

# **HUMAN TRAFFICKING THEORY AND PRACTISE: COMBATING HUMAN TRAFFICKING: LEGAL RESPONSES AND CHALLENGES**

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## **ABSTRACT:-**

The issue of human trafficking as a grave violation of human rights has become a relevant topic for legal discussion. Every year thousands of human beings are trafficked by their own fellow beings all over the world and within the country. Socio-economic conditions, poverty, destitution, rural illiteracy, unemployment, lack of awareness about the traps made by traffickers, dysfunctional family life, and commercialization of sex etc. act as push factors for human trafficking. There are also many pull factors which include lucrative employment propositions in big cities, easy money, promises of better pay and a comfortable life by the trafficking touts and agents, demand of young girls for marriage in other regions demand for low-paid and underage labour, growing demand of young kids for adoption, rise in demand for women in the rapidly expanding sex industry etc.

This paper is a descriptive analysis with the help of secondary data regarding the issue of human trafficking has done in this paper. The legal provisions for the prevention of human trafficking in the international and national context have been analysed. An assessment of major provisions of the International conventions and treaties regarding human trafficking and the codified laws of India under Indian Penal Code and other legislation against Human trafficking has also been analysed. It also examines the efficiency of existing laws against human trafficking. It takes an objective look at the strategies in place and also addresses measures which can be taken in combating human trafficking.

The results indicate that the objective of the study seeks answers to various questions regarding the effectiveness of statutes against human trafficking. The prosecutions of trafficking are readily extrapolated to one or other manifestation of trafficking as prosecution really an

appropriate measure ineffective anti-trafficking response. There are also risks associated with an expansionist conception of what constitutes trafficking which also affects the rigidity of legal prosecution. Another issue which was identified is prosecutors are often unaware of the legal framework around trafficking or oblivious of its use. The research compares the key performance of International law and Indian law on trafficking all around the world for the purpose of determining whether or not the laws produce the expected result of its enactment. It also provides important insights into the methods of combating human trafficking.

Keywords: Human trafficking, Legal responses; Effectiveness; Combating Human trafficking.

## **INTRODUCTION**

Human trafficking is the most modern form of slavery traced back to the Mesopotamian code of Hammurabi, to the present world trading humans, over the years it has taken different dimensions. Trading humans mainly for forced labour has changed, and now it is in the form of sexual slavery, child labour, wife selling or bride buying through forced marriages, conscription, extraction of organs or tissues in the name of transplantation, surrogacy e.t.c and also commercial sexual exploitation of the trafficker or others, which leads to forced prostitution.

According to the report of the International Labor Organization (ILO), forced labour alone generates an estimated \$150 billion in profits per annum as of 2014. In 2012, the I.L.O. estimated that 21 million victims are trapped in modern-day slavery. About 68 percent of the victims all over the world were exploited for labour, 22 percentage was sexually exploited, and 10 percentage was exploited in state-imposed forced labour.<sup>1</sup>

India has become a centre of human trafficking, which acts as a source as well as a destination for the victims. Both internal and external human trafficking is prominent in India. Internal trafficking is within the country from one state to another, and external trafficking is trafficking into the foreign countries under the shadow of migration. It has been reported in newspapers in the beginning of August 2017, in Nepal immigration officers at the airport are colluding with traffickers for illegal transfer of Nepali women to Gulf countries. Around 60% of domestic

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<sup>1</sup> *Results and methodology (Special Action Programme to Combat Forced Labour)*, ILO GLOBAL ESTIMATES ON FORCED LABOUR 2012. (Oct.28,2017,03:00PM, [http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/forced-labour/lang--en/index.htm#P23\\_5027](http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/forced-labour/lang--en/index.htm#P23_5027))

workers were sent to Gulf countries, while rest travels to other countries like India, Srilanka, China and African countries. Adults, as well as children, are massively trafficked for various purposes within the country. Most recently reported human trafficking incident was from Rajasthan around 171 children from Gaya, Bihar was rescued by Anti-human trafficking cell of Jaipur police, the Child Welfare Committee and Child helpline. Out of this 151 children were forced into labour and 20 were homeless youngsters. Children were exploited in inhuman conditions at different places, including bangle, embroidery and precious stone units of Jaipur<sup>2</sup>.

This complex phenomenon has been driven by different social, economic, political and cultural factors. People desire to migrate seeking better conditions which mitigate and prevent poverty, lack of social economic opportunity, political instability, civil unrest, internal disturbances, natural disasters, oppression e.t.c. The destabilization and displacement of population act as a major factor, which leads to trafficking and forced labour. On the other hand, poverty, desire for wealth a standard of living attracts or act as pull factors into the hands of traffickers. Children are being sold by parents on the belief that, they would escape from chronic poverty and would move to a place with better living conditions. Socio-cultural differences can also lead to trafficking. Rohingya crisis is one of the most recent examples which may lead to alarming risks of trafficking, sexual abuse and child labour due to lack of schooling and widespread desperation of people

Save the Children International CEO Helle Thorning-Schmidt commented on Rohingya crisis, "It's a child protection disaster waiting to happen. This kind of situation leaves children, who've already seen and experienced things that no child should ever see, at a hugely increased risk of exploitation like trafficking, sexual abuse and child labour"<sup>3</sup>

Issues like corruption during the enforcement of laws by the officials, the involvement of international organized criminal groups, widespread network of traffickers which facilitates trafficking in persons.

#### OBJECTIVES OF CURRENT STUDY

1. To analyse the legal provisions against human trafficking.

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<sup>2</sup> Special correspondent, *171 rescued child labourers sent back to Bihar by train*, THE HINDU, Aug 10, 2017, at P2.

<sup>3</sup> Special correspondent, *Rohingya kids exposed to abuse, trafficking risk*(Oct,22,2017,12:00AM), <http://www.thedailystar.net/frontpage/rohingya-kids-prone-abuse-trafficking-risk-1479943>.

2. To examine whether the existing laws are effective in combating human trafficking.
3. To analyse challenges and address measures in combating human trafficking.

### RESEARCH METHODOLOGY

The present paper is mainly based on secondary data, which has been taken from different legal sources. In the present paper, Indian Penal Code and various provisions of International Law has been analysed. The systematic approach has been adopted for analysis. Various enactments made by the Indian Parliament has also discussed.

#### **1. LEGAL RESPONSES AGAINST HUMAN TRAFFICKING**

Presently, there is a wide contour of laws against human trafficking in the world. It can be dated back to the time of slavery and its abolition can be considered as a major step in the international front against human trafficking. The provisions against slavery within the Slavery Convention (1926) and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956) are included in this powerful move.

In the International law, there have been many relevant instruments to prevent human trafficking and an extensive number of codes for defining, preventing and prosecuting trafficking of persons.

The Universal Declaration of Human Rights(1948), the International Covenants on Civil And Political Right (1966), The United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949), and the Convention on the Elimination of all Forms of Discrimination Against Women (1979) become a foundation for the structure of international law for anti-human trafficking. The Optional Protocol on the sale of children, child prostitution and child pornography was also adopted by United Nations in order to protect Child rights in 2000 convention, came into effect on 18 January 2002.

Most recent and landmark laws which play a significant role in Human Trafficking are,

**1.1 The United Nations Convention against Transnational Organised Crime (UNCTOC)**

came into force in 2003, although resolution was adopted in 2000 at Palermo Convention and its related protocols include,

1. Protocol to prevent, suppress and punish trafficking in persons especially women and children
2. Protocol against the smuggling of migrants by Land, Sea and Air.
3. Protocol against the illicit manufacturing and trafficking in firearms.

The United Nations Office on Drugs and Crime (UNODC) created these conventions, which have an important action to combat human trafficking. the UNODC established the United Nations Global Initiative to Fight Human Trafficking (UN.GIFT) in 2007 also to support this drive.

Koffi.A.Annan, then UN Secretary-General said,

"The signing of the Convention in Palermo in December 2000 was a watershed event in the reinforcement of our fight against organized crime. I urge all States to ratify the Convention and the Protocols thereto at the earliest possible date and to bring these instruments into force as a matter of urgency."<sup>4</sup>

According to the Article 3 of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime, Trafficking in persons shall mean:

"The recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat, use of force or other means of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the receiving or giving of payment... to a person having control over another person, for the purpose of exploitation."<sup>5</sup>

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<sup>4</sup>Kofi Annan 'Address at the opening of the signing conference for the United Nations Convention against Transnational Organized Crimes, UNODC (Oct,27,10:00 AM)[http://www.unodc.org/unodc/en/about-unodc/speeches/speech\\_2000-12-12\\_1.html](http://www.unodc.org/unodc/en/about-unodc/speeches/speech_2000-12-12_1.html)

<sup>5</sup> United Nations Convention against Transnational Organized Crime, Gen.AR 55/25. 2A /AC.254/34.(2000).

Article 5 of the United Nations Convention Against Organised Crime deals with the Criminalisation of participation in an organized criminal group. It provides guidelines for the member nations of the convention to prevent transnational organized crimes. The article states the following:

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally: (a) Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity. (b) Organizing, directing, aiding, abetting, facilitating or counselling the commission of a serious crime involving an organized criminal group. This convention act as an effective tool in the international scenario against human trafficking, which comes under the transnational organized crimes.
2. The knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances.
3. States Parties whose domestic law requires the involvement of an organized criminal group for purposes of the offences established.

## **1.2 International Labor Organisation**

The Organisation which acts as a major voice against inequalities and violation of human rights. It has constituted various protocols against human trafficking mainly in the areas of forced labour and child labour. The major conventions are:

- ILO Forced Labour Convention, 1930 (No. 29)<sup>6</sup>

Article 25 The illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced.

Article 26 1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to apply it to the territories placed under its sovereignty, jurisdiction, protection, suzerainty, tutelage or authority, so far as it has the right to accept obligations affecting matters of internal jurisdiction.

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<sup>6</sup> *Conventions and Recommendations, ILO* (Oct, 26, 2017 (12:30 PM))  
[http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/forced-labour/lang--en/index.htm](http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/forced-labour/lang-en/index.htm)

- ILO Abolition of Forced Labour Convention, 1957 (No. 105)<sup>7</sup>

Article 2...Each Member of the International Labour Organisation which ratifies this Convention undertakes to take effective measures to secure the immediate and complete abolition of forced or compulsory labour as specified in Article 1 of this Convention.

- ILO Minimum Age Convention, 1973 (No. 138).

Article 2 states that Each Member which ratifies this Convention shall specify, in a declaration appended to its ratification, a minimum age for admission to employment or work within its territory and on means of transport registered in its territory; subject to Articles 4 to 8 of this Convention, no one under that age shall be admitted to employment or work in any occupation. In Article 3, The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years. Under Article 4, it states that National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work.

- ILO Worst Forms of Child Labour Convention, 1999 (No. 182)

Article 3 defines 'the worst forms of child labour' includes; (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

### **1.3 The United Nations Global Initiative To Fight Human Trafficking (UN.GIFT )**

UN.GIFT was launched in 2007 with an objective to promote global fight against trafficking in persons on the basis of international agreements reached the United Nations. by the International Labour Organization (ILO), the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Children's Fund (UNICEF), the United

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<sup>7</sup> *International Labour Standards on Forced labour*, ILO (Oct,26,2017 (12:00 PM))  
<http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/forced-labour/lang--en/index.htm>

Nations Office on Drugs and Crime (UNODC), the International Organization for Migration (IOM) and the Organization for Security and Cooperation in Europe (OSCE).

#### **1.4 Regional legislation**

An International Law becomes more active only when it associates with regional legislation. Most countries have incorporated their regional and domestic legislation. U.S.A has enacted United States Victims of Human Trafficking and Protection Act,2000 to prevent human trafficking.

In Europe, the European Convention on action against trafficking in Human beings (2 008), and the European Convention for the protection of Human Right and Fundamental Freedoms(1950) has been incorporated to end trafficking. Various regional organizations like COMMIT, a sub-regional group initiative of China, Laos, Thailand, Myanmar, Cambodia and Vietnam to wash away human trade.

In India,a signatory to international conventions like Convention on the Rights of the Child (1989),Convention on Elimination of all forms of Discrimination Against Women (1979), UN Protocol to Prevent ,Suppress,Punish Trafficking in Persons,especially Women and Children (2000) and latest South Asian Association for Regional Cooperation (SAARC) ,Convention Preventing and Combating Trafficking in Women and Children for Prostitution (2002).<sup>8</sup>

Recently India had disputed against ILO' Slavery report as various estimates show that, it has continuously kept India at first place, with 18 million slaves in 2016.The methodology of sampling seems to be biased as the focus is entirely on India.The largest sample surveyed in 2017 was in India, while samples of other countries are much lesser to that of India.<sup>9</sup>

## **2. LAWS AGAINST HUMAN TRAFFICKING IN INDIA.**

Indian Criminal Law is related to criminal conduct in India, which is divided into three major acts: Indian Penal Code1860, Code of Criminal Procedure,1973, Indian Evidence Act,1872. Apart from these laws, Indian Parliament has passed many special criminal laws relating to human trafficking, which includes, Immoral Trafficking Prevention Act (ITPA), Bonded Labour Abolition Act 1976, the Child Labour Act, and the Juvenile Justice Act, The Criminal

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<sup>8</sup> Bachpan Bachao Andolan vs Union Of India & Ors ,(2011) 5 S.C.C 1.

<sup>9</sup> Somesh Jha.*India disputes ILO's Slavery report*,THE HINDU,Oct,6,2017 at P1.



Law Amendment Act (2013), Transplantation of Human Organs Act, 1994, POSCO Act 2012 etc. In addition, Supreme court has established various provisions through Case laws.

For example. *Vishaka v. Rajasthan*<sup>10</sup>, a landmark case recognized that the provisions of 58 international treaties can be read with the existing Indian law and order to "expand" the areas of protection and also in the absence of a national legislation, "the contents of international conventions and norms are 59 significant for the purpose of interpretation."

## **2.1 INDIAN PENAL CODE**

Indian Penal code which acts as the major criminal code of the country. Under IPC section 359 to 374 deals with kidnapping, abduction, procurement of the minor girl, buying and selling of human as slaves, for prostitution, unlawful compulsory labour and rape. Sections 359 to 361 deals with Kidnapping and provides punishment under section 363 states that "Whoever kidnaps any person from [India] or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."<sup>11</sup>

Section from 363A to 366 deals with kidnapping for and through different means which include kidnapping a minor for the purpose of begging, in order to murder, for ransom, with an intention to secretly or wrongly confine any person, and also forcefully marrying a girl. Sections 366 A & B deals with procurement and importation of minor girl within or from outside the country. The following sections, 367 to 371 deals with different ways of slavery which includes buying and selling and habitual dealings in a slave. Section 372 and 373 deals with selling and buying a minor for the purpose of prostitution. And section 374 deals with unlawful compulsory labour. Rape, an outrageous act, which slave. under the section 375 and 376 of Indian Penal code. All these provisions are subordinated by numerous legislations in the country.

## **2.2 Other Legislations**

As we can easily identify the vulnerable groups prone to human trafficking in India are, Women, Children and Labourers, a person doing unskilled manual work for daily wages. In

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<sup>10</sup> *Vishaka v. State of Rajasthan*, AIR 1997 S.C.3011

<sup>11</sup> Indian Penal Code, 1860(Act No. 45 of Year 1860)

India, various legislations were made, repealed and amended to shield the dignity of all these sections. An analysis can be done on legislation for the protection of these groups.

1. Bonded Labourers
2. Children
3. Women

➤ **BONDED LABOURERS**

Bonded Labourers which include thousands of men, women and children, are being trafficked in India for forced labour in sectors such as construction, steel, and textile industries, wire manufacturing for underground cables, biscuit factories, pickling, floriculture, fish farms, and shipbreaking. It has been reported that they are being exploited by various unregulated and illegal working agencies, who decoy adults and children by giving fake promises into forced labour.

The major legislation in India to defend Forced labour is the following :

**1. Bonded Labour System (Abolition) Act,1976**

This act aimed at the abolition of bonded labour system in order to prevent economic and physical exploitation of the weaker sections of the people.

Under the definition of this act, Bonded labour system means a system of forced or partly forced labour under which a debtor enters or has or is presumed to have entered into an agreement with a creditor<sup>12</sup>

The foremost intent of this act is to abolish bonded labour system in India, no person shall make an advance under or in pursuance of the bonded labour system or compel any person to render any bonded labour or forced labour.

Under section 16 of this act whoever compels any person to render any bonded labour shall be punished with imprisonment which may extend to three years and also with a fine which may extend to two thousand rupees. Section 18 states that, extracting bonded labour under bonded labour system shall be punishable. And also section 20 of this act, Abetment under the definition of Indian Penal Code, be punishable with the same punishment, as it is provided for the offence which has been abetted.

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<sup>12</sup> Bonded Labor System (Abolition) Act, 1976,Sec.2,cl.(g).

**2. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,1989(33 OF 1989).**

The aim of this act is to prevent the commission of offences of atrocities against the members of the scheduled castes and scheduled tribes. Section 3 (1), subclause (vi) states that whoever ,not being a member of a scheduled caste or scheduled tribe compels or entices a member of a scheduled caste or scheduled tribe to do "beggar" or other similar forms of forced labour or bonded labour other any compulsory services for public purposes imposed by government, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with a fine.

**3. The Protection of Civil Rights Act,1955 (22 OF 1955).**

Under Section 7-A.Unlawful compulsory labour when to be deemed to be a practice of "untouchability", clause (1) , whoever compels a person ,on the ground of "untouchability", to do any scavenging or sweeping or to remove any carcass or to flay any animal or the remove the umbilical cord or, to do any other job of a similar nature shall be deemed to have enforced a disability arising out of untouchability.

Beside all these acts, Child Labour (Prohibition and Regulation) Act 1986 also enforces the provisions and procedures for penalizing child labour.The Child Labour (Prohibition and Regulation)Amendment Act,2016 also prohibits the engagement of children in all occupation and also prohibits I hazardous occupations and processes.'Under the Child Labour (Prohibition and Regulation) Amendment Act, 2016, children younger than 14 years can now work in family enterprises and farms after school hours and during holidays. Children working as artists in the audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities, except the circus, have also been granted the exemption, provided the work does not affect their school education'.

➤ CHILDREN

Child trafficking which is a modern form of child exploitation for the purpose of forced child labour in factories, Child sex tourism, Child sexual exploitation, through forced marriages, for domestic servitude, for criminal acts like pickpocketing, begging etc. Children also used for entertainment purposes as in Circus camps.

The constitution of India enshrines both in part III and IV for the interest of children, under articles 15(3), 21(A), and 24,39(e),(f),45,51(A).

National Policy for Children 1974,<sup>13</sup> also states that we are committed to providing adequate services to the children, both before and after birth and throughout the period of growth to ensure their full physical, mental, social development. Some legislation which gave protection for child rights and also ensures protection from different forms of atrocities against children which includes ;

**1. The Juvenile Justice (Care and Protection of Children) Act,2000.**

This act was aimed at providing proper care, protection and treatment to the juveniles in conflict with the law and to the children in need of care and protection through adjudication and also rehabilitation.

Section 24 of Juvenile Justice (Care and Protection )Act,2000, states that whoever employs or uses any juvenile or child for the purpose or cause any juvenile to beg shall be punishable by imprisonment for a term which may extend to three years and shall be liable to fine.

Section 26, deals with exploitation of juvenile or child employ, whoever ostensibly procures a juvenile or the child for the purpose of any hazardous employment keeps him in bondage and withholds his earnings or uses such earning for his own purposes shall be punishable with imprisonment for a term which may extend up to three years, and also a fine .

**2. The Juvenile Justice (Care and Protection of Children) Act,2015.**

The Juvenile Justice (Care and Protection of Children) Act,2015 aimed at the substitution of existing laws in such a way that s juveniles in conflict with the law who comes under the age group of sixteen to eighteen can be tried as adults when they commit a heinous crime.

Section 76 of the act deals with employment of a child for begging. In section 78, it states that using a child for rendering, peddling, carrying supplying or smuggling any intoxicating liquor, narcotics, drugs or psychotropic substance. These acts are reprimanded, with a punishment of rigorous imprisonment not less than three years which may extend to 7 years or fine up to 1 lakh. Section 79 also penalizes exploitation of child employee with the same punishment. Section 81 deals with sale and procurement of children for any purpose, while section 83 consider the use of a child by militant groups.

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National Policy for Children (1974) No.1-14/74-Centre for childrights.

Under section 84 of Juvenile Justice (Care and Protection )Act, consider kidnapping and abduction of a child. For the purposes of this Act, the provisions of sections 359 to 369 of the Indian Penal Code, shall mutatis mutandis apply to a child or a minor who is under the age of eighteen years and all the provisions shall be construed accordingly.

### **3. The Protection Of Child From Sexual Offences Act, 2012.**

In order to protect children from offences of sexual assault, sexual harassment and pornography the act was enacted and provided for the establishment of special courts for trial of such offences. It also associated with ending up of matters connected with the exploitation of children.

Sections from 3 to 14 of, The Protection Of Child From Sexual Offences Act, 2012 act states about the penetrative sexual assault, aggravated penetrative sexual assault, sexual assault, aggravated sexual assault, sexual harassment of a child, use of a child for Pornography, and retributions respectively. Under Section 4, punishment not less than 7 years, which may extend to life imprisonment for penetrative sexual assault. aggravated penetrative sexual assault is punishable under section 5 & 6, not less than 10 years which may extend to life imprisonment and fine. sexual assault and aggravated sexual assault is awarded a punishment of not less than 5 years or may be fined under section 7 to section 10. Use of a child for pornography is also punished under section 14 for not less than 5 years and fine. While sexual harassment to a child is liable to punishment for not less than 3 years and fine under section 11 & 12 of The Protection Of Child From Sexual Offences Act, 2012.

### **4. National charter for children 2003.<sup>14</sup>**

Clause 4, and subclauses (a)(b)(c) of National Charter 2003 states that state recognizes that the subsection minimum needs of every child must be met, that foster full development of child's facilities (a). In the subclause (b), it states that In order to ensure this the state shall in partnership with the community provide social security for the children, especially, for abandoned children and street children.

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<sup>14</sup> National charter for children 2003.<sup>14</sup>Extraordinary Gazette of India, Part-1, Section-I, NO. F. 6- 15198 CW, 2004.

Section 8 of the Charter states that it shall provide protection for the children from economic exploitation and all forms of abuse. clause (b)&(c) of the charter in this section give provisions for the total ban of all forms of Child labour.

Under Section 9, All children have right to be protected against neglect, maltreatment, injury trafficking, sexual and physical abuse of all kinds, Corporal punishment, torturing, exploitation, violence and degrading treatment.

Section 10 states that The State shall take strict measures to ensure that children are not used in the conduct of any illegal activity namely, trafficking of narcotic drugs and psychotropic substances, begging, prostitution, pornography or violence. The state shall in partnership with community ensure the protection of children in distress for their welfare and all-round development. And also added in Section 11 of the charter, Protection of the girl child, the state shall ensure that crimes and atrocities committed against girl child including, marriage, discriminatory practices, forcing girls into prostitution, and trafficking are speedily eradicated.

#### **5. Child Labour (Prohibition and Regulation) Act 1986.**

This act was laid down to introduce procedures for deciding which employment, occupation or processes the employment of children should be banned. This act intends to ban employment of children, lay down procedures to decide modification to the schedule of banned occupation, regulate the condition of work of children in employment where they are not prohibited from working, laid down enhanced penalties for the violation of provisions of this act and also to obtain uniformity in the definition of 'child' in the related laws.

Section 3 of this act, prohibits child labour, while Section 14, defines the penalties for, whoever employs any child or permits any child to work in contravention of the provisions of section 3 shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years, or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both and IA states that, whoever employs any adolescent or permits any adolescent to work in contravention of the provisions of section 3A shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years or with fine which shall not be less than twenty thousand rupees but with fifty thousand rupees or both.<sup>15</sup>

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<sup>15</sup> Child Labour (Prohibition and Regulation) Act 1986, Sec.3, Acts of parliament, 1993.

## 6. Child Labour (Prohibition and Regulation) Amendment Act, 2016.

The Amendment act is characterized with insertion of section 3A, No adolescent shall be employed or permitted to work in any of the hazardous occupations or processes set forth in the Schedule, Provided that the Central Government may, by notification, specify the nature of the non-hazardous work to which an adolescent may be permitted to work under this Act. And also Amendment of section 14.<sup>16</sup> As per section 14 A, the offence under child labour has been made as a cognizable offence no matter what has been provided in the Criminal Procedure Code. Secondly, as per section 14B and C, The government has made provisions for not only Punishment for the employers but also for the rehabilitation of the victims of this child labour practice.

### ➤ WOMEN

In India, Constitution of the nation itself makes express provisions for affirmative action in favour of women. Article 14, 15 & 16 ensures Right to Equality, prohibits all kind of discrimination and also equality of opportunity in all matters of employment<sup>17</sup>. Legislature and Judiciary are always sensitive towards women-related issues, which is evident through the legislation and court judgments. Some of the major enactments which care for women protection are:

#### 1. The Immoral Traffic (Prevention) Act.

An Act to provide in pursuance of the International Convention signed at New York on the 9th day of May 1950, for the prevention of immoral traffic.

Under section 2 of this act, it defines keywords like 'Brothel' 2(a) and also "prostitution" means the sexual exploitation or abuse of persons for commercial purposes or for consideration in money or in any other kind, and the expression "prostitute" shall be construed accordingly; 2(f).

In Section 3, it explain about the punishment for keeping a brothel or allowing the premises to be used as a brothel which is punishable on the first conviction with rigorous imprisonment for a term of not less than two years and which may extend to three years and also with fine which

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<sup>16</sup> Child Labour (Prohibition and Regulation) Amendment Act, 2016, NO. 35, Acts of parliament, 2016.

<sup>17</sup> INDIA CONST. art. 14, 15, 16.

may extend to ten thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which shall not be less than three years and which may extend to seven years and shall also be liable to fine which may extend to two lakh rupees.

Section 5. states Procuring, inducing or taking person for the sake of prostitution, with or without his/her consent, induces a person to go from any place, with the intent that he/she may become the inmate of a brothel ,takes or attempts to take a person or causes a person to be taken, from one place to another with a view to his/her carrying on, or being brought up to carry on prostitution , causes or induces a person to carry on prostitution

Section 4, subclause (2) any person over the age of eighteen years is proved to be living with or to be habitually in the company of, a prostitute, exercised control over the movements of a prostitute, acting as a tout or pimp on behalf of a prostitute shall be given the punishment with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees.

In case of offence committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to act for a term of fourteen years considering the victim is whether a child, the punishment shall extend to rigorous imprisonment for a term of not less than seven years also may extend to life.

5A & 5B deals with trafficking for sexual exploitation with commercial interests. Where any person recruits, transports, transfers, harbours or receives a person for the purposes of prostitution, such person shall, until the contrary is proved, be presumed to have recruited, transported, transferred, harboured or received the person with the intent that the person shall be used for the purpose of prostitution. In section 5B. defines punishment for committing trafficking in person with rigorous imprisonment for a term which shall not be less than seven years and in the event of a second or subsequent conviction with imprisonment for life. And also attempts to commit, or abets trafficking in persons shall also be deemed to have committed such trafficking in persons and shall be punishable with the punishment described for committing the offence. While section 5C defines the punishment if any person sexually exploits a victim of trafficking. This Act stands as a major legislation to protect women from all kinds of sexual exploitation with financial motives.

## **2. The Suppression of Immoral Traffic in Women and Girls Act,(1956)**

This Act was enacted under Article 35 of the Constitution with the object of inhibiting and abolishing trafficking in women and girls. It was also in pursuance of the UN's Trafficking



Convention. The aim of the act is to rescue trafficked or exploited women and girls. This act also prevents the deterioration of public morals and stamps out of the evil of prostitution that was uncontrolled in the country.

The laws which are applicable to all vulnerable sections of the society and which work towards the prevention of human trafficking are :

- **Criminal Law (Amendment) Act of 2013.**

Section 370 and 370 A of this act deals with trafficking in person. The key amendments introduced by these provisions are the specific criminalisation of recruitment, transfer, transport, harbouring a person for the purpose of prostitution, forced labour, organ removal by use of threats or inducement; conduct which had previously been covered by general provisions dealing with slavery and abduction. It also endows with for better punishment of 7 to 10 years imprisonment.

- **Transplantation of Human Organ Act, 1994**

This act aimed at a twofold objective to prevent commercial dealing of human organs which encourages trafficking in person. The second objective is to regulate, removal, storage and transplantation of human organs for therapeutic purposes.

Beside this Within India, some states regulated aspects of the informal labour sector, including the Jharkhand government, which passed legislation in November 2016 requiring employment placement agencies to be licensed and prohibiting recruitment fees for domestic work<sup>18</sup>. The Punjab Prevention of Human Smuggling Act, 2012, Karnataka Devdasi (Prohibition of dedication ) act 1982, Andrapradesh Devdasi (Prohibition of dedication )act1989, Goa Children's Act,2003 are few examples.

### **2.3 LANDMARK JUDICIAL PRONOUNCEMENTS**

There were many Landmark judgments which stood for victim's rights, to approach human trafficking and also for the protection of vulnerable section, say, Women, Children and Bonded labourers.

- **PRERANA vs. The Union of India.**<sup>19</sup>

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<sup>18</sup> National Legal Research Desk, *The Jharkhand Private Placement Agencies and Domestic Workers (Regulation) Act, 2016*, NLRD (Oct, 20, 2017, 10:15 PM) <http://nlrd.org/jharkhand-passes-the-private-placement-agencies-and-domestic-workers-regulation-act/>.

<sup>19</sup> Prerana vs State Of Maharashtra And Ors. on ( 2002 ), 2003 BomCR Cri, (2003) 2 BOMLR 562, 2003 (2) MhLj 105.

One of the landmark cases in which the petition was filed by the NGO to protect women and girls rescued from the flesh trade against the pimps and brokers were keen to reacquire the possession of them. The court passed that children who are being likely to be grossly abused, tortured or sold for the purpose of sexual exploitation, abuse and illegal acts, they will have to be produced before the child welfare committee.

- Prajwala vs. The Union of India.<sup>20</sup>

This judgment is a benchmark case on judicial decisions, focused on the protection of rights of victims of trafficking. Thus, Prajwala invoked Article 32 of the Constitution to file a Public Interest Litigation to force the Government to create a protocol for the rehabilitation of women and children who have been the victims of trafficking.

- Vishal Jeet v. The Union of India.<sup>21</sup>

Supreme court reported that in spite of the stringent and rehabilitative provisions of law, there has been no desired outcome, as the rate of exploitation of young women and men for trafficking and prostitution was enormously growing. This landmark ruling Supreme court took it upon and gave directions for the protection and rehabilitation of devadasis, who had been dedicated by their families or communities for cultural reasons and later took prostitution as a provision.

- MC Mehta v. State of Tamil Nadu<sup>22</sup>

This is one of the historical judgements regarding child labour. The case was filed by a petitioner regarding a large number of child labour in the matchbox factories of Sivakasi in Tamilnadu. It relates the coexistence of poverty and child labour in a state and also shows light on the failure of a government in eradicating child labour. Court had pointed out a certain direction in a mission mode to eliminate child labour.

- Gaurav Jain v. The Union of India.<sup>23</sup>

The case law resulted in the formation of Coordination Committee at the Central Government Level formed to Frame the National Plan of Action and to implement it on an urgent basis in

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<sup>20</sup> Prajwala vs Union Of India & Ors(2009)WP(C) NO.56 , 2004.

<sup>21</sup> Vishal Jeet v. The Union of India, (1990) 3 S.C.C 318.

<sup>22</sup> MC Mehta v. State of Tamil Nadu(1996) 6 S.C.C. 756

<sup>23</sup> Gaurav Jain v. The Union of India, (1997) 8 S.C.C.

the light of realizing the state of violation of Right to Life of trafficked victims. In this Supreme Court ordered for setting up of various committees and also an implementation of schemes and programmes in order to rehabilitate the victims. Through a proactive method, court believed that the directions would relieve the human problem by rehabilitation of the unfortunate fallen women caught in the trap of prostitution; their children would be brought into the mainstream of the social order and also ensure social equality and status with the dignity of persons which are the arch of the constitution.

▪ Kamaljit v. State of NCT of Delhi 2006<sup>24</sup>

In this case, the court found that the Govt. of India's Action Plan of 1998, which aimed at combating Human trafficking had not delivered any desired result, as a result, more stringent measures become the need of the day. The court also pointed out the major difference in criminal statutes of India and others while dealing with organized crimes. In December 2002, India also became a signatory to UN Convention Against Trans-National Organised Crime. By becoming the participant in the Convention, the Government of India has given a clear directive to confront evils of trafficking of women and children.

▪ Bachpan Bachao Andolan V. Union of India.<sup>25</sup>

In this landmark ruling, chief secretary of each state was asked to submit a circular for the implementation of action to combat human trafficking. The Solicitor General had submitted a detailed report on the issue of Human Trafficking in India. The court urges for a coordinated effort by the three agencies namely the Commission, the Ministry and the State Governments.

### **3.EFFECTIVENESS OF EXISTING LAWS**

In India, there is an existing need for specialized legislation to deal with Human Trafficking. Even though Indian Penal Code 1860 deals with offences like kidnapping, trafficking, abduction, rape, buying and selling of minors under sections 359 – 373, it lacks the scope of handling a wide range of activities involved in trafficking. IPC is in a narrow scope which is less capable to deal with the crimes involved in organized trafficking.

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<sup>24</sup> Kamaljit v. State of NCT of Delhi 2006

<sup>25</sup> Bachpan Bachao Andolan V. Union of India 2011 SCC (5) 1

The Child Labour (Prohibition and Regulation) Amendment Act, 2016 suffers from several flaws, the new act slashed the list of hazardous occupations for children from 83 to include just mining, explosives, and occupations mentioned in the Factory Act. This means that work in chemical mixing units, cotton farms, battery recycling units, and brick kilns, among others, have been dropped. The Act doesn't define the limit of working hours and state that children may work after school hours or during vacations. This can cause loopholes in protecting a child from the traffickers and also from bonded child labour.

When we consider the Suppression of Immoral Trafficking Act, it has many drawbacks in the protection of women. prescribed penalties discriminate on the basis of sex. A prostitute under the definition of the Act could be imprisoned for up to a year, but a pimp faces only three months. This act also gives way for the pimps, brothel owners or brokers to escape on the ground that the Act allowed prosecution of persons other than prostitutes only if they involved willingly and made women engage in prostitution. The clients were not viewed as an offender under the Act. This Act only provides provisions to prevent street prostitution, while prostitution behind the closed door was left unaddressed. This exists as a loophole which promotes the establishment of brothels.

In order to ensure effective enforcement of existing laws, there should be the revival of all concerned stakeholders in the criminal system, from the police officers to the highest judicial officer. A crystal clear system of law enforcement can be implemented through cooperation with all the limbs of the society aiming for the same cause. NGO's can be an integral part of the social system for law enforcement, rescue, prevention, counselling, reintegration, social empowerment etc.

#### **4. CHALLENGES IN COMBATING HUMAN TRAFFICKING**

The fight against human trafficking is not a clear-cut process. Challenges are many and a multidisciplinary approach is essential. The vulnerable groups include undocumented migrants, people involved in the commercial sex industry, homeless or children without legitimate guardians in a massive number can also be considered as a challenge in combating most severe form of exploitation.

In a broad sense, while considering the key challenges in combating Human trafficking, the major challenges are;

- Defining the crime
- Identification of the crime and its victims.
- Non punishment-Low number of convictions
- Neglecting the vulnerable groups and prevention.

Pimping or brokering are existing as hurdles in combating trafficking in persons are being prosecuted as such and the convictions are leading to mere penalties, which are disproportionate to the seriousness of the crime. Defining the crime itself act as the main compound in ensuring justice for trafficked victims.

Another curb in combating trafficking is accused persons are often denied their right to sue accusers, defending them in securing assistance and also to benefit from the presumption of innocence.

"Any policy or programme that emphasizes or rewards more prosecutions while failing to actively promote, support and monitor better prosecutions that respect the rights of all persons, victims and accused alike is ethically compromised and strategically flawed."stated by A T Gallagher ,in *The Problems and Prospects of Trafficking Prosecutions: Ending impunity and securing justice*.<sup>26</sup> Human trafficking cases are hard to prosecute when we consider the victims, they are crucial for a conviction.

The victims may not report their experiences to the law enforcement agencies or they may hide the facts. There may occur many deterrent to victim of reporting the incident due to fear of reprisals from traffickers, the political and social pressures that work against undocumented and sex workers reporting abuse, the victim seeing the situation as their own fault or believing that they have committed a crime, fear of deportation and fear of law enforcement acting in collusion with traffickers etc. Another fact is non-cooperation of victims as they may not self-identify them as victims and consider themselves as people who have had a bad luck.

Trauma causes a large impact on the victim which affects the efforts of law enforcement agencies. During Investigations as well as trial, the mental conditions of the victim matters, when they may say they do not remember key events or situations, denial of events which took

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<sup>26</sup> A T Gallagher, 'Editorial: *The Problems and Prospects of Trafficking Prosecutions: Ending impunity and securing justice*', *Anti-Trafficking Review*, issue 6, 2016, pp. 1-1

place, appear to consent their situation, showing a high level of indifference to the situation, being hostile, refusal to cooperate etc.

#### 4.1 How to combat Human Trafficking.

The approach towards combating human trafficking by the Organization for security and cooperation in Europe can be considered as an example using four P-paradigm, that is,

- Prevention which includes awareness and addressing root causes
- Prosecution, including investigation and co-operation with international law enforcement
- Protection of victims' rights, including assistance and compensation
- Partnerships with international organizations, Ngo's and joint work between public and private institutions.

Preventive measures to combat Human trafficking includes measures to ensure economic or social policies which benefits the vulnerable sections. The measures should be addressed with coherent knowledge on the root causes. There should be border measures as well as measures relating to data collection and research. Existing legislative measures should be enforced effectively. Awareness can act as a major component in preventing the threat. Migration, Political instability and poverty act as a major facilitator, the measures to control or eliminate these issues should be a prior consideration. Education can act as a major source of awareness from grass root level, which may change the definition of the crime. Providing a safe place to learn and live and also giving psychological support for a child is important for children.

Poverty can be alleviated through enhancing job opportunities, by facilitating business opportunities targeting the vulnerable sections. Apart from this, there should be strict monitoring and administrative control over the issue by the enforcement agencies and government.

- The most prevention strategies fall within one of the following categories:
- Reducing the vulnerability of potential victims through social and economic development
- Discouraging the demand for the services of trafficked persons
- Public education
- Border control
- Preventing the corruption of public officials.

## **5. CONCLUSION**

Law enforcement approaches that respect the rights of the victims are essential. The authority should be aware of the social, physical and mental situation through which a victim undergoes. The best way to find solutions for a problem is precise understanding of the cause. While considering the case of children, education can act as a major catalyst. From streets to the classrooms can protect from all kind of exploitations such as sexual exploitation, trafficking, child labour etc.

The legal responses begin with the UN Trafficking Protocol , a major step forward in the fight against trafficking, joined by International Organisations which include, International Labour Organization (ILO), the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Children's Fund (UNICEF), the United Nations Office on Drugs and Crime (UNODC), the International Organization for Migration (IOM) and the Organization for Security and Cooperation in Europe (OSCE).The criminal codes implemented by many countries act as effective criminal justice response to trafficking. And also many countries which have implemented criminal codes against trafficking, which act as effective criminal justice response to trafficking.

In India, it has been seen that Judicial activism emerged as an effective weapon against human trafficking. The more tactful approach through judgements will help to curb human trafficking from its grassroots levels.

There are many practical challenges for the agencies responsible for implementing and enforcing the anti-trafficking laws, including law enforcement. Cooperation between law enforcing bodies international organizations, non-governmental organisations, citizens, solicitors, professionals, educators, health care providers, students along with victims together can overcome these challenges. This will make a significant contribution towards the larger effort of securing justice for victims and ending the impunity of traffickers.

There are ample reasons to be hopeful that all the existing legislation, from the international scenario to the regional state of affairs will be able to identify and prevent these crimes. Numerous UN conventions to the state made legislations aims at ascertaining the lasting peace, economic growth, sustainable development and the elimination of poverty intent these will, in turn, lead to the forever eradication of the scourge of trafficking in persons.

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