

CHILD TRAFFICKING LAWS; THE NEED FOR A CHANGE

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ABSTRACT

“The single aim of my life is that every child is: free to be a child, free to grow and develop, free to eat, sleep, see daylight, free to laugh and cry, free to play, free to learn, free to go to school, and above all, free to dream.”

-Kailash Satyarthi

A child has been trafficked if he or she has been moved within a country, or across borders, whether by force or not, with the purpose of exploiting the child. Child trafficking has been a remunerative business and is one of the fastest growing criminal activities at present. The paper starts with a brief introduction on what is child trafficking, its present status in India and statistics in comparison to other countries around the globe. According to the CBI (Central Bureau of Investigation), there are an estimated 1.2 million children involved in prostitution in India. If anything, these numbers are crying out for a need to be acted upon. The paper is then followed by explaining different means of exploitation of child trafficking, the most common amongst them being; using children for sexual activities, labour trafficking and child begging. The third part of the paper discusses the various acts and legislations that govern child trafficking in India, along with the judicial approach through an analysis of various cases. Further, the paper talks about how child trafficking has been dealt by different countries. In the United States, over 17,000 children are sold by human traffickers as slaves. To put that into context, it equates to 46 children per day. The paper then brings into light the recommendations given by NHRC (National Human Rights Commission) and various other organisations/agencies and in addition to that, about the rights of the abused child. The paper concludes by suggesting different measures to curb trafficking and highlights the various

changes that are required to be amended in the present laws with regards to the dire situation of child abuse throughout the country.

Keywords: Child trafficking, Prostitution, Child Begging, Sexual Exploitation, Child Labour, Modern Slavery

INTRODUCTION

Children are our greatest hope and asset of our country; they form a huge part of our population. Where the society is being modernized day by the day and at the same time many children's rights are being waived away. They can easily become victims of exploitation, and ill treatment and can be directed into undesirable channels by anti-social elements.

The United Nations Convention on the Rights of the Child defines *child* as "a human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier".ⁱ The word "child" has not been defined either in the Constitution or in the General Clauses Act. Under the Indian majority Act, 1875 the age of majority is said to be 18 years of age. Few statutes themselves define the term child such as section 2(2) of the Factories Act, 1948 defines child as a person who has not completed the age of 15 years.

UNICEF defines trafficking as "Trafficking of children is a form of human trafficking and is defined as the "recruitment, transportation, transfer, harbouring, and/or receipt" of a child for the purpose of slavery, forced labour and exploitation".ⁱⁱ The same definition has been adopted by Indian Penal Code and Anti-trafficking bill.

A report by the U.S. Department of State Terms India as a major source and destination where men, women and children are put into forced labour and trafficking. India's trafficking problem is internal and the ones who are the worst affected by it are the Dalits, tribal communities, and religious minorities.ⁱⁱⁱ

According to an ILO report, "A future without child labour", seventy-three percent of these children - approximately 180 million - are working in the worst forms of child labour - including prostitution, bonded labour, trafficking and hazardous work. The numbers show that slavery is on the rise, with around 5.7 million children forced into bonded labour.^{iv}

The less privileged of the society, such as the Scheduled Castes and Scheduled Tribes, Dalits etc. are put into such activities, out of their will, in most cases. A study conducted by the United Nations migration agency states that in almost half of the cases of child trafficking, a known family member is involved somewhere in the process^v. In some situations, the families are the ones who sell their children as slaves due to their critical financial condition. Through the word of the agents, people are sold from these communities with a promise for a better lifestyle and future. Some populations or personality types are more prone to be targeted for child trafficking, such as low-income children who have low self-esteem and broken households. These children are looking for someone to pay attention to them and show them affection.

A common misconception about child trafficking is that it is done only for the purpose of using the child as a means of labour or sex slave. The reality is that there are various other modes of exploitation such as Child Sex Tourism (CST), bonded labour, child soldiers, child begging and children in drug trades.

These children are often made to live in extremely poor and unhealthy conditions and are not paid for their work. They are made to feel incapable of doing anything right. People at the root of the matter, such as the agents and middlemen are the ones that need to be caught. It is not easy to identify such people because in about half of the cases they are from the family itself.

The US Department of State on TIP has given India a Tier 2 rating, the primary reason being that the Government of India doesn't fully meet the standards that are required to prevent trafficking, although there are significant efforts in place. The statistics have shown a rise, with the number of victims identified almost tripling. There is also an increase in the budget in the shelter programs for women and children who have been trafficked. The Government has held discussions to draft an anti-trafficking bill that is more comprehensive. On the India-Nepal border, several awareness activities have been held for students and various other communities that reside in the area. So where exactly did the Government go wrong? Several key areas were not given adequate attention and overall victim protection remained inconsistent and the government, in many cases, penalized the victims through crimes that they had committed as a result of trafficking, such as prostitution. That is why there needs to be education of the officials on the subject of victim identification. The conviction rates in cases of trafficking have remained very low and the number of investigations and prosecutions is measly, when

compared to the scale of trafficking in India. The reporting of such cases remains a major impediment.^{vi}

What we can infer from this is that what is being done right now is simply not enough. While the government has taken action such as increasing the budget for shelter programs and conducting investigations in certain areas, it has been overshadowed by the sheer lack of regard for cases of allegations, inadequate victim protection, and a very low rate of conviction in cases of child trafficking. If other countries can look into the situation of India and provide their insights, we need to look at the situation with an honest eye and plot out a strategy that is effective, thorough and consistent. It should be known that children are innocent beings and are not able to provide consent for such activities, even if they have been brainwashed into thinking that what they are doing is right and okay. It is important that governments, non-profits and law enforcement agencies continue to work to end child trafficking and to punish those people who are found to be hurting children.

There is thin line of difference between migration and trafficking. It is as follows “Migration for better option is subject to human rights and should not be violated, whereas trafficking is a completely different phenomenon. It is based on deceit, coercion, etc. resulting in exploitation.^{vii}”

DIFFERENT MEANS OF EXPLOTATION OF CHILD TRAFFICKING

There are many means of exploitation of child trafficking. The broad classifications are for the purposes of labour, illegal activities, sexual exploitation, and exploitation of child as soldiers or combatants in armed conflicts.

1. Labour

- a. Bonded labour: - Bonded labour which is also known as Debt bondage or debt slavery is a system of forced labour under which labour remains in bondage for specific period or unspecific period as security against loan or when they inherit a debt from relative. According to a report by the ILO, a whopping 246 million children, aged between 5 and 17 are still working today, in particularly dangerous conditions^{viii}.

- b. Domestic work: - Domestic workers are those who work for private households, often without clear terms of employment. It includes house chores such as cleaning, cooking food, washing clothes, watching the children and members of the family, driver duties and taking care of the house in general. A survey done by ILO states those women in particular are the targets of this mode of trafficking.^{ix}
- c. Other form of labour exploitation are construction work, carpet industry, garment industry, fish / shrimp export as well as other sites of work in the formal and informal economy.

2. *Illegal Activities*

- a. Begging: - ILO defines begging as “*work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily*”^x. According to Save The Children, an NGO, an approximate of three lakh children across the country are forced to engage in begging, using drugs and are subjected to violence and beatings.^{xi}
- b. Organ trade: - Organ trade among children is basically where child are trafficked or forced to donate their body organs which, in most cases, is the kidney. This happens mostly for paying off the debts of the family of the victim or organ sold for profit.
- c. Drugs peddling: - Children are forced to illegally transport the drugs from one country to another. According to a report by *The Independent*, criminals are resorting to using children as young as 12 to peddle class ‘A’ drugs including crack, heroine, and cocaine^{xii}.

3. *Sexual Exploitation*

- a. Forced prostitution: - Child prostitution is a form of prostitution that involves commercial sexual exploitation of children. It consists of prostitution of a minor, i.e. under the age of 18. It mostly manifests in the form of sex trafficking, where a child is kidnapped into a sex trade and then has to be involved in the activity to earn basic essentials. According to the Central Bureau of Investigation, there are an estimated 1.2 million children involved in prostitution in India^{xiii}.

- b. *Child sex tourism (CST)*: - Child Sex Tourism is a form of tourism that involves the prostitution of children. Mostly, paedophiles are associated tourists to such activities.

Webcam child sex tourism has emerged as a new form of child sex tourism. In this form, the users pay for webcam sex performances. According to the FBI, there are 750,000 predators online at any given time in 40,000 public chat rooms, for this purpose^{xiv}.

- c. *Child Pornography*: - Simply put, child pornography is a form of pornography that depicts a child being involved in sexually explicit activities, in a video form, with photos and videos^{xv}. Nowadays, live streaming has become a trend. It is a form where people pay to watch live sexual abuse of a child in a video form.

Accordingly, a pornographic video is created in India every 40 seconds and up to 38 percent of porn uploaded is deemed to be child abuse^{xvi}.

4. ***Exploitation of child as soldiers or combatants in armed conflicts***: - The recruitment of the child below the age of eighteen for the purpose of participating in armed conflicts such as using rifles, machetes or rocket- propelled grenades, slot in mines, etc., can be termed as child soldiers. It was estimated by UNICEF in 2014 that around 15 million children are directly affected by conflicts and children are used as soldiers in 14 countries and 50 armed groups and seven state armies. In the present time, primarily it is the ISIS who uses children as soldiers and arm conflicts.^{xvii} Exploitation of children as soldiers has been one of the worst forms of trafficking. Here the child's consent doesn't matter; they have been forced to take part in such illegal activities. This sort of exploitation is dangerous as it takes away the basic human rights such as right to life, health, education, sanitation, growth and development, child mortality, etc.

A sixteen-year-old girl after demobilization from armed group said that "it disturbs me so much that I inflicted death on other people". She states that when she goes home, she has to perform some traditional rites and cleanse herself. She still dreams about the boy from her village that she killed. "He is talking to me, saying I killed him for nothing, and I am crying."^{xviii}

In Israel and Palestinian territories children are involved on both sides. Israeli children on one side have been used by extreme settler movements in violent activities and on other side the

Israeli military are alleged to have used Palestinian children as shields, and have arrested and interrogated thousands of teenagers.^{xix}

Many other forms of child trafficking such as children used in construction work, carpet industry, garment industry, work in formal and informal economy, socially and religiously sanctified forms of prostitution, work in circus, dance bars, camel jockeys, child for marriages, etc., have been abolished and reduced to a good extent by the government of India and the judiciary.

VARIOUS LAWS, ACTS, JUDICIAL APPROACH IN REGARDS TO CHILD TRAFFICKING

The government of India has passed many laws, acts, policies and schemes for the purpose of reducing trafficking and providing care and protection for the child who has been trafficked. The legislations and statutes are;

1. ***The Constitution of India^{xx}***: - Article 23 of the constitution guarantees the right against exploitation, prohibition of trafficking of human being and forced labour. Article 24 prohibits the employment of children below the age of 14 in factories, mines and other hazardous places.
2. ***Immoral Traffic Prevention Act (ITPA), 1956***: - This act discusses trafficking and sexual exploitation for commercial purposes in relation to prostitution of girl and women and not any other form of trafficking. The punishment under the act is that if a person procures, induces or takes the child for the purpose of prostitution then he will be punished with an imprisonment of minimum 7 years and can be extended to life imprisonment or fine up to one lakh or both.
3. ***Indian Penal Code, 1860^{xxi}***: - There are many provisions regarding trafficking in IPC, the most relevant ones are Section 366B, which talks about procurement and importation of minor girl from a foreign country to India and Section 374, which gives punishment for forced labour. Section 370 of the act defines trafficking.
4. ***Bonded Labour System (Abolition) Act 1976***: This act speaks on the illegality of slave and bonded labour with reference to both adults and children. Children who have

incurred any debt during their labour work are not liable to repay their debt. If any property is seized, it needs to be given back to the child. The offence is cognizable and bailable and the punishment is imprisonment of up to 3 years and fine till two thousand^{xxii}

5. ***Child Labour (Prohibition and Regulation) Act, 1986:*** - This act talks about children used in different sectors for labour purposes. The act prohibits children below the age of 14 to work in automobile workshops, bidi making, carpet weaving, handloom and power loom industry, mines, domestic work and all forms of occupation. The only exception is that the child can help his family members after the school hours. Even an adolescent child who is between the age of 14 to 18 years is restricted to hazardous work such as mines, crackers and other inflammable places, and hazardous places. The punishment for employing a child is an imprisonment term between 6 months and 2 years, or a fine of Rs. 20,000 to Rs. 50,000, or both^{xxiii}.
6. ***The Juvenile Justice (Care and Protection of Children) Act, 2000:*** - The Juvenile Justice Act is the primary law relating to juveniles in conflict with law as well as children in need of care and protection. This Act provides for proper care, protection and treatment of them by catering to their development needs and by adopting a child friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this Act.^{xxiv} The primary objective of Juvenile Justice Act is to provide adequate services for prevention of social maladjustment and rehabilitation of socially maladjusted juveniles.
7. ***The Prohibition of Child Marriage Act, 2006:*** - The Act prohibits rather than prevents child marriages and provisions of relief to the victims of child marriage as well as enhanced punishments for all those who have actively abetted and solemnized the marriage is provided for. Child marriages are void in case where minor girls are being sold for the purpose of marriages, and many times these minors are sold or trafficked after getting married for illegal and immoral activities. The punishment for a male adult marrying a minor is imprisonment up to two years and fine of up to one lakh rupees.^{xxv}
8. ***The Protection of Children against Sexual Offences (POCSO) Act, 2012:*** - The act deals with sexual offences against any child who is less than 18 years of age. It also provides protection of children from the offences of sexual assault, sexual harassment

and pornography. The act has a child-friendly approach for reporting, recording of evidence, investigation and speedy trial of offences through appointment of Special Courts. The act provides for more severe punishment when the sexual offence is committed by a person in a position of trust or authority.^{xxvi}

9. **Child Helpline Number:** A 24 hours toll free number that is 1098, has been made available to all children during distress. Adults can also use this benefit this scheme in behalf of children in distress. The primary objective of this scheme is to provide every child to child protection system directly and assistance.^{xxvii}

10. **Ujjwala Scheme:** This is a comprehensive scheme for prevention and rescuing, rehabilitating and reintegration of victim of trafficking for commercial sexual exploitation. The scheme talks about the involvement of local communities, awareness and conduct of seminar for the welfare of children and providing basic facilities and needs to the victim and continuous counselling and legal help assistance to them^{xxviii}.

11. **The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018:** - This bill was introduced by the Minister of Women and Child Development and has been passed by the Lok Sabha on 26th July, 2018. The uniqueness of this bill is that it creates a law of investigation for all types of trafficking, rescue, protection, and rehabilitation of trafficked person. This punishment and penalties are more strict and higher for those who are involved in trafficking of a person. The offences are cognizable and non-bailable in nature and if the punishments are in conflict with other law, then the higher punishment prevails. The following are few highlights of the bill^{xxix}:

- Few forms of trafficking are termed as more ‘aggravated’ form of trafficking such as forced labour, bearing children, begging, or for inducing early sexual maturity.
- Various authorities are set up for rescue and **investigation at district, state and central level for rescuing of trafficked person and investigating the offences.**
- Special courts need to be set up at each district for speedy and complete trial within a year
- The penalty for trafficking of minor is imprisonment of 10 years to life imprisonment, and fine. Trafficking of more than one minor is life

imprisonment, and fine. In case of aggravated form of trafficking, the punishment is imprisonment of 10 years to life imprisonment, and fine of at least rupees one lakh.

The role of judiciary has been significant for protecting the rights and welfare of the child. It has made efforts in different means for the betterment of the child and its rights. There are a few landmarks cases where the courts have gone ultra vires to provide justice to all children who have been victim of different forms of abuse and trafficking. There has been judicial activism by the courts for the welfare of the child and to improve the status of the child.

In the case of *Labours Working on Salal Hydro project vs. State of Jammu and Kashmir and others*^{xxx}, where the court had observed that construction work comes under the purview of hazardous employment and also under Article 24 of the constitution which talks about prohibition against employment of child labour only to factories, mines or other hazardous employments. The court also observed that child labour is an economic problem which cannot be solved. The court, regarding the responsibility of the state, stated that the state owes a duty of care towards children.

In *M.C. Mehta vs. State of Tamil Nadu*^{xxxi} where the issue was regarding employment of children in match factories was challenged. The court held that Employment of children in the match factories when it is directly connected with the manufacturing process up to the final production of the product should not be permitted, at all.

A similar approach has also been taken in the case of *Rajangam, Secretary, District Beedi Workers union vs. State of Tamil Nadu and others*^{xxxii} where the court held that children working in tobacco manufacturing poses a great treat to the life and wellbeing of the child and therefore these children needs to be prohibited from working in these industries. In the case of *Bachpan Bachao Andolan vs. Union of India*,^{xxxiii} the Supreme Court and the other court had held that no child should be allowed to work in the circus industry.

Another case of *M.C. Mehta vs. State of Tamil Nadu*^{xxxiv} which had received continues cases regarding child exploitation. By the direction of the Supreme Court a committee was set up to examine the issue and form a report for the same. The Supreme Court had given passed its judgement based on the report and the recommendation given by the committee and held that and industries work is more hazardous in nature for a child to work.

A landmark case regarding Immoral Trafficking prevention Act was *Gaurav Jain vs. Union of India and others*^{xxxv} which was one of the most comprehensive judgement given in regard to child trafficking and child rights. The Supreme Court held that the children who have been affected have a certain right to equality of opportunity, dignity, care, protection and rehabilitation, so as to assume a role in the society without a stigma attached to them. The court also directed for a Central advisory Committee to formulate a scheme for the rehabilitation of children who are victim of both trafficking and prostitution.

INTERNATIONAL APPROACH

There are many conventions that have been passed for restoring the rights of the children and how to reduce trafficking of children such as Convention on the rights of the child, UDHR etc. Apart from this many countries such as USA and Russia also face different forms of child trafficking. USA has used a different approach for reducing child trafficking where as in Russia, where child sex trafficking has plagued the country.

United States of America: Over 2 million children are trafficked for sex worldwide. Out of those, around 250,000 live in the United States. 10,000 of those children are smuggled into America every year. According to UNICEF, cases of child trafficking have been reported in all the 50 states of the USA^{xxxvi}. The figures show that approximately, 46 children in America are sold into slavery every day^{xxxvii}. So, what's being done by the authorities to keep such activities in check?

Based on the US Department of state report on Trafficking in Persons, the US government has kept consistent the efforts to keep the trafficking in check. The victim assistance has continued to find funding. As compared to 2017, 2018 saw an increase in the number of victims served through the government. The basic service that is provided is the hotline that is easily accessible to the public. Apart from that, the officials have been given formal training and are told how exactly to identify the victims of trafficking. The various NGO's that provide traffic specific victim services have also been provided with additional funding, which in turn helps them to increase their resources, manpower and technology. Extra victim services such as medical and dental care, mental health and substance use disorder treatment, sustenance and shelter, translation services, employment opportunities, immigration assistance, and various other

services are provided for. The law enforcement agencies have been given additional training in cases of victim identification, assistance, recovery, and participation in the overall justice process. Various advocates have called for the law enforcement to be trained in cases on the linkage between substance use and human trafficking. The DHS has worked behind the scenes with more than 1,100 training sessions held with the NGOs and law enforcement agencies, providing them with additional assistance in victim protection.^{xxxviii}

The federal government has also set up a National Human Trafficking Resource Centre Hotline. The hotline answers questions and responds to crises in up to 170 languages and provides materials in over 20 languages.^{xxxix}

The statutory and legislative measures that are in place;

- **The Victims of Trafficking and Violence Prevention Act (TVPA).**
- **The Customs and Facilitations and Trade Enforcement Reauthorization Act of 2009.**
- **Intelligence Reform and Terrorism Prevention Act, 2004.**
- **Protect Act, 2003.**
- **Civil Asset Forfeiture Reform Act, 2000.**
- **The Mann Act, 1910.**

The penalties for those who are involved in the trafficking are stringent and harsh:

- There is a conviction for holding any person in peonage, which is a potential fine and a prison term of **20 years**. If a death arises out of kidnapping, sexual abuse or other aggravating factors, the maximum punishment goes up to a life imprisonment.
- Sex trafficking of children by fraud, force or coercion carries an enhanced penalty. Prison sentence of these offences is potentially a life imprisonment and a minimum of **10 years** in prison. It could be more, depending on the details of the offense
- The law prohibits and punishes any attempts and conspiracies that are relating to human trafficking. It provides for the forfeit of any such property that has been used in violation of the law, as well as any proceeds from the act. The law also includes clauses for the mandatory payment of restitution to the victim for the entire amount of the losses faced, as deemed by the court.

The efforts taken by the United States government have been commendable. From the setting up trafficking specific NGO's to providing an effective hotline for trafficking related issues, there have been so many compulsive efforts taken up. In the long run, these aid in preventing trafficking. There is still a long way to go for the United States, but they must be appreciated for the measures that are in place right now, which are way ahead of any other country around the globe.

Russia: Being one of the biggest hubs of trafficking in the world, Russia doesn't seem to be taking its trafficking issue too seriously. The recently concluded FIFA World Cup in Russia had resulted in the trafficking activities growing, as claimed by many NGO's.

According to the Global Slavery Index, there were in excess of a million victims of trafficking in Russia, in the year 2016. The conviction rates, however, are shockingly low. Just 28 people were convicted of sex trafficking and forced labour in 2013. In 2017, Russia's federal level investigative committee publicly reported a mere 19 investigations against trafficking.

The Trafficking in Persons Report by the U.S. Department of State states that Russia does not have a set national plan to combat trafficking, neither is there a designated agency in place to coordinate anti-trafficking measures. There are also no legislations in place that can implement an effective framework.^{x1}

The Government of Russia clearly hasn't done enough. There seems to be a rampant wave of corruption that has plagued the entire situation and it seems to be never ending.

The Russian Criminal Code deals with trafficking;

- **Article 127** prohibits trafficking for commercial sexual exploitation and forced labour. It provides for a punishment for upto **5 years'** imprisonment for trafficking crimes and may extend upto **15 years** in some cases.
- **Article 152** provides for a punishment for purchasing or selling of a minor of upto 5 years in prison. Mostly though, people involved in human trafficking are charged under Article 240 and 241, which involve affiliation with brothels and prostitution because it is easier to prove these in courts.
- There is also an asset forfeiture legislation that allows the prosecutors to forfeit the assets of people found to be involved in offence such as trafficking.

The efforts, as can be seen, have been minimal by the Russian agencies. Russia has stated that it will not provide federal statistics related to trafficking to the United States, following the Tier 3 rating that was given to it by the Trafficking in Persons Report prepared by the U.S. Department of State. Running away from the reality isn't something that would make the situation any better. The need of the hour for Russia is to take immediate action in response to the blatant human rights violation that is taking place in the form of trafficking. Allowing Russia to host a FIFA World Cup under such circumstances was a bizarre move and has just made matters worse, with regards to trafficking. In order to curb the trafficking issues, the corruption needs to be eradicated first. This can be done through the setting up of committees or commissions to look into the heart of the matter. As long as corruption exists, the trafficking numbers will be rising.

HUMAN RIGHTS FOR CHILDREN AND CONVENTIONS

Human rights exist in order to safeguard the most vulnerable section of the society, and that also includes children. These rights are the basic rights that are enshrined in the very roots of the Constitution. Child rights are equivalent to the rights given to any adult and they cannot be erased in any situation. The Child should be fully prepared to live an individual life in the society, and has the right to be brought up as per the ideals proclaimed in the Charter of the United Nations, and in particular within the spirit of peace, dignity, tolerance, freedom, equality and solidarity.^{xli}

These rights and principles are also included under the Universal Declaration of Human Rights (UDHR), Convention on the Rights of the child and many such other Conventions. Article 4 of UDHR provides that “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”^{xlii}

- 1) Convention on the rights of the child:** The United Nations Convention on the rights of the child is a treaty that aims to define the civil, political, economic, social, health and cultural rights of children. It defines a child as any human being under the age of 18, unless the national legislation states otherwise. Nations that sign to it are bound by the walls of international law. At present, 196 countries are party to this treaty.

The countries that have ratified the convention are mandated to report to, and appear before the United Nations Committee on the Rights of the Child. Their progress will be examined regularly with regards to the scale of implementation and status of children in the country. The reports are made available to the public.

There are three optional protocols in this treaty;

- a) The first protocol restricts the involvement of children in military conflicts.
- b) The second protocol prohibits the sale of children, child prostitution and child pornography^{xliii}. The second optional protocol on the sale of children, child prostitution and child pornography are one of particular importance.
- c) The third protocol relates to the communication of complaints.^{xliv}

2) Supplementary Convention on the Abolition of Slavery, 1956: - This is a treaty which builds upon the 1926 Slavery Convention. It deals with aspects such as forced labour, debt bondage, serfdom, child marriage, servile marriage and child servitude. Some of the important articles are as follows;

- **Article 1** - The parties commit to abolish and abandon debt bondage, serfdom, servile marriage and child servitude.
- **Article 3** - Criminalisation of slave trafficking.
- **Article 6** - Criminalisation of enslavement and giving others into slavery.
- **Article 7** - Definitions of "slave", "a person of servile status" and "slave trade".

3) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children: This is a protocol to the Convention against Transnational Organised Crime. It has been ratified by 173 parties.^{xlv} The protocol mandates the ratifying parties to prevent and combat trafficking in persons, aid and assist victims of trafficking. It also facilitates the safe return and acceptance of children who have been victims of cross-border trafficking.

The protocol defines the crime of trafficking in human beings as follows_ "*Trafficking in persons*" 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."

RECOMMENDATION

The Centre for Child Rights and Campaign against Child Trafficking (CACT) in its report in June, 2016 had come out with various recommendations for a movement against child trafficking. The recommendations are as follows^{xlvi}:-

1. Rescue with humanistic and rehabilitation-oriented approach, and conduct raids for the rescue of child, girls and women.
2. Strengthening law enforcement by training various organisation, ground level staff and child welfare departments. And also, prosecution of offenders must be stronger.
3. Investigation of crime of child trafficking needs to be considered at all stages of child trafficking i.e. sharing criminal intelligence with other police agencies on traffickers and all other accomplices. And also sharing crime data with other police agencies and CBI regarding vulnerable places and vulnerable people.
4. Law and policy reform in the present scenario: -
 - a. ITPA should be repealed and replaced by a new law.
 - b. Policy of penalising women and children who are foreign nationals for breaking immigration laws or travelling without ticket in India be stopped.
 - c. Age verification of victims appearing to be below the age of years.
5. Rehabilitation, repatriation and reintegration of the victims by providing: -
 - a. Immediate shelter for the victim.
 - b. Legal assistance for the victim.
 - c. Creation of panel of experts for victim assistance and support.
 - d. On-going support post-rescue and return to the home.
 - e. Every state government must have a sponsorship programme to provide for education and vocational training health care, and such other support to the survivors.
 - f. NGOs assisting with rescue, care, protection, rehabilitation, repatriation and follow-up responsibilities must be adequately funded for the carrying out such responsibilities.
6. Standards of Care which includes security, confidentiality, health and medical support, counselling and therapeutic support, legal aid assistance, restoration and repatriation, monitoring.

7. Victim compensation.
8. Moving Beyond Prevention of Re-trafficking to Preventing Trafficking for Commercial Sexual Exploitation.

NATIONAL HUMAN RIGHTS COMMISSION (NHRC)

The recommendation given by The National Human Rights commission in The Report of the NHRC Committee on Missing Children are as follows^{xlvii}:-

1. Priority Issue: - Missing Children' is a grave matter which is also a human rights issue. This issue needs to be made a "priority issue" by all stakeholders, especially the law enforcement agencies.
2. Missing Persons Squad/Desk in Police Stations: - The Committee recommends that every Police Station across the country should have Special Squad/Missing Persons Desk to trace missing children. This Squad/Desk should have a Registering Officer who should be made responsible of registering complaints of missing children.
3. Mandatory Reporting: - The State Police Headquarters should evolve a system of mandatory reporting whereby all incidents of missing children across the country should be reported to the newly constituted National Commission for Protection of Child Rights (NCPCR) within 24 hours of occurrence.
4. Involving Panchayat Raj Institutions Etc.: - The role of Panchayats and such bodies should be extended to:
 - a. Prompt reporting of missing children;
 - b. Prompt dissemination of intelligence, if any, to the law enforcement agencies;
 - c. Rendering assistance to law enforcement agencies for tracing children;
 - d. Provide timely feed-back to the law enforcement agencies about the return of the child.
5. Involving Ngo's: - There is need enforcement agencies to evolve some kind of a mechanism in Partnership with non-governmental organizations and social workers, whereby apart from rendering counselling to them, awareness raising activities are carried out.

6. Rescue of children in need of Care And Attention: - There is a need to identify “runaway children”, “abandoned children” “neglected children” and such “vulnerable children” who are often found roaming around places where they are particularly exposed to abuse and exploitation such as railway stations, traffic junction etc.
Their vulnerability increases due to a lack of support structures – family or otherwise.
7. Attention to transit points of trafficking & missing Children from across border.
8. Survey and Research: - The world of missing children is unknown and there is no proper study or research on this issue. Even today the exact figures of missing or traced children are not available. The existing legislation requires the State and district authorities to periodically carry out inspections/surveys of places where children are employed with a view to identifying missing children and those engaged in bonded labour/child labour.

CONCLUSION, SUGGESTIONS AND CHANGES REQUIRED

At present, the trafficking laws aren't harsh enough on the traffickers. The conviction rate in cases of trafficking is extremely low, when compared to the scale at which trafficking occurs in the country. This, though, is an issue worldwide. According to a report from the UN, the number of trafficked victims in Europe was higher in 2016, as compared to 2011, but only 742 people were convicted in 2016, whilst 988 were convicted in 2011.^{xlvi} This situation has to change and justice must be served to the victims. Government should come up with stricter penalties that have a deterrent effect, which in turn can lead to a reduction in the trafficking rates. Owing to the sheer number of trafficking cases and their complexities, specialised courts must be set up in each district to ensure efficient and speedier trials. There should be regular schemes introduced that are primarily aimed at protection and justice of the victims. After 2007, there haven't been any schemes aimed at combating trafficking, so it would be a good move to come up with a few more specialized schemes. The role of the NGO's has been stressed upon in this paper earlier, because it's pivotal that the NGO's are given a high responsibility in the whole process. With more funding and support from the government, the NGO's can expand their database and resources. Holding regular workshops, seminars etc. by the government for the NGO's and various agencies involved in the anti-trafficking process also further hones their skills. In India, lots of victims are penalised for crimes arising out of

trafficking such as prostitution. The officials should be trained and educated with regards to victim identification, so that this doesn't happen. Whilst India has seen the rise of trafficking cases in recent years, the judiciary has to be commended for taking the initiative to protect child rights. One instance is in the case of *Labours Working on Salal Hydro project vs. State of Jammu and Kashmir*,^{xlix} where the court had observed that construction work comes under the purview of hazardous employment and also under Article 24 of the constitution which talks about prohibition against employment of child labour only to factories, mines or other hazardous employments. In the case of *Bachpan Bachao Andolan vs. Union of India*^l, the court prohibited the working of children in the circus industry. Largely, the judiciary has put the onus on the state to combat crimes such as child trafficking and child labour. The effective implementation remains a challenge and a lot of work lies ahead, despite the current efforts made.

The following are a few suggestions and the changes that are need to be taken into Consideration:

1. ***The anti-trafficking bill, 2018*** has been passed by the Lok Sabha but is yet to be consented by the President. The main aim of the bill is to create a law for investigation in all cases of trafficking, and the protection and rehabilitation of the victims. It specifies the investigation procedures and rehabilitation process of victims at the district, state and national level. The certain purposes of trafficking are also specified in the bill such as forced labour, begging, inducing early sexual maturity or bearing children. An aggravated form of trafficking attracts a higher penalty. The main changes are the penalties prescribed. In most cases of trafficking, the bill sets out a higher punishment as compared to the prevailing laws. Ratifying of the bill would be a good start for changing the scenario of trafficking in India.
2. ***The NGO's should be given a pivotal role*** in the process of prevention of child trafficking. The funding from the government must increase, which in turn would lead to a rise in the manpower, resources and technology of such NGO's. In the case of United States of America, the NGO's are given a major responsibility in the overall justice process, right till the rehabilitation of children who have been trafficked. They even hold regular workshops to further enhance the skills of the NGO's. These little steps go a long way in mitigating trafficking as a whole.

3. ***A victim based approach:*** The trafficking legislations currently in place have an emphasis on the penalties and punishments to the trafficker. At some point, the victim should be given the priority. There doesn't seem to be that focus on the victim. Schemes must be passed that provide mental assistance, rehabilitation processes and compensatory plans for the victims of trafficking. The problem doesn't end once the victim is recovered. It's not easy for a child that has been trafficked to smoothly transition back into the society. Factors such as mental trauma start to kick in and it's important that the state provides for assistance in such cases.
4. ***Responsibility of media in respecting the privacy of the victims:*** While making national headlines out of the victim is good for the TRP's and numbers of the channels, it doesn't help the victims and their families. The mental side of a child is very sensitive. Exposing the victims and their stories to the entire nation makes it difficult for the victim to get back into the society and lead a normal life. In cases of child trafficking, the state must do its' job effectively, without making a national story out of it. Additionally, the court procedures in such cases should be private and not open to the public.
5. ***Speedy trials:*** The anti-trafficking bill of 2018 has laid an emphasis on this aspect that, for long, has needed to be addressed. As per the bill, there would be the setting up of specialised designated courts in each district, in order to ensure speedier trials. The cases often get dragged on for years with the traffickers freely roaming about in the society.
6. ***Taking inputs from former victims of trafficking:*** The government can take into consideration inputs and suggestions from the victims who have survived trafficking, with regards to how it took place, the various stages involved etc. This could be a good way of finding out loopholes in the methods that are used by the traffickers.
7. ***Continuing mandamus*** is a tool that must be used by courts in cases of child trafficking. Because corruption is a constant companion to trafficking, the courts must take up a higher responsibility and ensure that their orders are strictly complied with. Keeping in mind victims as well, the courts must ensure that the compensations ordered must be duly paid to the families that have been affected and that the state is taking due care of the victims, rather than leaving them to dry. There is the onus on the state to

ensure the well-being of the victims of child trafficking and if the courts must take a step further and make sure that implementation is complied with, so be it.

8. **Regular schemes by the government:** When it comes to schemes, the prominent one is the Ujjwala scheme. The scheme was introduced in December 2007 and is aimed at serving the victims through rehabilitation, reintegration etc. The reality is that the Ujjwala scheme is the only prominent one. There seems to be no other well-known scheme that is aimed at combating child trafficking. The Government should regularly introduce victim centric schemes that are comprehensive in terms of compensation, rehabilitation and recovery.

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