or that the applicant is at the risk of fleeing justice.

In the aforesaid facts and circumstances and considering the rival submissions, the facts and circumstances of the case and the material available on record as well as considering the nature of allegations and accusation against the applicant, the severity of the punishment if convicted and the period of incarceration as well as the fact that no apprehension has been expressed by the learned AGA that the applicant is at the risk of fleeing justice or that she would tamper with evidence or influence any witness, hence, at this stage, without expressing any opinion on the merits of the case, this Court is of the view that the applicant is entitled to be released on bail.

Let the applicant Smt. Rumana Begum involved in Case Crime No.172/2019, under Section 370 IPC, Police Station Krishna Nagar, District Lucknow be released on bail on her furnishing a personal bond with two local reliable sureties each in the like amount to the satisfaction of the court concerned.

At the time of executing required sureties the following conditions shall be imposed in the interest of justice.

(i) The applicant shall file an undertaking to the effect that she shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through her counsel. In case of her absence, without sufficient cause, the trial court may proceed against her under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure her presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against her, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court, absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against her in accordance with law.

(v) The applicant shall neither influence any witness nor tamper with any evidence after her release.

The trial court is directed to expedite the trial relating to Case Crime No.172/2019, under Section 370 IPC, Police Station Krishna Nagar, District Lucknow and the same shall be concluded within a period of one year from the date, a certified copy of this order is placed before the Court concerned. The Senior Superintendent of Police, District Lucknow and the Joint Director of Prosecution shall also ensure that the witnesses are present before the Court concerned for compliance of the aforesaid order.

Order Date :- 28.9.2021
Rakesh/-

APPENDIX –III

REPLY OF THE RTI APPLICATION MOVED BY THE RESEARCHER

Registered letter MAR 2022

प्रारूप-5

द्वारा पंजीकृत डाक
कार्यालय पुलिस आयुक्त कमिश्नरेट लखनऊ।
पत्र संख्या व-475/05(124 ए)/22. दिनांक-07.03.2022
प्रेषक-
अजय कुमार
जनसूचना अधिकारी/
अपर पुलिस उपायुक्त मुख्यालय
कमिश्नरेट-लखनऊ।

सेवा में,
श्रीमती चांदना सुबा
पता-डिपार्टमेंट आफ लॉ बाबा साहब भीमराव अम्बेडकर यूनीवर्सिटी विद्याविहार रायबरेली रोड
जनपद-लखनऊ।

महोदय,

कृपया सूचना का अधिकार अधि0 2005 के अधीन सूचना उपलब्ध कराये जाने के सम्बन्ध में अधोहस्ताक्षरी को सम्बोधित, क्रमांक 124 ए/22 पर पंजीकृत अपने पत्र दिनांक 24.01.2022 का सन्दर्भ ग्रहण करने का कष्ट करें।

उक्त के सन्दर्भ में आप द्वारा चाही गयी प्रार्थना पत्र की सूचना प्रमारी डी0सी0आर0बी0/कमिश्नरेट लखनऊ से प्राप्त की गयी। जो मूलरूप में संलग्न कर प्रेषित है। प्रमारी-रब-ए-व-टी-०१०

यदि आप उपर्युक्त उत्तर से सन्तुष्ट नहीं है तो आप सम्बन्धित अधिनियम की धारा 19(1) के अधीन इस पत्र के प्राप्त होने के दिनांक से 30 दिन के भीतर प्रथम अपीलीय अधिकारी के समक्ष अपील दायर कर सकते हैं। जिनका पता निम्नवत है-

प्रथम अपीलीय अधिकारी/
पुलिस उपायुक्त मुख्यालय,
कमिश्नरेट लखनऊ।
कुल 6 बर्क


(अजय कुमार)
जनसूचना अधिकारी
अपर पुलिस उपायुक्त मुख्यालय
कमिश्नरेट लखनऊ।
मो0न0-9454401089

कार्यालय डी० सी० आर० बी० कमिश्नरेट लखनऊ।

पत्र संख्या:—डीसीआरबी/जन०सू०/2022

दिनांक:—मार्च ५, 2022


सेवा में,

जनसूचना अधिकारी/
अपर पुलिस उपायुक्त,
कमिश्नरेट लखनऊ।

कृपया आप अपने पत्र संख्या:व-475/05/124ए/2022 दिनांक 04.02.2022 का सन्दर्भ ग्रहण करने का कष्ट करें, जिसके माध्यम से आवेदक चौदना बासू निवासी-बाबा साहेब भीमराव अम्बेडकर यूनीवर्सिटी (विद्याविहार) रायबरेली रोड लखनऊ के द्वारा चाही गयी सूचना उपलब्ध कराये जाने विषयक है।

उपरोक्त के क्रम में कमिश्नरेट के सभी थानों से पत्राचार कर आख्या प्राप्त की गयी तो प्राप्त आख्यानुसार अभी तक किसी थाने से कोई लाभप्रद सूचना प्राप्त नहीं हुयी है।

रिपोर्ट सादर सेवा में प्रेषित है।


डी०सी०आर०बी०
कमिश्नरेट लखनऊ।

कार्यालय अवैध मानव व्यापार निवारण इकाई, कमिश्नरेट लखनऊ

पत्रांक:-ए0एच0टी0यू0 (जन0सू0) /2022

दिनांक - फरवरी // ,2022

सेवा में,

जनसूचना अधिकारी /
अपर पुलिस उपायुक्त मुख्यालय
जनपद लखनऊ।

महोदय,

कृपया आप अपने पत्र संख्या : व- 124A/2022, दिनांक 04-02-2022 का संदर्भ ग्रहण करने का कष्ट करें जिसके माध्यम से आवेदिका श्रीमती चान्दना बासू नि0 बाबा साहेब भीम राव अम्बेडकर यूनिवर्सिटी (विद्या विहार रायबरेली रोड लखनऊ) द्वारा कार्यालय ए0एच0टी0यू0 से सम्बन्धित मांगी गई सूचना सादर अवलोकनार्थ प्रेषित है -

बिन्दु संख्या -1

मानव तस्करी से सम्बन्धित सूचना संलग्न है।

(R. Jaiswal)
11/2/22

प्रभारी निरीक्षक
ए0एच0टी0यू0
कमिश्नरेट लखनऊ

नोट:- बिन्दु संख्या 2,3 व 4 का विवरण सम्बन्धित कार्यालय से प्राप्त करने की कृपा करें।

क्रमांक	सूचना	कार्य	दिनांक	स्थान	व्यक्ति	वर्ग	वर्ग	वर्ग	वर्ग	वर्ग	वर्ग	वर्ग
1	155/18	370	18.11.17	05.04.19	13.03.18	13.03.18	13.03.18	13.03.18	13.03.18	13.03.18	13.03.18	13.03.18
2	341/18	370	19.04.19	21.04	21.04	21.04	21.04	21.04	21.04	21.04	21.04	21.04
3	172/19	370	10.04.19	08.03.18	08.03.18	08.03.18	08.03.18	08.03.18	08.03.18	08.03.18	08.03.18	08.03.18

APPENDIX –IV

SAMPLE Of E-QUESTIONNARE

Questionnaire on "HUMAN TRAFFICKING OF WOMEN FOR SEXUAL EXPLOITATION IN INDIA: A STUDY WITH SPECIAL REFERENCE TO LUCKNOW CITY"

Any personal data and opinion given in this questionnaire will be used only for academic purpose and not elsewhere.

*** Required**

1. Name *

2. Age *

Check all that apply.

15-25

25-35

35-45

45-65

Other: _____

3. Occupation/Profession *

Mark only one oval.

academician

judge

Advocate

police officer

Research Scholar

Students

Other: _____

4. Gender

Mark only one oval.

Male

Female

5. City/Village

6. State

7. Country

8. E-mail ID *

9. 1. Do you know about the Human trafficking?

Mark only one oval.

Yes

No

Maybe

10. 2. Do you think the poverty, unemployment, lack of education etc. are the reasons labile for human trafficking in India?

Mark only one oval.

Yes

No

Maybe

11. 3. Do you think lack of awareness about the women rights and their laws is one of the reasons for increasing crime of women trafficking?

Mark only one oval.

- Yes
 No
 Maybe

12. 4. Do you know that human trafficking is the crime u/s 370, 370 A of the IPC?

Mark only one oval.

- Yes
 No
 Maybe

13. 5. Do you think there are lacuna in the implementation of the laws relating to the protection and prevention of human trafficking?

Mark only one oval.

- Yes
 No
 Maybe

14. 6. Do you think that parent/guardian should have basic legal knowledge about human trafficking?

Mark only one oval.

- Yes
 No
 Maybe

15. 7. Do you think the punishment given under the Indian law are sufficient to curb the crimes against the human trafficking?

Mark only one oval.

- Yes
 No
 Maybe

16. 8. Do you think that maximum number of victims of human trafficking for sexual exploitation are women belonging to poor society?

Mark only one oval.

- Yes
 No
 Maybe

17. 9. Do you think that the main purpose or reason of trafficking of women is Sexual exploitation?

Mark only one oval.

- Yes
 No
 Maybe

18. 10. Do you think that the police personnel of Lucknow city are specifically trained and competent to prevent trafficking of women?

Mark only one oval.

- Yes
 No
 Maybe

19. 11. Do you think that there should be special police station or bodies for dealing with the matter of women trafficking in Lucknow city State of Uttar Pradesh.

Mark only one oval.

- Yes
 No
 Maybe

20. 12. Do you think that police is technologically efficient for preventing the women trafficking.

Mark only one oval.

- Yes
 No
 Maybe

21. 13. Do you know about the cases of crime of human trafficking happens in Lucknow city?

Mark only one oval.

- Yes
 No
 Maybe

22. 14. Do you think that Indian judiciary is playing a protective role for creating a healthy environment for victim's of trafficking ?

Mark only one oval.

- Yes
 No
 Maybe

23. 15. Do you think that human trafficking of woman are Increasing day by day in India?

Mark only one oval.

- Yes
 No
 Maybe

24. 16. Your valuable suggestion are welcome.

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Google Forms

APPENDIX-V

महिलाओं और बच्चों की तस्करी के खिलाफ योगी सरकार का बड़ा फैसला उप्र के हर जिले में होगा एंटी ह्यूमन ट्रेफिकिंग थाना

लखनऊ, 26 अक्टूबर
योगी सरकार ने महिलाओं और बच्चों की तस्करी के खिलाफ बड़ा कदम उठाया है। उत्तर प्रदेश के हर जिले में अब एंटी ह्यूमन ट्रेफिकिंग थाना बनाया जाएगा। इन थानों को राज्य सरकार ने कार्रवाई के कई अहम अधिकार सौंपने जा रही है। ये एंटी ह्यूमन ट्रेफिकिंग थाने सीधे दर्ज कर संबंधी एफआईआर और खुद करने विवेचना।

योगी सरकार ने महिलाओं और बच्चों की तस्करी, बाल श्रम और देह व्यापार पर रोक लगाने के लिए निर्देश कस दिया है। प्रदेश में 40 नए एंटी ह्यूमन ट्रेफिकिंग थानों का गठन किया जाएगा।

जा जन्मदाता से थाने के रूप में कार्य करेंगी और खुद अपराधिक मामलों को एफआईआर दर्ज कर उसकी विवेचना करेंगी। 2016 में प्रदेश के 23 जिलों में मानव तस्करी को रोकथाम के लिए एंटी ह्यूमन ट्रेफिकिंग थानों को थाने का दर्जा दे दिया गया था।

इनमें मुजफ्फरनगर, कुशीनगर, आराबंकी, खोरी, बहराइच, अलमपुर, बदरगं, सिद्धार्थनगर, उन्नाव, हरदोई, झाबुली, मऊ, कानपुर नगर, योरेखपुर, बिजनौर, जौनपुर, आजमगढ़, फिरोजाबाद, पौलीभीत, सोनपुर, बलिया, भागलपुर नगर एवं शाहजहाँपुर शामिल किए गए थे।



■ एंटी ह्यूमन ट्रेफिकिंग पुलिस सीधे दर्ज करेगी एफआईआर, खुद करेगी विवेचना
■ 75 जिलों में मानव तस्करी पर लगेगी लगाम

योगी सरकार ने प्रदेश में एंटी ट्रेफिकिंग थानों को थाने के रूप में अतिरिक्त प्रदान किया। एंटी ह्यूमन ट्रेफिकिंग थानों पर मानव तस्करी से जुड़े क्राइम को एफआईआर, उनकी विवेचना और आगे की कार्रवाई की जाएगी। इसका कार्यक्षेत्र पूरा जिला होगा।

केंद्र में दर्ज कराते ये अपनी एफआईआर

अभी तक एंटी ट्रेफिकिंग थानों किन्हीं भी कार्रवाई के लिये केंद्र थाने में ही एफआईआर दर्ज करती थी। मुकदमा दर्ज होने के बाद थाना को पुलिस विवेचना करती थी हालांकि अब कुछ मामलों को एंटी ह्यूमन ट्रेफिकिंग थानों में ट्रांसफर किया जाने लगा था लेकिन अब स्वयं एंटी ह्यूमन ट्रेफिकिंग थाने के रूप में थाने निर्णय से संकेता।

अब उप्र के हर जिले में होगा एंटी ह्यूमन ट्रेफिकिंग इकाई थाना, शासनदेश जारी

मानव तस्करी रोकने के लिए अब हर जिले में एक एंटी ह्यूमन ट्रेफिकिंग इकाई का थाना होगा। शासन ने 40 नए जिलों में इन थानों को स्थापना के लिए स्वीकृति दी है। 20 अक्टूबर को इस संबंध में अगले मुख्य सचिव अखिलेश अग्रवाल को और से शासनदेश भी जारी कर दिया गया। प्रदेश में पहले कुल 35 जिलों में एंटी ह्यूमन ट्रेफिकिंग इकाई के थाने थे। यह थाने 2011 और 2016 में स्थापित हुए थे। नए थाने केंद्र सरकार के विमान सेपटी डिजीवन के निर्देश के बाद स्थापित किए जा रहे हैं। केंद्र सरकार द्वारा इसके लिए थन भी आवंटित कर दिया गया है। केंद्र सरकार ने पहले से स्थापित 35 थानों को 12 लाख रुपये की दर से 4 करोड़ 20 लाख रुपये और 40 नए थानों के लिए 15 लाख रुपये की दर से छह करोड़ रुपये तक प्रदेश सरकार को दिए हैं।

देह व्यापार समाज के विरुद्ध अपराध : कोर्ट

बिधि संवाददाता, प्रयागराज: इलाहाबाद हाई कोर्ट ने जबरन देह व्यापार करने में शामिल होने के आरोपित आकाश को जमानत पर रिहा करने से इन्कार कर दिया है। कोर्ट ने कहा कि देह व्यापार समाज के विरुद्ध अपराध है। ऐसे अपराध के आरोपित सहानुभूति के हकदार नहीं हैं। यह आदेश न्यायमूर्ति संजय कुमार सिंह ने आकाश की अर्जी पर दिया है।

पुलिस व एंटी ह्यूमन ट्रेफिक थानों ने नोएडा गौतमबुद्ध नगर के एक गेस्ट हाउस पर 27 फरवरी 2021 को छापा मारकर चार लड़कियों को छुड़ाया था।

आरटीआइ : मानव तस्करी की आशंका

यूपी में हर रोज गायब हो रही हैं तीन लड़कियां

पत्रिका न्यूज नेटवर्क

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लखनऊ. उत्तर प्रदेश में योगी सरकार भले ही प्रदेश की कानून व्यवस्था बेहतर होने का दावा करती हो, महिलाओं और बच्चियों के साथ होने वाले अपराधों पर लगाम नहीं लगा पाई है। हर रोज प्रदेश में औसतन 3 लड़किया गायब हो रही हैं। यह खुलासा एक आरटीआइ से हुआ है। अनुमान है कि लड़कियों के गायब होने के पीछे मानव तस्करी बड़ा कारण है।

50 जिलों में गायब हुई 1164 बेटियां

आरटीआइ के जरिए 50 जिलों से मांगी सूचनाओं के अनुसार 2020 में 1164 लड़कियां गायब हुई थी। इनमें से 12-18 आयुवर्ग की 1080 लड़कियां थी। पुलिस ने 966 लड़कियों को बरामद किया है, 200 अभी भी लापता हैं।