

# **TRAFFICKING AND SEXUAL EXPLOITATION OF WOMEN AND CHILDREN IN INDIA :**

## **CHALLENGES IN EXISTING LAW FRAMES AND THE WAY FORWARD**

### **GROUP 6 PRESENTATION**

**04 MARCH 2022**

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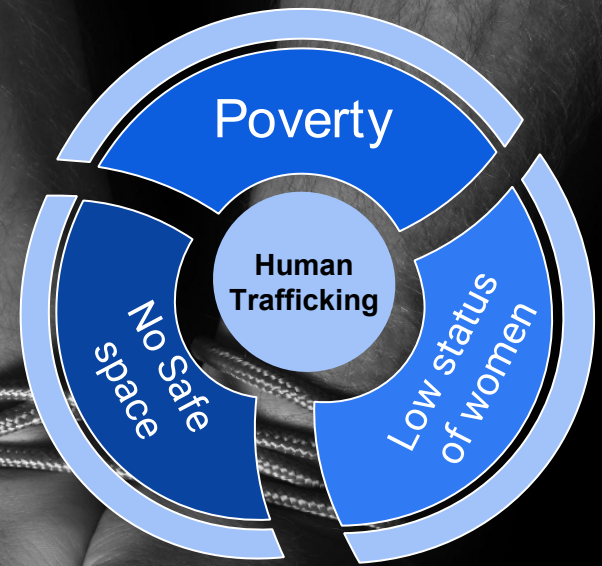
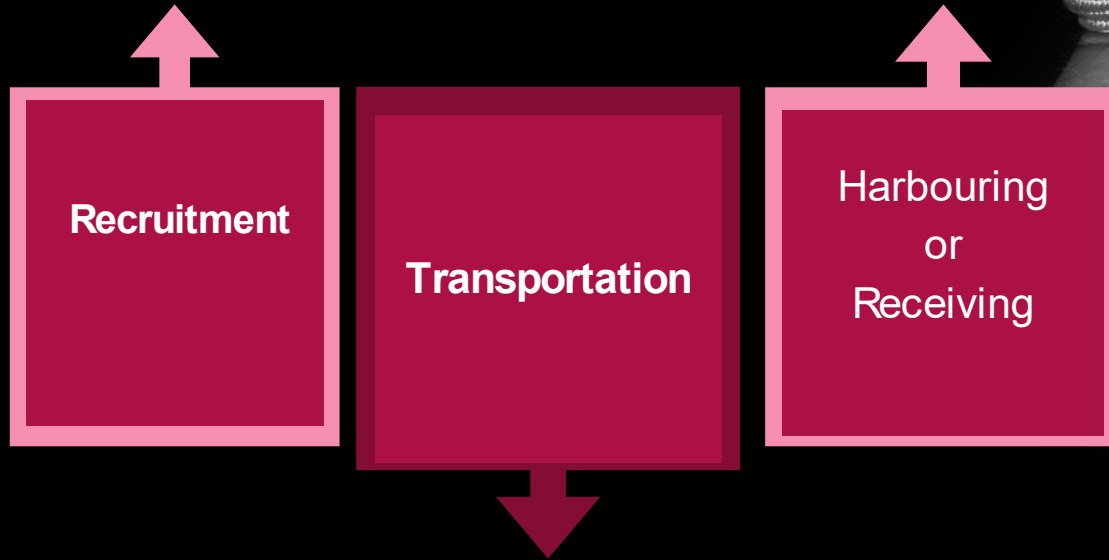
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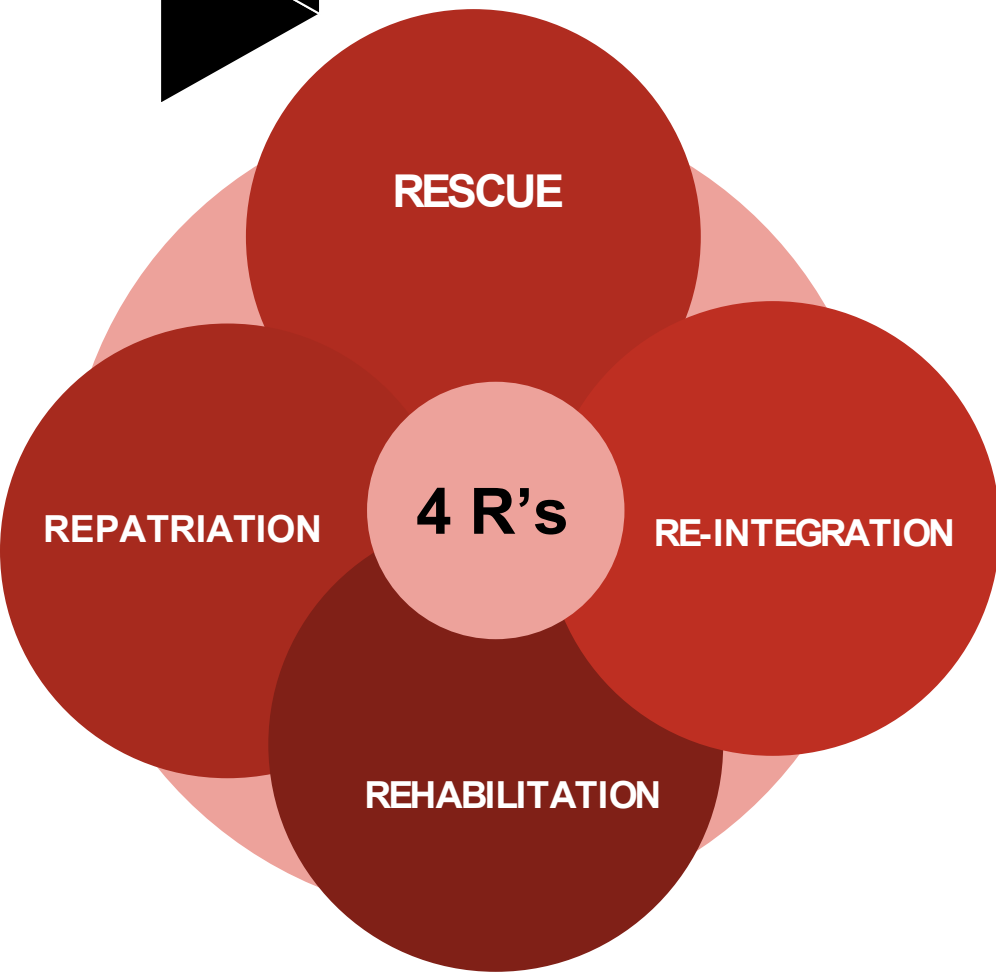


# INTRODUCTION



# INTRODUCTION

- **Trafficking of women and children for commercial sexual exploitation is an organized crime that violates basic human rights. India has emerged as a source, destination and transit for both in-country and cross border trafficking. The problem of trafficking of women and children for commercial sexual exploitation is especially challenging due to its myriad complexities and variation. Poverty, low status of women, lack of a protective environment etc. are some of the causes for trafficking.**
- **The widespread contemporary exploitation of men, women and children is unacceptable to people of conscience the world over. Trafficking in human beings involves the transportation, harbouring or receipt of persons by means of threat, coercion, abduction or fraud for the purpose of exploitation. The problem of human trafficking, particularly in women and children has emerged as grave social issue which is one of the most serious affronts to the dignity and human rights of them.**
- **It is a gross commercialization and commodification of innocent human lives. Though it is a borderless crime, India among many South-Asian countries is rapidly used as a source, transit point as well as destination for the traffickers. It is just not about the violation of human rights but it is the defeat of human rights.**



No. of the sufferers released  
from trafficking under sexual  
exploitation for prostitution  
(NCRB)

2014 : 4743

2015 : 9483

## **HUMAN TRAFFICKING IN INDIA - 2020**

Latest numbers from the National Crime Records Bureau (NCRB) show, in 2020, **1714** human trafficking cases were reported under IPC, while **4709** persons, including minors and adults, were trafficked across India





## FORCED LABOUR

Family gives up a child

Child is sold to a shopkeeper

S/he works without pay

Receives minimal nutrition and can't attend school

## SEX TRAFFICKING

Transportation of women on fake promises

Are kept captive and forced into prostitution

Captor controls the money

## DEBT BONDAGE

Victims under high debt

Are transported to diff country for work

Looted by the captor and forced to do the labour

## CHILD SEX TRAFFICKING

Child run away case

Approached and seduced by pimp

Coerced into prostitution

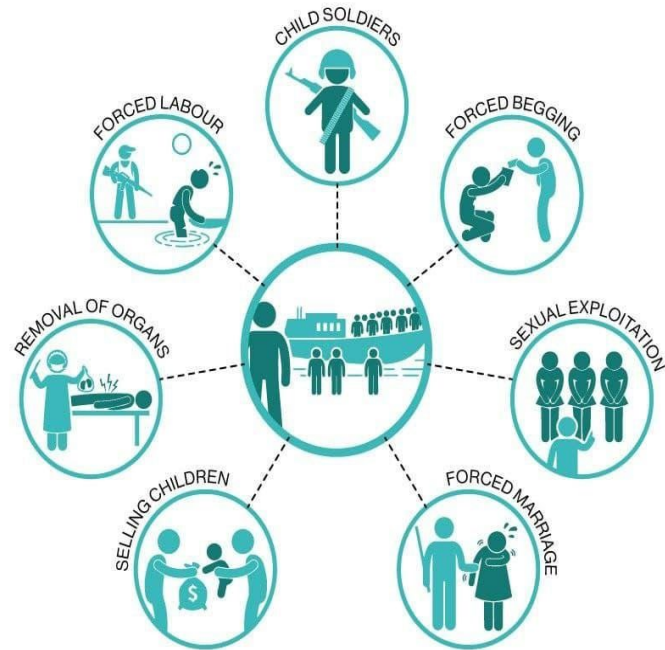


## Purpose of Human Trafficking - 2020

Human Trafficking data published is based on annual data as provided by States/UTs from their Anti human Trafficking Units

| <u>S. No</u> | <u>Purpose of Human Trafficking</u>  | <u>Total (all India)</u> |
|--------------|--------------------------------------|--------------------------|
| 1            | Forced Labour                        | 1452                     |
| 2            | Sexual Exploitation for Prostitution | 1466                     |
| 3            | Other forms of sexual exploitation   | 0                        |
| 4            | Domestic Servitude                   | 846                      |
| 5            | Forced marriage                      | 187                      |
| 6            | Petty Crimes                         | 11                       |
| 7            | Child Pornography                    | 14                       |
| 8            | Begging                              | 10                       |
| 9            | Drug Peddling                        | 0                        |
| 10           | Removal of Organs                    | 0                        |
| 11           | Other reasons                        | 694                      |

**PEOPLE ARE TRAFFICKED  
FOR MANY EXPLOITATIVE  
PURPOSES**



# Constitutional Provisions on Trafficking

Trafficking in Human Beings or Persons is prohibited under the Constitution of India. The specific provisions relates to Article 23 (1) of the Constitution which is as follows:-

*'Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law'.*

Taking note of the relevant provisions of the Constitution, viz. Arts 23, 21, 13, 14, 15, 16, 38, 39(f), 46, 32, etc., and the provisions of Immoral Traffic (Prevention) Act, 1956 and Juvenile Justice Act, 1986, the Supreme Court came to the conclusion that prostitutes have a right to enter the social mainstream and their children have right to equality of opportunity, dignity, care, protection and rehabilitation so as to be part of the mainstream of social life without any pre- stigma attached on them.

- **Section 370:** Trafficking of persons: offence and its punishment
- **Section 370 A:** Exploitation of a trafficked person
- **Section 371:** Habitual dealing in slaves
- **Section 372:** Selling minor for purpose of prostitution etc.
- **Section 373:** Buying minor for purposes of prostitution etc.

## Anti Trafficking Bill

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

### Key features:

- Covers new forms of aggravated trafficking
- Prescribe stringent punishment
- Institutional mechanism from district to national level
- Time bound trial and repatriation
- Immediate protection of rescued victim
- Rehabilitation not contingent on criminal proceedings

Government of India  
Ministry of Women and Child Development



## KEY FEATURES

➤ The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021 proposes that any person committing an offence of “trafficking in persons” shall be punished with imprisonment not less than seven years but which may extend to ten years and shall also be liable to a fine of at least one lakh rupees

➤ NIA shall act as the

national investigating and coordinating agency responsible for prevention and combating of trafficking in persons

➤ A national anti-human trafficking committee will be formed for ensuring overall effective implementation of the provisions of this law

➤ State and district level anti-human trafficking committees will also be constituted



# **AMENDMENTS TO IMMORAL TRAFFIC PREVENTION ACT, 1956**

**To protect the victim:-•New section where Trafficking is defined**

- 1. Age of child raised from sixteen years to eighteen year.**
- 2. Deletion of Sections which re-victimized the victims.**
- 3. *In-Camera* proceedings in court cases to safeguard privacy of victims.**
- 4. New Section 5B which provides punishment for trafficking in persons**
- 5. Enhancement of punishment to traffickers, brothel keepers, pimps etc.**
- 6. If the trafficked victim is a child the punishment can extend to life.**
- 7. New section for punishment for a persons who visits brothel for sexual exploitation.**

# Ritual Sex Slavery: The Life of a Devdasi

- In India, a devadasi was a female artist who was dedicated to worship and serving a deity or a temple for the rest of her life. The dedication took place in a Pottukattu ceremony that was somewhat similar to a marriage ceremony.
- It is system in which a female before reaching the age of puberty is married or dedicated to a temple, temple priest or some local deity. It was a common feature of all temples in Ancient India but continues to exist even today in some parts of India.
- The word 'Devadasi' is made up of two Sanskrit words 'Deva' which means God and 'Dasi' meaning a 'female servant'. It is a system of female prostitution with religious sanctions. Most of the girls who were forced into this practice belonged to low castes such as dalits.
- This tradition was made illegal in India in 1988
- In the present times these women have lost their auspicious and sacred status and are forced to live marginalized lives. Their problems are given negligible recognition and require strict enforcement of their social and political rights.
- This practice also violates a number of International treaties and conventions for women and child rights like the International Covenant on Civil and Political Rights, Convention on the Elimination on all Forms of Discrimination against Women , Universal Declaration of Human Rights, Convention on the Rights of the Child and Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

# Highlights of the BLS(A) Act of 1976

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The BLS(A) Act renders bonded labour practices illegal. This pan-India act states all people held in bonded labour are to be freed, with all obligations to and agreements with the employer made void

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The act also holds those responsible who enforce bonded labour, took advancements for the purposes of bonded labour, abets any offence under the act, and more

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Under this act, survivors of bonded labour are freed from all corresponding debt, and are entitled to repossessing all belongings and homesteads

## 1 IDENTIFICATION

Conducting survey and regular monitoring on the work sites & industries

## 2 LIBERATION

Operating rescue work to release the identified bonded laborers and

## 3 REHABILITATION

Implementing Central Sector Scheme for the rehabilitation of the

## 4 PROSECUTION

Enforcing punishment for employing bonded labour, bonded debt &

## 5 SENSITIZATION

Conducting public awareness meetings and legal education to end

## 6 PROTECTION

Regularizing functions and performance of the Vigilance Committees for the protection & welfare



# **Anti-Human Trafficking Unit**

- The Anti-Human Trafficking Unit is an integrated task force to prevent and combat human trafficking of any form. The Ministry of Home affairs funds for this unit. Trained personnel are drawn from police or other related departments for this unit.
- The AHTU recommends advisories and guidelines from time to time to the States and Union Territories to strengthen law enforcement in the matters of human trafficking.
- The Unit also acts as a link with the three ministries i.e. M/O EA, Ministry of Labour Employment, Railways, etc.
- AHTU holds and assists state-level conferences or seminars with an idea to sensitize the concerned officers which include the Judicial, Police officers, and others in the State on human trafficking.
- The primary objective of the Anti-Human Trafficking unit is enforcement of law and co-operation with the other concerned agencies like NGOs, Shelter homes, etc. for care and rehabilitation of victims.
- AHTU is the organization that addresses the gaps in the law enforcement system in terms of trafficking and serves as an interface by enhancing cooperation between the concerned agencies who have the expertise in assisting these victims according to the prescribed mechanism.

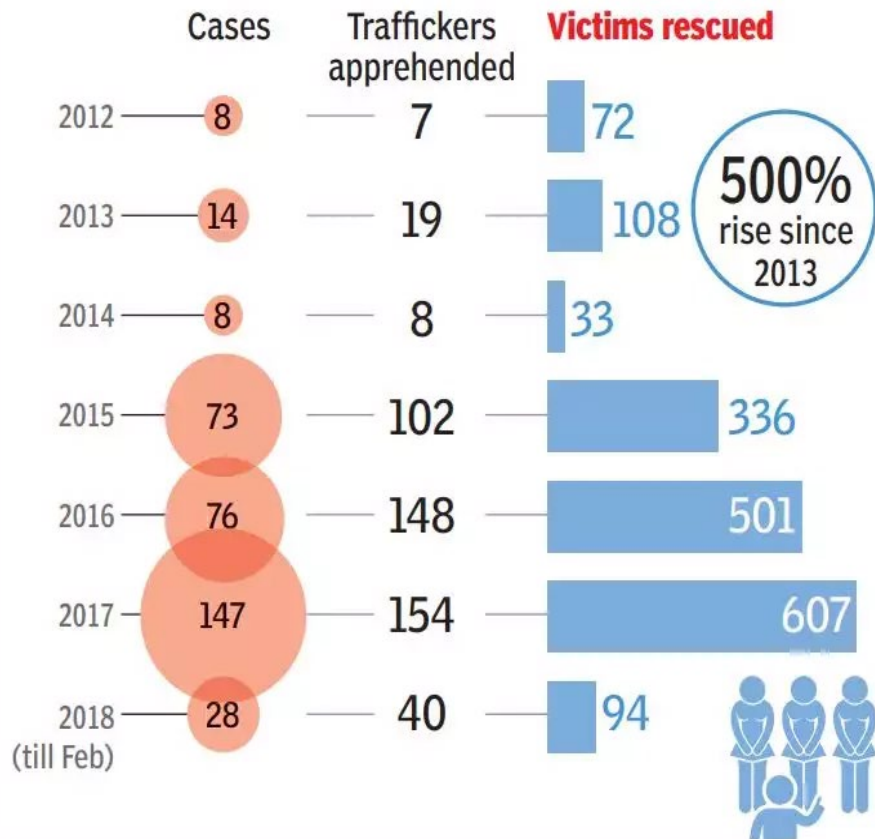


- In 2020 due to the pandemic, there was a sudden rise in the human trafficking crimes for which the Ministry of Home Affairs had released Rs. 100 Crore from the Nirbhaya Fund for strengthening the existing AHTU's as well as establishing new AHTU's for all the 739 districts of the States/Union Territories in India as well as in International borders.
- The AHTU has to take certain measures which includes filing of the report at the earliest ,Implementation and identification of accurate resources ,Constant monitoring and evaluation, Always updating the Government partners on all the investigation procedures and most importantly training the officers with the right attitude in order to protect the

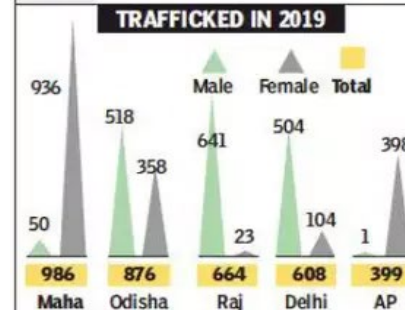
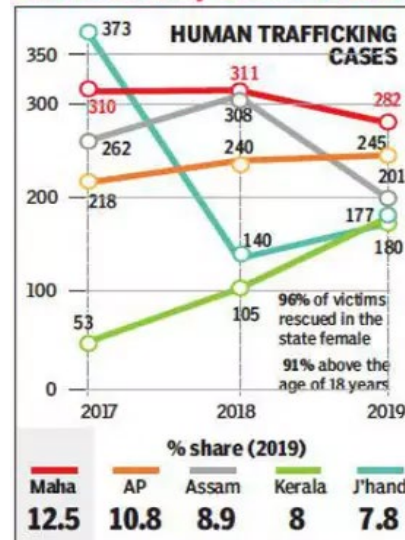


# MOST CASES REPORTED IN 2017

## Human trafficking reported on Indo-Nepal border



# IN STATE, 986 TRAFFICKED, 1,020 RESCUED



**VICTIMS FALL IN DEBT TRAP**

**243** sex workers who had been rescued in raids were surveyed through a study conducted by the NGO Sangram and the Netherlands-based group Rights4Change

It was found that a large percentage of the women returned to sex work after their release from shelter homes

“Those rescued are faced with debts due to the loss of livelihood during incarceration. They are then subjected to debt bondage —Meena Seshu | ACTIVIST

| RESCUED IN 2019 |      |        |       |
|-----------------|------|--------|-------|
| State           | Male | Female | Total |
| Maharashtra     | 42   | 978    | 1,020 |
| Odisha          | 518  | 358    | 876   |
| Rajasthan       | 641  | 23     | 664   |
| Delhi           | 504  | 104    | 608   |
| AP              | 0    | 425    | 425   |

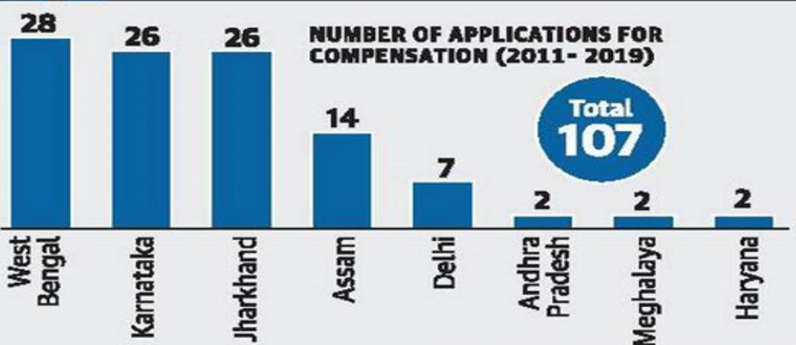
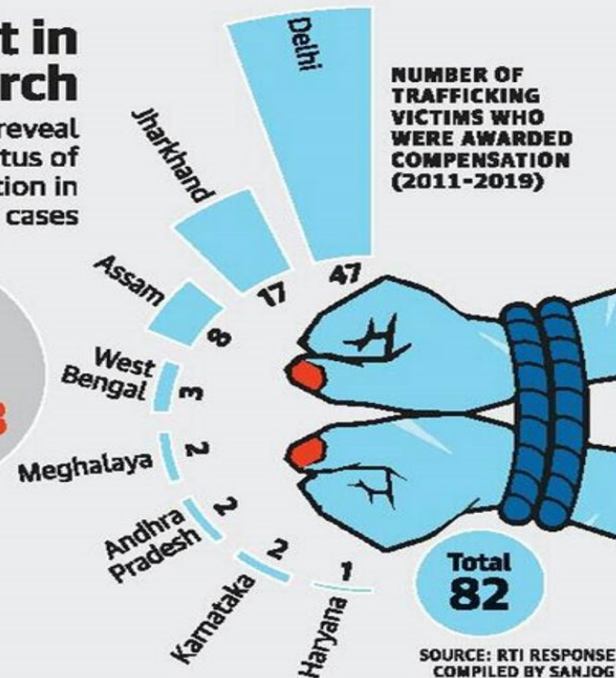
## Left in the lurch

RTI queries reveal poor status of compensation in trafficking cases

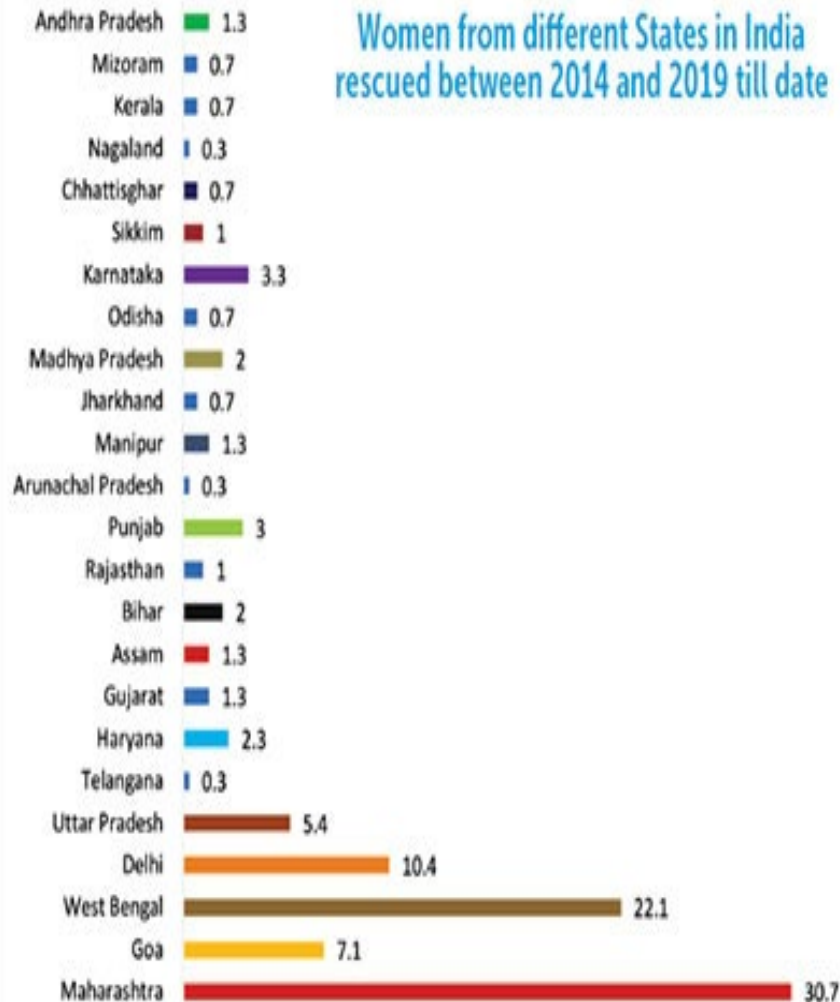
Number of cases of human trafficking (2011-2018)

**35,983**

SOURCE: NCRB REPORTS



## Women from different States in India rescued between 2014 and 2019 till date





# SAARC CONVENTION

1. **SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution [Ratified].**
2. **SAARC Convention on Regional Arrangements for Promotion of Child Welfare in South Asia [Ratified].**
3. **SAARC Charter where trafficking issues to be addressed at regional level.**





## **International Legal Instruments**

1. **UN Convention on the Rights of the Child (CRC) and its Optional Protocols (Sale of Children, Child Prostitution and Child Pornography) [Ratified]**
2. **Convention on Elimination of all forms of Discrimination against Women (CEDAW) [Ratified]**
3. **UN Convention Against Transnational Organized Crime [Ratified]**
4. **Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially. Women and Children supplementing above Convention [Ratified]**
5. **Millennium Development Goals (MDGs).**



# **MEMORANDUM OF UNDERSTANDING (Bangladesh & Myanmar)**

## **INDIA-BANGLADESH**

Many statistics about trafficking and estimates of its scope are circulated globally. In 2002, the International Labour Organization (ILO) estimated that each year 1.2 million children are trafficked for the purposes of labour or sexual exploitation globally. A UNICEF report says that approximately 400 women and children in Bangladesh are victims of trafficking each month. Another study reports that approximately 300,000 Bangladeshi children and women between the age group of 12- 30 were trafficked to India alone in the last ten years. **MoU**: Bilateral Cooperation for Prevention of Human Trafficking in Women and Children, Rescue, Recovery, Repatriation and Re-integration of Victims of Trafficking, June, 2015.

## **INDIA-MYANMAR**

**MoU** : Prevention of Trafficking in Persons; Rescue, Recovery, Repatriation and Reintegration of victims of Trafficking.

**Objective**: To strengthen friendship bonds and cooperation between India-Myanmar for preventing all forms of human trafficking and protecting and assisting victims of trafficking by increasing bilateral cooperation on the issues of prevention, rescue, recovery and repatriation related to victims of human Trafficking.

# **NHRC advisory on Combating Human Trafficking**

Owing to limited access to shelters and support structures for life and livelihood the vulnerable sections fall prey to the menace of human trafficking. As per the Annual Report of the National Crime Records Bureau 2020, 1714 cases of trafficking with highest in state of Maharashtra and Telangana with the highest purpose being Sexual Exploitation for Prostitution. These cases include a total of 4709 victims. It includes a 24\*7 toll free helpline number to be in place for real time reporting, tracking and monitoring cases related to human trafficking. Installation of special surveillance on railway stations, bus depots, airports, routes to remote villages etc to trace children without adult supervision, suspicious persons and to identify vulnerable spots in the region concerned with trafficking. Ensuring the testimonies of rescued victims are collected through video conferencing in courts especially in cases where the victims are repatriated or released from protective homes and the data to be updated to ensure quick information sharing between districts and states to combat human trafficking. Vigilance Commissions (VC) to be set up at village level for recording the details of migrants travelling and to intercept cases of trafficking and helping the community in filing cases of trafficking. Necessary arrangements must be made at the village level for identifying the children who are not attending schools or dropouts. Vacant posts in Child Care Institutes (CCI), District Child Protection Units (DCPUs) etc need to be filled on priority basis by the State administration.

# Highlights of MHA Advisory to States on Preventing and Combating Human Trafficking

## Strengthening Law Enforcement



- Set up and equip AHTUs
- AHTUs to have Integrated task force comprising officials from Police, Women and Child Development, Labour Dept., DLSA, other govt. dept., NGOs
- Trainings
- Victim-centric investigation
- Proactive intelligence gathering at hotspots, railways etc.
- Vigilance by Border Guard Officials
- Traffickers Database

1/2



NCW

#RoshniForWomen  
#EndHumanTrafficking



IJM



## **Functioning of District Administration**

**District Legal Service Authorities (DLSAs)** must create awareness among the people about issues related to trafficking with the help of NGOs, Para-legal Volunteers and Social Media Platforms. DLSAs should appoint an advocate to provide requisite legal aid to the survivors in protected homes. DLSA should provide adequate compensation to the survivors of human trafficking in accordance with section **357A of Victim Compensation Scheme in the Criminal Procedure Code (CrPC)**.

**The Child Welfare Committee (CWC)** must proactively take up the cases of rescued children in need of care and protection. The Juvenile Justice Board should conduct its proceedings within the premises of observation homes. Both **CWC & JJB** should discharge their roles and responsibility in sync with provisions of the Juvenile Justice (Care and Protection ) Act 2015. Rehabilitation cum Placement Officer at CWC must monitor the progress of the individual care plan of the child, while DLSA must follow up with the cases of adult men and women survivors. A District Nodal Officer must be appointed from the Labour Department to follow up on cases of child labour.

**Not everything should be for sale.**

# **HUMAN RIGHTS? PRICELESS!**

**Every person is precious and  
shouldn't be exploited.**

## **Ujjawala Scheme Objectives**

- **Prevention of trafficking of children and women for commercial sexual exploitation by means of social mobilization and awareness generation programmes, the participation of local communities, generation of public debates, and opinions through seminars/workshops and other innovative activities.**
- **Facilitating the rescue of victims and placing them in safe custody.**
- **Provision of rehabilitation services to the victims through the provision of basic amenities and needs like food, clothing, shelter, medical help, legal aid, guidance, counseling as well as vocational training.**
- **For working towards reintegrating the victims into their family and the society at large.**
- **Facilitating cross-border victims to repatriate into their home country.**

**You and I, we can help end human trafficking.**

# COMPONENTS OF UJJAWALA SCHEME

1. **PREVENTION** -To fulfill the prevention component, awareness on this topic needs to be spread by organising workshops and seminars on sensitive issues like human trafficking in areas where people suffer due lack of resources, poverty, and lack of education. People should be made aware of different techniques like street plays and other art forms like printing pamphlets, leaflets and posters.

2. **RESCUE** - With the help of frontline workforces like NGO's, women and youth groups, Police, Panchayat and especially information shall be received if any such illegal activity is being reported then they shall take immediate action.

The scheme will deliver food, shelter, toiletries, clothing, trauma counseling, medical aid etc. during the temporary period between rescue and production before the concerned authorities.

3. **REHABILITATION**- It was decided by the higher authorities that Protective and Rehabilitative (P&R) Homes will be established to deliver elementary facilities such as food, clothing, medicines, hospitalisation, appropriate linkages to de-addiction centers, and other matters of private use. The sufferers experience extreme torture psychologically so they need a lot of help as soon as possible through a qualified clinical psychologist and psychiatrist. Victims have to claim their right to property, matrimonial rights, divorce, maintenance and custody of children, so they need appropriate legal aid which would comprise of court work and documentation connecting to the sufferers court case.

4. **RE-INTEGRATION** - Setting of Half-Way Home because a half-way Home is for victims who are lucratively working and can live semi-independently with least management.

Restoration to Families - This would cover the travel of the victim from the terminus area to her hometown and the expenditures experienced to her food throughout her travel and incidental expenditures.

5. **REPATRIATION**- Facilitate repatriation procedures - The scheme would provide for expenses incurred in fulfilling various formalities for obtaining a repatriation order for the victim.



# RECOMMENDATIONS

We need to put the efforts to prevent the commercial sexual exploitation and sex trafficking in India. Efforts to identify and respond to the commercial sexual exploitation and sex trafficking are emerging, with some noteworthy examples, but efforts to date are largely under supported, insufficient, uncoordinated, and unevaluated.

- With the aid of community mobilisation and participation of local societies, programmes spreading alertness among different age groups, organising workshops/seminars we all can put an end to this menace.
- Save victims from where they were exploited and put them in harmless guardianship.
- Deliver therapy services and also elementary facilities such as accommodation, nourishment, clothing, medical treatment.
- Facilitate reunion of the sufferers into the family and society at large.



# Helplines for Women's Safety and Combating Human Trafficking by Government of India

- 15100** National Legal Aid Helpline, NALSA
- 1091** Women Helpline, MWCD
- 181** Women Helpline (Domestic Abuse), MWCD
- 1094** Missing Children and Women,  
Deputy Commissioner of Police
- 1091, 1291** Senior Citizen Helpline, MWCD
- 1098** Children in Difficult Situation, MWCD
- 112** Emergency Helpline, MWCD

NALSA: National Legal Services Authority

MWCD: Ministry of Women and Child Development



#RoshniForWomen  
#EndHumanTrafficking





## NATIONAL HUMAN RIGHTS COMMISSION, INDIA

*Certificate*

### Human Rights Pledge

Certified that

[Redacted Name]

has solemnly pledged to protect and promote human rights of all, at all times, without any discrimination and has also pledged not to violate the human rights of others, directly or indirectly, through actions, words or deeds.

5577794689



Jaideep Govind

**Secretary General**

National Human Rights Commission, Manav Adhikar Bhawan Block-C, GPO Complex, INA, New Delhi – 110023  
Tel.No. 24651330, 24663333. Fax No. 24651332, Website: [www.nhrc.nic.in](http://www.nhrc.nic.in)

TRAFFICKING AND SEXUAL EXPLOITATION OF WOMEN AND  
CHILDREN IN INDIA: CHALLENGES IN EXISTING LAW FRAMES AND  
THE WAY FORWARD

NATIONAL HUMAN RIGHTS COMMISSION, ONLINE SHORT TERM INTERNSHIP

FEBRUARY, 2022

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## **ABSTRACT**

Trafficking in women and children is one of the most despicable forms of violations of human rights. Being a complex issue, it has been given short shrift from the academia, legal field and the civil society. It has often equated with prostitution but that is the half story. This paper is an attempt to present the trends and dimensions of trafficking from a human rights paradigm and demystify several issues surrounding it. It will also shed some light on the role of NGOs, the civil society and the family. The paper is based amply on the secondary literature and primary experiences. The human rights discourse is profoundly silent on this major issue which snatches away most of the human rights from the most vulnerable group. It has immense implications for future course as India is fast becoming a source, transit point as well as a destination for traffickers.

This paper tries to analyse the existing legislations and subsequently point out the lacunas that are present in the law. Subsequent conclusive comments and recommendations are also provided.

**Key Words** - *Trafficking in women and children, legislations, dimensions of trafficking, human rights*

## **INTRODUCTION**

The widespread contemporary exploitation of men, women and children is unacceptable to people of conscience the world over. Trafficking in human beings involves the transportation, harbouring or receipt of persons by means of threat, coercion, abduction or fraud for the purpose of exploitation. The problem of human trafficking, particularly in women and children has emerged as grave social issue which is one of the most serious affronts to the dignity and human rights of them. It is a gross commercialization and commodification of innocent human lives. Though it is a borderless crime, India among many South-Asian countries is rapidly used as a source, transit point as well as destination for the traffickers. It is just not about the violation of human rights but it is the defeat of human rights. It is not only the human rights which are failing but the society and institutions are also to share the blame. In the context of increasing violence and deep-seated patriarchal values the traffickers' jobs become easy. Hence trafficking in women and children, which is the most vulnerable group, is the sordid tale of violation of human rights and dignity.

M/o women & child development had laid an all-encompassing structure for stoppage of trafficking for Rescue, Rehabilitation and Re-Integration of Victims of Trafficking for Commercial Sexual Exploitation-Ujjawala. It came in recognition in the year 2007 to put an end to this menace. It's main agenda was to regulate the 3R's i.e., Rescue, Reintegration, and Rehabilitation of the victims who were trafficked for commercial sexual exploitation. According to the data provided by the NCRB, the sufferers released from trafficking under sexual exploitation for prostitution is 4743 & 9483 for the year 2014 & 2015 respectively.<sup>1</sup>

## **OBJECTIVE**

1. To analyse the existing legislations in depth.
2. To suggest reforms for enhancing the same.
3. To provide a descriptive analysis of the legislations.

## **DESCRIPTIVE ANALYSIS – NATIONAL LEGISLATIONS**

### **1. CONSTITUTION OF INDIA**

#### **Article 23 - Prohibition of 'Traffic in Human Beings' and Forced Labour**

- (1) Traffic in human beings and begar and other similar forms of forced labour are prohibited, and any contravention of this provision shall be an offence punishable under law.
- (2) Nothing in this article shall prevent the state from imposing compulsory service for public purposes. And in imposing such service the state shall not make any discrimination on grounds only of religion, race, caste, or class or any of them.

Article 23(1) prohibits “*traffic in human beings and begar and other forced labour*”. Traffic in human beings and forced labour militates against human dignity. Article 23 protects the individual not only against the state but also private citizens under Article 35, the Parliament is authorised to make laws for punishing acts prohibited by this article.

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<sup>1</sup> Live Law, <https://www.livelaw.in/14226-victims-rescued-trafficking-sexual-exploitation-prostitution-last-2-years/>, (Last visited on Feb 27, 2022)



Article 23 explicitly prohibits the following discussed practices:

- a) Beggar- Beggar means forcing a person to do some work against his will and that on the basis of non-payment or grossly inadequate payment. However, this condition shall not apply to a case where forced labour is a part of punishment as in a prison house or some such work forms part of the service conditions or agreement.
- b) Bonded Labour/ Debt Bondage- Article 23 prohibits bonded labour as it is a form of forced labour as per this article. This is a practice under which a person is forced to work to pay off his debt. The money they get is very little and the work they do gets doubled. Often these debts get passed over to the next generations. Hence, it is known as a form of forced labour.
- c) Traffic in human beings- It means to deal in men and women like goods such as to sell or let out or sell or let out or otherwise get them disposed. It includes immoral traffic in women or girls or subjecting children to immoral or such practices. For this sake, the *Suppression of Immoral Traffic in Women and Girls Act, 1956* had been put in operation. The validity of this Act has been upheld by laying down that it is not inconsistent with the fundamental right to carry on a business, trade or profession.<sup>2</sup>

Devdadsis are also covered under the term “traffic in human beings”. Though ‘slavery’ is not expressly mentioned, there is no doubt that the expression ‘traffic in human beings’ would cover it. (Dubar v Union of India<sup>3</sup>)

In Gaurav Jain v Union of India<sup>4</sup> it was held Children of the prostitutes have a right to equality of opportunity, dignity, care, protection and rehabilitation so as to be a part of the mainstream of social life. The Supreme Court held that the children of the prostitutes have the right to equality of opportunity, dignity, care, protection and rehabilitation so as to be part of the mainstream of social life without any pre-stigma attached on them. The Court directed for the constitution of a committee to formulate a scheme for the rehabilitation of

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<sup>2</sup> Shama v State of UP, AIR 1959 AII. 57

<sup>3</sup> AIR 1959 AII. 57

<sup>4</sup> AIR 1997 SC 3021

such children and child prostitutes and for its implementation and submission of periodical report of its Registry.

Taking note of the relevant provisions of the Constitution, viz. Arts 23, 21, 13, 14, 15, 16, 38, 39(f), 46, 32, etc., and the provisions of Immoral Traffic (Prevention) Act, 1956 and Juvenile Justice Act, 1986, the Supreme Court came to the conclusion that prostitutes have a right to enter the social mainstream and and their children have right to equality of opportunity, dignity, care, protection and rehabilitation so as to be part of the mainstream of social life without any pre- stigma attached on them.

- d) Other forms of forced labour - Any other practice which comes under Article 23 is also prohibited by this Article.

In Sanjit Roy v. State of Rajasthan<sup>5</sup> The State employed people for certain work under the Famine Relief Act. The people were badly hit by famine, thus the State employed them. However, these people were paid even below the minimum wages on the ground that the money is given to help them in meeting the famine situation. Bhagwati J. held that-

*“The payment of wages lower than the minimum wage to a person employed in Famine Relief Work is violative under Article 23. The State is not allowed to take undue advantage of the helplessness of such people with an excuse of helping them to meet the situation of famine or drought.”*

In M.P. State in Devendra v. Nath Gupta, The Madhya Pradesh High Court decided that even though there was no remittance, instructors were required to offer assistance for "public purposes," including schooling studying, family arranging, rundown of voters, general races, and so on that didn't negate Article 23.

In the case of Bandhu Mukti Morcha case where the bench headed by Justice P.N. Bhagwati expressly mentioned: *“The Right to live human dignity, free from exploitation enshrined under Article 21 derives its life and breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Article 41 and 42 ”.*

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<sup>5</sup> AIR 1983 SC 328

### **Relationship between Human Trafficking and Fundamental Rights**

Fundamental Rights as provided under part III of Indian Constitution have unequivocally claimed the wrongness of human trafficking in terms of morality and legality both. There is a well-established link between Human Rights, Fundamental Rights, and Human Trafficking. Indian Constitution recognizes the fundamental right of non-discrimination, equality, education, constitutional remedies, freedom of speech and expression that includes right of free movement, right to life and liberty, etc.

Article 23 talks about the prohibition of traffic in human beings and forced labour and provides its citizens altogether a right against trafficking. And if there have been no separate article or fundamental right for prohibition for human trafficking it would have been a violation of fundamental rights by the virtue of the golden triangle of fundamental rights that is constituted by Article 14, 19 and 21.

Dealing further with this, Article 19 protects certain rights regarding freedom of speech and expression that protects the right to move freely throughout the territory of India under sub-clause (d). It is one of the directly related rights and there are numerous rights that are going to be affected or violated as of right of practicing the profession of carrying business, it is more of a consequence of human trafficking.

Article 21 protects the very Right to Life and Liberty of people in India, both citizens, and non-citizens. Referring to the interpretation made in the case of Kharak Singh v. State of Uttar Pradesh<sup>6</sup> It was stated: *life is not a mere animal existence and there is more to it*. Hence humans cannot be sold like commodities or animals hampering their Right to life. As very rightly said in the case of Maneka Gandhi vs. Union of India<sup>7</sup>, right to life embodied in Article 21 of the Indian Constitution, is not merely a physical right but it also includes within its ambit, the right to live with human dignity. And hence dignity cannot be hampered by any act of contractual human dealing.

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<sup>6</sup> AIR 1963 SC 1295

<sup>7</sup> 1978 SCR (2) 621



## **2. THE TRAFFICKING OF PERSONS (PREVENTION, PROTECTION AND REHABILITATION) BILL, 2018**

The Bill has 59 sections divided into 15 chapters. The main features of the Bill are:

- a) The Bill deals with all kinds of trafficking and also with the rehabilitation, protection and rescue of the trafficked person.
- b) It also seeks to establish the rehabilitation and investigation authorities at the District, State and National level.
- c) An Anti-trafficking unit for rescuing victims and investigating the case while a Rehabilitation Committee for rehabilitation will be set up as per the provisions of the Bill.
- d) Trafficking has also been classified into general and aggravated forms under the Bill. The aggravated form is trafficking for the purpose of forced labour, bearing of children, begging, or for inducing early sexual maturity.
- e) The punishment under the law has been enhanced and made more stringent in comparison to the present laws.
- f) It also takes care of the confidentiality of the victim, complainant and of the witness by not disclosing their identity.
- g) All proceedings need to be time-bound and must be completed within an year from date of taking cognizance.
- h) For the first time, a rehabilitation fund for the victims of trafficking shall be created.
- i) The Bill also addresses the issue of trans-border trafficking.

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## **3. INDIAN PENAL CODE, 1860**

According to the National Human Rights Commission's Report on Trafficking in Women and Children, India's population of women and children engaged in sex labour is estimated to be between 70,000 and 1 million, with 30 percent of these individuals being under the age of 20<sup>8</sup>. The Indian Penal Code, 1960 stands as an essential legislative weapon to combat the perils of this crime. The essential Sections under the same include<sup>9</sup>

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<sup>8</sup> Sankar Sen, P.M Nair, *A Report on Trafficking in Women and Children in India*, National Human Rights Commission, ISS Project, Vol.1 (2003)

<sup>9</sup> Indian Penal Code, 1860, Imperial Legislative Council, 1860 (India)

- a) Section 370, 370A – Human Trafficking
- b) Section 373 – Buying of minors for Prostitution
- c) Section 372 – Selling of minors for Prostitution
- d) Section 366A – Procurement of Minor Girls
- e) Section 366B – Importation of girls from Foreign Country

Human trafficking, particularly of women and children, is an organised crime that severely violates the victims' basic human rights. It infringes the rights, dignity, life, security, privacy, health, education, and redress of grievances for the violated. They are exposed to physical and sexual abuse, and they are forced to work against their will at low or no pay. This, combined with their obligation to the trafficker, keeps them in a debt bondage and slavery scenario.

Several provisions of the Indian Penal Code dealing to sexual offences have been changed by the Criminal Law (Amendment) Bill, 2013<sup>10</sup>. It makes human trafficking illegal and uses the term "exploitation" rather than "prostitution" to describe it. The amendment eliminates the victim's assent obtained through coercion as a basis in absolving the trafficker of culpability. Furthermore, minor traffickers will face harsh penalties, including at least five years in prison, with the possibility of life imprisonment.

Despite these legislative provisions, there have instances of delayed justice or lack of evidence to prove the guilty beyond reasonable doubt. Human trafficking through these laws aren't adequately addressed. They have disregarded the victims' rights to rehabilitation and protection from harm. The victims face challenges dealing with the prosecution, such as repeated adjournments, a lack of an interpreter, the production of the rescued persons in a court of law alongside the offender, and the witness's lack of protection. The cases against the trafficker's relapse as a result of the victim pleading guilty, the victim and witnesses becoming hostile, and so forth. The loopholes in the prosecution systems are highlighted as repeated adjournments, easy bail for the trafficker, court harassment and humiliation of the victim, insensitivity of the courts, and so on.

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<sup>10</sup> Criminal Law (Amendment) Bill, 2013, Acts of Parliament, 2013 (India)

However, it has to be noted that the practice and methods of law enforcement are gradually changing. The practice of arresting, charging, prosecuting, and convicting trafficked victims on the basis of solicitation has decreased. Police and prosecutors are increasingly conscious of the need of identifying victims of human trafficking rather than defendants.

An example of this gradual change can be emphasised through the case of *Munni v. State of Maharashtra*<sup>11</sup>. The case facts reveal that the police raided a red light arena, rescued several juvenile girls. The Bombay High Court addressed the necessity of emotionally and psychologically protecting young children, particularly girls, so that they do not fall prey to the cruel trap of human trafficking. The importance of the Child Welfare Committee's responsibility in assisting the rehabilitation and protection of "*children in need of care and protection*" in this regard, has been stressed upon. It emphasised the significance of child-friendly rehabilitative techniques in the event that a child strays and must be reintroduced into the safety net.

The media has a significant role to play in mobilising public support and participation in efforts to prevent and combat human trafficking. It is a potent tool for social change because of its reach and ability to shape public opinion. Human trafficking has strong roots in the society's social ethos and, as a result, law alone will not suffice. The wider issues of a lack of employment opportunities and gender inequality, discrimination and denial of chances must be considered. Poverty, illiteracy, and a lack of awareness of rights and livelihood should all be addressed in the strategy along with as well as social and economic empowerment challenges.

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#### **4. BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976**

Bonded labour has been designated as a prohibited practice in various international conventions and as well in various Indian Laws and Legislations. The harsh reality is that despite formulation and implementation of the Bonded Labour System (Abolition) Act in 1976, the menace of bonded labour still exists in our society and country at large.

It's well known that the trafficking in human beings and forced labour have been explicitly prohibited under Article 23 of the Constitution of India. Furthermore, the rights to life and to

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<sup>11</sup> *Munni v. State of Maharashtra*, Criminal Writ Petition no, 227 (2011)



personal liberty have been secured under Article 21. Apart from these Constitutional provisions, there is a specific legislation, Bonded Labour System (Abolition) Act which has also been enacted back in 1976 to prohibit bonded labour and its practice in India.

In the case of Neerja Chaudhury v. State of Madhya Pradesh<sup>12</sup>, the honourable Supreme Court ruled that it is the plainest requirement of Articles 21 And 23 of the Constitution that bonded labourers need to be identified and. Moreover, they must be suitably rehabilitated on release. Any failure of action on the part of the state governments in implementing the provisions of the Bonded Labour System (Abolition) Act would be the direct violation of Article 21 and Article 23 of the Constitution. In this Case, the Apex Court correlated the issue of bonded labour system with the person's fundamental right enshrined in Article 21 Of the Constitution and gave a clear inflict to the state to implement Article 21 and Article 23 of the Constitution which is their responsibility too.

NHRC plays a worth mentioning role by constantly encouraging and urging the state governments to conduct surveys and provide rehabilitation to the bonded labourers but sadly the results continue to remain colossally poor due to aforementioned reasons. Till the point the law does not install its existence even at the lowest sections of the society, it would be regarded as insufficient, despite having a statutory recognition and guarantees.

Therefore, preventive as well as reformatory methodology must be followed. The bonded labour system must severely be condemned and eliminated from the grass-root levels of the society.

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## **5. THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956 (ITPA)**

Human trafficking continues to exist as one of the most insidious forms of modern slavery today. It strips individuals of dignity and violates their human rights in many different forms. Victims of human trafficking are subjected to harsh conditions, severe violence and are trafficked often by force and coerced to partake in various illegal activities such as commercial sex, debt bondage, forced labour, etc. Women and children in India are often recruited into this vicious environment through forceful entrapment and abuse where individuals are stripped of

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<sup>12</sup> AIR 1984 SC 1099

their autonomy and agency, often under the false pretence of a good life. The forced labour of millions of citizens comprises India's largest trafficking problem; men, women, and children in debt bondage have no choice but to engage in industries such as brick kilns, rice mills, agriculture, and embroidery factories. A common characteristic of bonded labour is the use of physical and sexual violence as coercive tools. Within India, several laws are centered on the prohibition of the trafficking of human beings. The constitutional and legislative provisions against trafficking include:

The Immoral Traffic (Prevention) Act, 1956 (ITPA) is the most important benchmark legislation for the prevention of trafficking and sexual exploitation. ITPA is supported by Section 370 – 373 of the Indian Penal Code (IPC). The framework seeks to prevent trafficking for sex work and also aims to eliminate other manifestations of sex work and its sources, and thus elements such as the operation of brothels. Sex workers are directly impacted by law relating to public soliciting and doing sex work in public places which are offenses under ITPA. These public spaces include educational institutions, places of religious worship, hostels, hospitals, and any notified area. This specific provision and the ambiguity due to the broadness of the term leads to regular arrests and detainment in rehabilitation spaces creating negative consequences on sex workers. Sex workers can be removed from such places and the premises can be sealed. ITPA also allows police and Non -Governmental Organizations (NGOs) to conduct raids and rescue operations. Police can evict any person found on the premises where sex work is carried out, irrespective of their age and consent.

The Act also criminalizes living through the earnings of prostitution if one is above the age of eighteen. Section 5(A) of the Act criminalizes trafficking including the recruitment, transportation, transfer, harbour, or receive of a person for prostitution through abuse of power or force. The Act of trafficking on first conviction can be punishable with imprisonment for up to three months alongside a fine of twenty thousand rupees.

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## **6. DEVADASI SYSTEM ABOLITION ACT**

Sri Chaitanayadev had defined devadasis as ‘Sebaets’ who served God through dance and music. Devadasi system is a religious practice in India. It is a Sanskrit words that can be split into “deva” meaning God and “dasi” meaning female slave of God, this practice is usually found in some Hindu Communities, especially in Southern India, where minor girls are dedicated to Hindu Temples to be “married” to a deity. Traditionally, once a girl is decided to be dedicated as a devadasi, she undergoes a ceremony after which she is married to a deity and is prohibited to marry anyone else.

#### Legislative Initiative Towards Abolishing the Devdasi System –

Dr. Muthulakshmi Reddy introduced a bill rising the age of dedication of child to devadasi system. Initially, Devadasi system wherein minor girls were adopted for the purpose of dedication in the later date was made punishable under Section 372 and 373 of the Indian Penal code.

Thus, these two sections cover all the parties who sells and let them to prostitution including the parents or guardian, while section 373 deal with the keeper of brothels and all others who earns profits arising from the general prostitution of the girls.

The first legal initiative to criminalise the devadasi system and to protect the victim of this ill practice was the Hindu Religious and Charitable Endowment Act of 1927 enacted in Mysore. This was soon followed by The Bombay Devadasi Protection Act of 1934. This Act made dedication of women illegal, whether consensual or not. Those found guilty of such acts could face a year’s imprisonment or fine or both. The 1934 Act had provided rules, which were aimed at protecting the interests of the Devadasi.

The latest law with regard to devadasi is since 2005, the Maharashtra Devadasi System (Abolition) Act of 2005. But no new Act has been enforced, and so the only right which is available to the devadasi is with regard to sexual abuse and trafficking which is covered by the Section 370 of the Indian Penal code. The act should therefore acknowledge that the dedicated person’s children are those who are the most at risk of being, in turn, dedicated and trafficked for the flesh trade, and should provide for the protection against dedication.

As Religion is being used as a tool to sexually exploit female children into prostitution in India, there is therefore an urgent need for awareness rising. As the major issue with the women being

trafficked is also the lack of awareness among people, poor families living in village who are the most vulnerable in being deceived by trafficker, therefore awareness must be raised among the teacher, health worker, local official and police to ensure that devadasi women and their children are not subject to discrimination or denial of services. Government needs to take further effective initiative such as effective sexual exploitation awareness program in the village. The new law should be enforced which is effective and strengthen with strict punishment, in order to stop this system of dedication and so the law needs to be enforced in such a manner as to preserve the tradition and the right of worshipping while protecting the women and the children from being exploited.

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## **7. NATIONAL INVESTIGATION AGENCY AMENDMENT ACT, 2019**

The National Investigation Agency of the Government of India has been empowered to take up investigation of crimes of human trafficking w.e.f 2nd August 2019. Under the section 6 of the NIA Act, the Central Government can ask the NIA to take over a case, on the request of the State Government concerned. The Central Government has even powers to take over the case suo motu, vide Section 6(6). Though the amended schedule of offences, which the agency can investigate includes only 370 and 370A IPC, the section 8 of the Act empowers NIA to investigate any other offence connected with the offence and, therefore, if ITPA or any other law is involved, the NIA can investigate them too. By the same amendment of 2019, NIA has been empowered to register a crime and investigate an offence in the schedule to the Act, even if it has been committed anywhere outside India. Here is a perfect chance for the NIA to take over or counter important crimes, especially those having trans-border ramifications and even trafficking of Indians committed abroad.

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## **8. UJJAWALA SCHEME**



Human trafficking implies the process through which people are positioned in an abusive circumstance for monetary benefits. Trafficking of women and children for commercial sexual exploitation is an organized crime having both national as well as international ramifications, which robs people of their basic human rights.<sup>13</sup> It's one of the wickedest forms of crimes which necessitates instant and absolute action from governments. It is a violation of the fundamental human rights of the most defenceless in our society, our children & helpless women, and a barbarity that must be condemned in the sturdiest manner.

The objective was :

- a) With the aid of community mobilisation and participation of local societies, programmes spreading alertness among different age groups, organising workshops/seminars we all can put an end to this menace.
- b) Save victims from where they were exploited and put them in harmless guardianship.
- c) Deliver therapy services and also elementary facilities such as accommodation, nourishment, clothing, medical treatment.
- d) Facilitate reunion of the sufferers into the family and society at large.

Everyone in this country of India whether they are citizens or non-citizens, irrespective of caste, race, creed, sex and occupation have the fundamental right to live a life full of dignity and the state has to make sure this and act as a safeguard of these rights.<sup>14</sup> Right to dignity is a Fundamental Right that is certain to every citizen of this nation regardless of his/her vocation, held in a momentous 2021 SC judgement.<sup>15</sup>

The bench of Justices LN Rao, BR Gavai and BV Nagarathna found that its guidelines to provide sex workers almost a decade back were not complied with. The instructions were delivered while the bench was hearing an request filed by *Durbar Mahila Samanwaya Committee* requesting help from the the system to deliver once-a-month dry rations and money transfer to sex workers who were stressed to endure throughout the pandemic. The claimant

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<sup>13</sup> Byjus, <https://byjus.com/free-ias-prep/ujjawala-scheme/> (last visited on Feb 26, 2022)

<sup>14</sup> Live Law, <https://www.livelaw.in/top-stories/supreme-court-sex-workers-ration-cards-voter-ids-187770>, (Last visited on Feb 27, 2022)

<sup>15</sup> Budhadev Karmaskar v State of West Bengal, AIR 2021 SC

had stated that sex workers were underprivileged and were unable to manage dry rations because they were incapable to produce proof of individuality.

The Scheme shall have the following main components:-

1. PREVENTION -To fulfill the prevention component, awareness on this topic needs to be spread by organising workshops and seminar on sensitive issues like human trafficking in areas where people suffer due lack of resources, poverty and lack of education. People should be made aware with different techniques like street plays and other art forms like printing of pamphlets, leaflets and posters.
2. RESCUE - With the help of frontline workforces like NGO's, women and youth groups, Police, Panchayat and especially information shall be received if any such illegal activity is being reported then they shall take immediate action.

The scheme will deliver food, shelter, toiletries, clothing, trauma counselling, medical aid etc. during the temporary period between rescue and production before the concerned authorities.

3. REHABILITATION- It was decided by the higher authorities that Protective and Rehabilitative (P&R) Homes will be established to deliver elementary facilities such as food, clothing, medicines, hospitalisation, appropriate linkages to de-addiction centres and other matters of private use. The sufferers experience extreme torture psychologically so they need a lot of help as soon as possible through a qualified clinical psychologist and psychiatrist.

Victims have to claim their right to property, matrimonial rights, divorce, maintenance and custody of children, so they need appropriate legal aid which would comprise of court work and documentation connecting to the sufferers court case.

4. RE-INTEGRATION - Setting of Half-Way Home because a half-way Home is for victims who are lucratively working and can live semi-independently with least management.

Restoration to Families - This would cover travel of the victim from the terminus area to her hometown and the expenditures experienced to her food throughout her travel and incidental expenditures.

5. REPATRIATION- Facilitate repatriation procedures - The scheme would provide for expenses incurred in fulfilling various formalities for obtaining a repatriation order for the victim.
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## **9. ANTI-HUMAN TRAFFICKING UNIT**

The Anti-Human Trafficking Unit is an integrated task force to prevent and combat human trafficking of any form. The Ministry of Home affairs funds for this unit. Trained personnel's are drawn from police or other related departments for this unit. The AHTU recommends advisories and guidelines from time to time to the States and Union Territories to strengthen the law enforcement in the matters of human trafficking. The Unit also acts as a link with the three ministries i.e. Ministry of External affairs, Ministry of Labour Employment, Railways etc<sup>16</sup>. AHTU holds and assists state level conferences or seminars with an idea to sensitize the concerned officers which includes the Judicial, Police officers and others in the State on human trafficking. Other than these, The Unit is also responsible for signing MoU's with other countries to control this issue and participate in national and international conferences as well.

The Ministry of Home Affairs with the co-operation from Government of India in partnership with the United Nations Office on Drugs and Crimes on April 2006 had taken up a project on "Strengthening the law enforcement response in India against trafficking in persons through training and capacity building"<sup>17</sup> which was two years of training programme to raise awareness among law enforcement officers i.e. Police and Prosecutors mainly on sensitizing human trafficking and the ways to improve their investigation and prosecution of the perpetrators of such crime. The primary objective of Anti-Human Trafficking unit is enforcement of law and co-operation with the other concerned agencies like NGO's, Shelter homes etc. for care and rehabilitation of victims.

The Unit is responsible for collection of data regarding trafficking from the State, Union Governments and Administrative offices in order to identify the problematic locations and

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<sup>16</sup> Ministry of Home affairs ,[https://www.mha.gov.in/Division\\_of\\_MHA/Women\\_Safety\\_Division/anti-trafficking-cell](https://www.mha.gov.in/Division_of_MHA/Women_Safety_Division/anti-trafficking-cell) (last visited on Feb. 24 , 2022)

<sup>17</sup> Ministry of Home affairs , [https://www.mha.gov.in/division\\_of\\_mha/anti-trafficking-cell](https://www.mha.gov.in/division_of_mha/anti-trafficking-cell) (last visited on Feb. 25,2022 )

analysing for them being the source, transit and destination areas and monitoring such locations to ensure that action is taken by the respective government or office against the crime.

In 2010, The Central Government through the MHA released an advisory notification for the set-up of AHTU's by the State Government at district level, through the funds under the Scheme for infrastructure and equipment along with Nirbhaya Fund was also approved by the Government. The district level AHTU's were responsible for registration, investigation of causes related to trafficking as notified to the State Governments across the country.

AHTU is the organization that addresses the gaps in the law enforcement system in terms of trafficking and serves as an interface by enhancing co-operation between the concerned agencies who have the expertise in assisting these victims according to the prescribed mechanism.

Responsibilities of the Anti-Human Trafficking Units :<sup>18</sup>

- a) Ensuring total attention towards dealing with offences related to human trafficking through a multi-disciplinary approach with the collective response by all the stakeholders in the Unit.
- b) Dealing trafficking crimes with an organized crime perspective
- c) Working along with all the departments in cooperation with the police, other government agencies and departments which includes women and child, labour, health etc.
- d) Conducting rescue operations with the help of NGOs whenever information regarding trafficking is received from police resources, NGOs and civil society.
- e) Assuring a victim-centric approach which is to safeguard the best interest of the victim or survivor and preventing secondary/ re – victimization of the victim.
- f) Gender sensitive and child rights sensitive approach to be maintained while dealing with trafficked victims.
- g) Functioning as the foundation unit for collection and development of a comprehensive database on all legal aspects of the crime including information on traffickers and their gangs along with their activity which would be stored to the District and State Crime Record Bureau to transmission further in the National Crime Records Bureau Database.

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<sup>18</sup> Responsibilities of AHTU , <https://slideplayer.com/slide/10413949/> (last visited on Mar. 1,2022)



In 2020 due to the pandemic, there was a sudden rise in the human trafficking crimes for which the Ministry of Home Affairs had released Rs. 100 Crore from the Nirbhaya Fund for strengthening the existing AHTU's as well as establishing new AHTU's for all the 739 districts of the States/Union Territories in India as well as in International borders.<sup>19</sup>

The AHTU has to take certain measures which includes filing of the report at the earliest, Implementation and identification of accurate resources, Constant monitoring and evaluation, Always updating the Government partners on all the investigation procedures and most importantly training the officers with the right attitude in order to protect the victims and prosecute the guilty.

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## **10. NHRC ADVISORY ON COMBATING HUMAN TRAFFICKING**

The National Human Rights Commission (NHRC) is mandated by the Protection of Human Rights Act, 1992 to protect and promote the human rights of all in the country. Towards fulfilment of its mandate, the Commission is extremely committed for the protection of the rights of the vulnerable and marginalised sections of the society.

Trafficking of women and children for commercial sexual exploitation is an organized crime that violates basic human rights. India has emerged as a source, destination and transit for both in-country and cross border trafficking. The problem of trafficking of women and children for commercial sexual exploitation is especially challenging due to its myriad complexities and variation. Poverty, low status of women, lack of a protective environment etc. are some of the causes for trafficking.

The Commission has issued advisories on various themes one of them being NHRC Human Rights Advisory on Combating Human Trafficking to help the Central Ministries and State Governments in preventing human trafficking and ensuring the promotion and protection of the rights of its victims/survivors.

Owing to limited access to shelters and support structures for life and livelihood the vulnerable sections fall prey to the menace of human trafficking. As per the Annual Report of the National

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<sup>19</sup> Institutional Mechanism of MHA  
[https://www.mha.gov.in/sites/default/files/Institutionalmechanism\\_02022021.pdf](https://www.mha.gov.in/sites/default/files/Institutionalmechanism_02022021.pdf) (last visited on Mar. 02, 2022)

Crime Records Bureau 2020, 1714 cases of trafficking with highest in state of Maharashtra and Telangana with the highest purpose being Sexual Exploitation for Prostitution. These cases include a total of 4709 victims .

### Security and Preventive Measures

It includes a 24\*7 toll free helpline number to be in place for real time reporting, tracking and monitoring cases related to human trafficking.

Installation of special surveillance on railway stations, bus depots, airports, routes to remote villages etc to trace children without adult supervision , suspicious persons and to identify vulnerable spots in the region concerned with trafficking.

Ensuring the testimonies of rescued victims are collected through video conferencing in courts especially in cases where the victims are repatriated or released from protective homes and the data to be updated to ensure quick information sharing between districts and states to combat human trafficking.

Vigilance Commissions (VC) to be set up at village level for recording the details of migrants travelling and to intercept cases of trafficking and helping the community in filing cases of trafficking.

Necessary arrangements must be made at the village level for identifying the children who are not attending schools or dropouts.

Vacant posts in Child Care Institutes (CCI), District Child Protection Units (DCPUs) etc need to be filled on priority basis by the State administration.

Adequate steps taken to provide livelihood opportunities in source districts across the country through the existing schemes and programmes at village level (like MGNREGA , PMGKY, DDU-GKY etc.)

### Functioning of Anti-Human Trafficking Units (AHTUs)

AHTUs to be set up in all districts in all States/UTs of the country. However priority should be given to those districts in the states which are prone to trafficking.

AHTUs shall be notified as a nodal agency for coordination among all departments and NGOs at state level.

Necessary personnel may be deputed to perform the basic roles and responsibilities during the rescue operation of AHTUs with adequate female representation at AHTUs.

Police/Law enforcement agencies must be sensitised with Standard Operating Procedures on prevention, rescue, investigation and rehabilitation processes.

Ensure training and capacity building of police dealing with cases of human trafficking with relevant laws, procedures, guidelines and related modus operandi.

Every AHTUs at district level must be provided with adequate physical and digital infrastructure with requisite fund and functionaries.

#### Access to Security and Healthcare Benefits

Protection and shelter homes for both male and female survivors must be established in every state which should be open 24\*7.

Ujjwala and Swadhar Greh homes need to be adequately funded. Periodic social audits after every 6 months should be conducted for the functioning of these institutions at district level.

Adequate counseling services need to be provided to the trafficking survivors and the staff of shelter homes should also be sensitised and trained on counselling of victims/survivors.

#### Functioning of District Administration

District Legal Service Authorities (DLSAs) must create awareness among the people about issues related to trafficking with the help of NGOs, Para-legal Volunteers and Social Media Platforms. DLSAs should appoint an advocate to provide requisite legal aid to the survivors in protected homes. DLSA should provide adequate compensation to the survivors of human trafficking in accordance with section 357A of Victim Compensation Scheme in the Criminal Procedure Code (CrPC).

The Child Welfare Committee (CWC) must proactively take up the cases of rescued children in need of care and protection. The Juvenile Justice Board should conduct its proceedings within the premises of observation homes. Both CWC and JJB should discharge their roles and

responsibility in sync with provisions of the Juvenile Justice (Care and Protection) Act 2015. Rehabilitation cum Placement Officer at CWC must monitor the progress of the individual care plan of the child, while DLSA must follow up with the cases of adult men and women survivors. A District Nodal Officer must be appointed from the Labour Department to follow up on cases of child labour.

#### Prevention of Re-Trafficking and Rehabilitation of the Survivors

Financial Assistance of Rs. 20,000 under the Central Sector Scheme for Rehabilitation of Bonded Labour, 2016 must be paid without any delay. Further, compensation upto Rs. 3,00,000 should be provided immediately after the issuance of release certificate by the District Magistrate to the rescued victims/survivors.

Necessary authorization and power be delegated to district magistrate for withdrawal of money and timely disbursement of said amount to atrocity victims/ survivors in accordance with the SC/ST Act (Rule 12(4A)).

### **DESCRIPTIVE ANALYSIS – INTERNATIONAL LEGISLATIONS**

#### **1. MEMORANDUM OF UNDERSTANDING (BANGLADESH, MYANMAR AND NEPAL)**

##### **India & Bangladesh**

Stats : Many statistics about trafficking and estimates of its scope are circulated globally. In 2002, the International Labour Organization (ILO) estimated that each year 1.2 million children are trafficked for the purposes of labour or sexual exploitation globally. A UNICEF report says that approximately 400 women and children in Bangladesh are victims of trafficking each month. Another study reports that approximately 300,000 Bangladeshi children and women between the age group of 12- 30 were trafficked to India alone in the last ten years.

MoU : Bi-lateral Cooperation for Prevention of Human Trafficking in Women and Children, Rescue, Recovery, Repatriation and Re-integration of Victims of Trafficking, June, 2015.



### **Definitions (Article 2)**

(a) “**Trafficking in women and children**” shall mean the buying, selling, recruitment, receipt, transportation, transfer, or harbouring of any person for the purpose of sexual-exploitation, labour-exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs or any other form of exploitation by means of

1. Threat or use of force or other forms of coercion, or
2. Abduction, fraud or deception, or other types of vulnerability, or
3. Giving or receiving of payments or benefits to achieve the consent of a person having control over another person

(b) “**Victims of trafficking**” or “**victim**” means a person against whom any of the trafficking offences under the respective laws of either country have been committed.

(c) “**Traffickers**” means persons, agencies or institutions engaged in human trafficking especially women and children.

(d) “**Child**” means a person below the age of 18 years.

**Objective :** To recognize, emphasize and ensure the preventive measures including but not limited to the strengthening of law enforcement agencies, border management, awareness and training programs among citizens, preventive communal measures in particular for women and children with special reference to human trafficking.

### **Provisions :**

- a) Prevent Human trafficking by setting up Anti-trafficking Cells and Joint Task forces
- b) Capacity building programmes for concerned agencies for both countries and joint training.
- c) Protecting rights of trafficked women and children
- d) Appropriate measures for repatriation and reintegration of victims.

**Merit :** Backed up by bilateral mutual legal assistance treaty, 2011 and the extradition treaty.

## **India & Myanmar**

**MoU** : Prevention of Trafficking in Persons; Rescue, Recovery, Repatriation and Reintegration of victims of Trafficking.

**Objective**: To strengthen friendship bonds and cooperation between India-Myanmar for preventing all forms of human trafficking and protecting and assisting victims of trafficking by increasing bilateral cooperation on the issues of prevention, rescue, recovery and repatriation related to victims of human Trafficking.

### **Provisions:**

Strengthening immigration and border controls cooperation and implementation of strategies with relevant Ministries and Organisations of both the countries.

Capacity building programmes for the agencies concerned of both countries and joint task forces.

Confidentially developing, sharing and exchanging databases and information on traffickers and victims of trafficking designated focal points of India and Myanmar.

Formulating and adopting Standard Operating Procedures (SOPs) and ensuring speedy investigation and prosecution of traffickers and organised crime syndicates in either country.

**Merit**: Strengthened by 2014 MoU between India and Myanmar on Border Cooperation that provides a framework for security cooperation and exchange of information between Indian and Myanmar security agencies. Concerned parties have agreed to exchange information in the fight against insurgency, arms smuggling and drug, human and wildlife trafficking & to take steps to prevent illegal cross-border activities.

## **India & Nepal**

The 1950 Treaty of Peace and Friendship allows free movement of people and goods across the nearly 1,800-km long border separating the two nations, India and Nepal. But this border hosts loads of illegal activities including human trafficking. There's a need to develop a Memorandum of Understanding (MoU) or a comprehensive set of integrated standard operating procedures (SOPs) to mitigate this problem that will focus on the grooming and modus operandi of trafficking, as well as the rehabilitation and repatriation of victims of trafficking.

Essential takeaways -

- a) Definitions and key conceptual distinctions between trafficking, smuggling and migration.
  - b) Proper screening and documentation at borders with modern technology to identify legitimate 'no objection letters' and to detect possible victims.
  - c) Lift bans on female migration through agreements with destination countries.
  - d) Robust legal machinery and formulation of integrated SOPs.
  - e) Vulnerability mapping for identifying the major corridors.
  - f) Increasing the frequency of Joint Task force meetings.
  - g) Cross-border and regional cooperation and dissemination of information to all stakeholders.
  - h) Allocation of adequate finances and proper training of concern.
  - i) Strict formulations of laws and regulations nationally as well as internationally.
  - j) Treaties and MoUs with nations worldwide.
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**2. SAARC CONVENTION**

According to the SAARC Convention on Preventing and Combating Trafficking in women and Children for Prostitution, 2002, 'trafficking; means moving, selling or buying women and children for prostitution within and outside a country for monetary or other purposes with or without the consent of the person subjected to trafficking. (SAARC Convention: 2002). India ratified the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution. With this, the Regional Task Force was constituted to implement the SAARC Convention.

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**3. UN CONVENTION**

India ratified the United Nations Convention on Transnational Organised Crime (UNTOC) which includes Protocols Prevention, Suppression and Punishment of Trafficking in Persons, particularly Women and Children. In 2013, Criminal Law Amendment Act was enacted where human trafficking was also defined.

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#### **4. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)**

CEDAW which is often labelled as International Bill of rights for women was adopted in 1979 but became effective in the year 1981 and India became a signatory to it in the year 1993. It contains of a Preamble and 30 articles, it outlines what creates discrimination contrary to women and sets up a scheme for national action to end such discrimination.<sup>20</sup>

##### Article 6 of CEDAW,

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

##### India's stand concerning CEDAW

India ratified CEDAW in 1993 which actually issued two declarations on the Convention.

- Article 5(a) of the Convention that “it shall abide by and ensure these provisions under its policy of non-interference in the private affairs of any public without their inventiveness and agreements.”
- Article 16(2) states that the Government of the Republic of India announces that, while it wholly supports the concept of obligatory marriage recordkeeping in principle, it is unfeasible in a big nation like India with its varied cultures, religions, and literacy levels. Even with the various provisions for women and girls' protection, it has not fully been implemented. The preference given to sons is still strong and prevails in the tradition and culture of India.

It delivers the basis for realising equality between women and men through ensuring women's equal access to, and equal opportunities in, political and public life -- including the right to vote and to stand for election -- as well as education, health and employment. States parties agree to make lawmaking on these important issues, so that women can relish all their human rights and vital autonomies.<sup>21</sup> It's the only human rights treaty which confirms the reproductive rights of women and targets culture and tradition as influential services determining gender roles and domestic relations. It says that women have the absolute right to obtain, modify or recall the

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<sup>20</sup> Byju's, <https://byjus.com/free-ias-prep/cedaw/> (last visited on March 02,2022)

<sup>21</sup> supra

country to which they belong. Country signatories to it also agree to take suitable procedures in contradiction of all methods of traffic in women and mistreatment of women.

## **RECOMMENDATIONS**

The ultimate goal in this paper is to identify what is commercial sexual exploitation and sex trafficking of children and women and to define strategies for improving prevention and identification of and interventions for victims and survivors of these crimes. There is substantial and compelling evidence that commercial sexual exploitation and sex trafficking of minors are serious problems with immediate and long-term adverse consequences for children and adolescents, as well as for families, communities, and society as a whole.

The facade of implementation of present legislation meant to combat unlawful exploitation is a major source of worry. To strengthen the Protection of Children from Sexual Offences Act of 2012, the Bonded Labor System Act of 1976, the Prohibition of Child Marriage Act of 2006, and the Child and Adolescent Labour Act of 1986, we need a more solid commitment.

Furthermore, the effective implementation of the Right to Education Act of 2009, which mandates that all children receive free and compulsory education until they reach the age of 14, as well as a more effective child protection mechanism and a strict check on placement agencies, will reduce the risk of child trafficking.

We need to put the efforts to prevent the commercial sexual exploitation and sex trafficking in India. Efforts to identify and respond to the commercial sexual exploitation and sex trafficking are emerging, with some noteworthy examples, but efforts to date are largely under supported, insufficient, uncoordinated, and unevaluated.

- a) With the aid of community mobilisation and participation of local societies, programmes spreading alertness among different age groups, organising workshops/seminars we all can put an end to this menace.
- b) Save victims from where they were exploited and put them in harmless guardianship.
- c) Deliver therapy services and also elementary facilities such as accommodation, nourishment, clothing, medical treatment.
- d) Facilitate reunion of the sufferers into the family and society at large.



## CONCLUSION

It is vital to understand the human rights abuse that occurs when basic rights to livelihood, equality, healthcare, etc are severely violated in the sex work community. A major 38 violation, one that is hidden under the garb of “*charity and help*”, is when sex workers are ‘*rescued*’ after brothels are raided by the police and NGO workers. The raids do not recognize the right of a consenting woman to practice sex work as a form of livelihood and instead invade her privacy. The Simplex case (2012) from Mumbai depicts how 200 women were “rescued” and sent to “*correction homes*” or “*Sudhar Griha*”, forcibly. This force translates to arbitrary police action, with narratives of torture, verbal abuse, and the threat of violence. The right to redressal is not offered and they’re either treated as victims of a crime or the criminals themselves. Even if the intention was to rescue them to ‘correction homes’, the narrative of sub-standard food, forced isolation, violence and inhumane living conditions betrays the whole garb of ‘help’. Cases in Kerala have pointed to sex workers being treated as mentally ill and their consent to any life-choice being denied.

The Supreme Court of India acknowledged that sex workers are deprived of the right to life and protection. According to Article 21 of the Indian Constitution, the State was instructed to provide recommendations for rehabilitation of sex workers that wish to leave the community. However, if they decided to continue working, conducive conditions were to be provided. In 2015, the apex court recommended that closing brothels and evicting “*offenders*” could be appealed against in higher courts.

The sex worker is also denied their 41 right to a fair trial as Free Legal Aid still remains a dream for the poor and marginalized women, who are anyway constrained by barriers of economic, social and cultural elements to seek justice for being accused as repeat offenders or victims of coercion. Budhadev Karmaskar v. State of West Bengal (2011) concluded that legal service victims of any crime or discrimination, can apply to the Legal Services Authority directly for immediate relief. Police apathy only adds to this status quo, leaving only the Judicial System to address the rights of sex work.

Regular training of law enforcement, Child Welfare Committees, and AHTUs on the newest laws, rules, and regulations, as well as court judgments, should be provided. These programmes

must be scheduled and repeated on a regular basis. Under one roof, training and sensitization programmes for diverse stakeholders can assist create a single platform for stakeholders to debate and resolve concerns, ensuring the seamless operation of the complete protection system.

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