

## PROBLEM OF HUMAN TRAFFICKING IN INDIA: A SOCIO- LEGAL ANALYSIS

*Dr.Shashi Kumar,*

Assistant Professor,  
Deptt. Of Human Rights, School for Legal Studies,  
B B Ambedkar University,  
Lucknow

### INTRODUCTION

The Human Trafficking is a serious problem in today's world. It has spread almost all countries and its magnitude is much felt in the least developing countries. Millions of men, women, and children are victims of human trafficking for sexual, forced labor and other forms of exploitation worldwide. The problem of human trafficking has now become an organized institutions and business activities which run into sex tourism and prostitutions in the world.

This paper aims to briefly study the problem of human trafficking prevalent in India from the socio-legal perspective. It will examine the constitutional and legal means through which the problem of human trafficking would be tackled.

### WHAT IS HUMAN TRAFFICKING?

Generally, the traffic defines as 'trade, especially illegal (as in drugs). It has also been described as 'the transportation of goods, the coming and going of people or goods by road, rail, air, sea, etc. The word trafficked or trafficking is described as 'dealing in something, especially illegally (as in the case of trafficking narcotics)'.  
'

In other words, the concept of trafficking denotes a trade in something that should not be traded in. Thus, we have terms like drug trafficking, arms trafficking and human trafficking. The concept of trafficking in people refers to the criminal practice of exploitation of human beings where they are treated as commodities for profit and after being trafficked, are subjected to long term exploitation.

### DEFINITIONS AND MEANING

- ❖ **The United Nations (UN)** defines "trafficking in persons" as the:

"recruitment, Transportation, transfer, harboring, or receipt of persons, by means of the threat or Use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments to achieve the consent of a person having control over another person, for the purpose of exploitation"<sup>i</sup>

- ❖ **The Optional Protocol to the Convention on the Rights of the Child on the Sale of Child, Child Prostitution and Child Pornography (2002)** defines Trafficking in Minors in Article 2(a) as:

"any action or transaction that transfers a child from one person or group of persons to another for remuneration or for any other benefit."

Human Trafficking is also outlawed in-

- ❖ The Universal Declaration of Human Rights (1948),
- ❖ The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949),
- ❖ The Declaration of the Rights of the Child (1959),

- ❖ The International Covenant on Civil and Political Rights (1979),
- ❖ Convention on the Rights of the Child (1989) with its supplementary Protocol on the Sale of Children, Child Prostitution and Child Pornography (2002);
- ❖ Convention No. 182 of the International Labour Organization (ILO) Relating to Prohibition of the Worst Forms of Child Labour (1999)
- ❖ Charter of the International Criminal Court (Rome, 1998).

## Forms of Human Trafficking

Some major forms of human trafficking have been briefly discussed below:

### (i) Trafficking for Forced Labour

Also known as involuntary servitude, forced labor may result when unscrupulous employers exploit workers made more vulnerable by high rates of unemployment, poverty, crime, discrimination, corruption, political conflict, or cultural acceptance of the practice. Immigrants are particularly vulnerable, but individuals also may be forced into labor in their own countries. Female victims of forced or bonded labor, especially women and girls in domestic servitude, are often sexually exploited as well.<sup>ii</sup>

### (ii) Sex Trafficking

When an adult is coerced, forced, or deceived into prostitution-or maintained in prostitution through coercion – that person is a victim of trafficking. All of those involved in recruiting, transporting, harboring, receiving, or obtaining the person for that purpose have committed a trafficking crime. Sex trafficking also can

occur within debt bondage, as women and girls are forced to continue in prostitution through the use of unlawful “debt” purportedly incurred through their transportation, recruitment, or even their crude “sale” – which exploiters insist they must pay off before they can be free. Women and children from developing countries, and from vulnerable parts of society in developed countries, are lured by promises of decent employment into leaving their homes and travelling to what they consider will be a better life. Victims are often provided with false travel documents and an organized network is used to transport them to the destination country, where they find themselves forced into sexual slavery and held in inhumane conditions and constant fear conditions and constant fear.

### (iii) Child Labour

Most international organizations and national laws recognize children may legally engage in certain forms of work. There is a growing consensus, however, that the worst forms of child labor, including bonded and forced labor of children, should be eradicated. A child can be a victim of human trafficking regardless of the location of that nonconsensual exploitation. Anti-trafficking responses should supplement, not replace, traditional actions against child labor, such as remediation and education. When children are enslaved, however, their abusers should not escape criminal punishment by virtue of long-standing administrative responses to child labor practices<sup>iii</sup>

### (iv) Trafficking in Human Organs

Trafficking in humans for the purpose of using their organs, in particular kidneys is a rapidly growing field of criminal activity. In

many countries, waiting lists for transplants are very long, and criminals have seized this opportunity to exploit the desperation of patients and potential donors. Such types of trafficking are more flourishing in developing countries. The health of victims, even their lives, is at risk as operations are carried out in clandestine way without having proper medical follow-up.<sup>iv</sup>

**(v) Bonded Labor**

Bonded labor is another form of human trafficking where force or coercion is the use of a bond, or debt, to keep a person in subjugation. It is criminal offence in many countries including India and included as a form of exploitation related to trafficking in the United Nations protocol on trafficking in persons. Many workers around the world fall victim to debt bondage when they assume an initial debt as part of the terms of employment, or inherent debt in more traditional systems of bonded labor. In South Asia, this problem is prevalent in huge as traditional bonded labor in which people are enslaved lives from generation to generation.

**(vi) Involuntary Servitude**

People become trapped in involuntary servitude when they believe an attempted escape from their conditions causing serious physical harm or the use of legal coercion, such as the threat of deportation. Victims are often migrants persons and low-skilled laborers who are trafficked from less developed countries to more prosperous and developed countries. Many victims experience physical and verbal abuse, breach of an employment contract, and are kept in captivity.

**(vi) Domestic Servitude**

Under the domestic servitude the children and women workers are trapped in servitude through use of force or coercion, such as physical (including sexual) or emotional abuse. Children are particularly vulnerable to domestic servitude which occurs in private homes, and is often unregulated by public authorities. For instance , there is great demand in some wealthier countries of Asia and the Persian Gulf for domestic servants who sometimes fall victim to conditions of involuntary servitude.

**(viii) Child Soldiers**

Children are trafficked that involves the unlawful recruitment of children through force, fraud, or coercion to be exploited for their labor or to be abused as sex slaves in conflict areas. Such unlawful practices may be perpetrated by government forces, paramilitary organizations, or rebel groups. UNICEF estimates that more than 300,000 children under 18 are currently being exploited in more than 30 armed conflicts worldwide. While the majority of child soldiers are between the ages of 15 and 18, some are as young as 7 or 8 years of age. Many children are abducted to be used as combatants. Others are made unlawfully to serve as porters, cooks, guards, servants, messengers, or spies. Many young girls are forced to marry or have sex with male combatants and are at high risk of unwanted pregnancies. Male and female child soldiers are often sexually abused and are at high risk of contracting sexually transmitted diseases. Some children have been forced to commit atrocities against their families and communities. Child soldiers are a global phenomenon. The problem is most critical in Africa and Asia, but armed groups in the Americas and the Middle East also unlawfully use children in conflict areas.

**(ix) Child Sex Tourism**

In many parts of the world, the Child sex tourism (CST) which involves child trafficking for commercialization child sex engagements. CST is a shameful assault on the dignity of children and a form of violent child abuse. The commercial sexual exploitation of children has devastating consequences for minors, which may include long-lasting physical and psychological trauma, disease (including HIV/AIDS), drug addiction, unwanted pregnancy, malnutrition, social ostracism, and possibly death. Tourists engaging in CST often travel to developing countries looking for anonymity and the availability of children in prostitution.

countries in Europe and the developing world where there are huge organized sex industries. Countries like Thailand and Netherlands, for example, receive large sums of money from legalized prostitution.

- Trafficking also springs up in regions experiencing war and natural disasters. Often large numbers of women are trafficked into military zones for recreation they are physically exploited.
- Another motivation for trafficking in women is the demand for brides in the United States and around the world. There are many mail-order bride agencies in the U.S. alone where women are illegally trafficked on plea of their marriage.

## CAUSES AND FACTORS OF HUMAN TRAFFICKING

Human Trafficking is caused by a whole range of conditions comprises a social, economic and political factor which may be identified as below:

- Lack of awareness about the dangers of trafficking when anybody seeking job and the ways in which victims are deceived and lured into these positions.
- Poverty is major cause which forces people to seek any job while ignoring the risks.
- Cultural factors have made women and children vulnerable to trafficking either through forced marriage by parents or for getting means of livelihood.
- Sexual exploitation of women and children is prevalent in cultures where men have more power than women and children.
- Some countries have a strong economic stake in the success and perpetuation of human trafficking. This is true for small countries whose gross national product depends on sex tourism and for larger

## PROCESS OF HUMAN TRAFFICKING

Throughout the process of human trafficking (recruitment, transportation, transfer, harboring, or/and receipt of persons), traffickers play particular roles. Traffickers in this note indicate "recruiters, transporters, those who exercise control over trafficked persons, those who transfer and/or maintain trafficked persons in exploitative situations, those involved in related crimes, those who profit either directly or indirectly from trafficking, its component acts and related offences." Each trafficker contributes at different stages in the human trafficking process for the purpose of exploiting the victims for economic or other gain. Traffickers may take on one task or multiple tasks such as recruitment, document forgery, transportation, escorts of victims, bribing public officials, facilitating the transportation and transferring, information gathering, and receiving victims in the destination.

## WHO ARE THE TRAFFICKERS?

Traffickers can be a stranger or someone the child knows, such as a relative or a friend. Traffickers are

often part of an organized criminal network that 'recruits' children and supplies them with fake identification. They may also pose as boyfriends or girlfriends in order to convince children to leave for a new life. For the pimps, brothel madams and brothel owners of Mumbai, the sex industry is a multi-million dollar business in which money is the bottom line. The highest prices go for the youngest girls, many of whom have been kidnapped from other Countries and trafficked to India, or sold by their own families into the industry.<sup>v</sup>

## WHO ARE THE VICTIMS?

People from every walk of life can fall victim to trafficking, however, certain groups are disproportionately exploited in trafficking and slavery. They include women, children, minorities, and poor people from disadvantage sections of the society. These vulnerable groups suffer types of crime under trafficking includes assault and Battery, Rape ,Torture ,Abduction, Sale of human beings, Unlawful detention ,Fraud, Wrongful confinement ,Murder.

## NATIONAL SCENARIO

### ***Human Trafficking in India: A serious Concern***

India being one highest population country in South Asia, is considered to be most "source, destination, and transit country" as far nature of human trafficking concern. The number of borders India shares with its neighbors adds to the problem. China, Nepal, Bangladesh, and Pakistan all have been identified as countries with a significant amount of human trafficking. Though there is no concrete data is available to identify number of human trafficking in different categories exist in India. It is reported that human trafficking is widespread problem in states which are economically underdeveloped such as Jharkhand, Bihar, Orissa, North-eastern states from where young girls and boys are trafficked to other places for domestic servitude, bonded labour or for sexual exploitation.

According to United Nations Office on Drugs and Crime 528 cases of human trafficking has been reported in Tamil Nadu in 2012. As per Home Ministry, 1379 in Karnataka, 2244 in Tamil Nadu, 2157 in Andhra Pradesh of human trafficking cases were reported. Delhi is the hotspot and transit point for illegal trade of young girls for domestic labour, forced marriage and prostitution. Children especially girls and young women, mostly from Northeast are taken from their homes and sold in faraway states of India for sexual exploitation and to work as bonded labour.

### ***Indian laws and Prevention of Human Trafficking***

India has a fairly wide framework of laws enacted by the Parliament as well as some State legislatures, apart from provisions of the Constitution which is the basic law of the country. Legal framework to address Trafficking in India as follows:

#### **(a). Constitution of India**

According to Article 23 of the Constitution prohibition of traffic in human beings and forced labor:-

(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 in accordance e with law.

(2) Nothing in this article shall prevent the stage from imposing compulsory service for public purposes, and in imposing such service the state shall not made any discrimination on grounds only of religion, race, caste or class or any of them.<sup>vi</sup>

#### **Trafficking In Human Beings**

The expression 'traffic in human beings,' commonly known as slavery, implies the buying and selling of human beings as if they are chattels, and such a practice is constitutionally abolished.

Traffic in women for immoral purposes is also covered by this expression.<sup>vii</sup>

Article 24 of the Constitution Prohibits employment of children below 14 years of age in factories, mines or other hazardous employment.

**(b). Indian Penal Code, 1860**

There are 25 provisions relevant to trafficking; significant among them are:

- ❖ Displaced from her community which is tantamount to kidnapping/abduction. (sec. 361,362,365,366 IPC)
- ❖ Procreation of a minor girl (below 18 years of age) from one part of the country to another is punishable. (Sec. 366A)
- ❖ Importation of a girl below 21years of age is punishable. (Sec. 366B)
- ❖ Sold by somebody. (sec. 372)
- ❖ Bought by somebody. (sec. 373)
- ❖ Wrongfully restrained. (sec. 339)
- ❖ Wrongfully confined. (sec. 340)
- ❖ Provides punishment for compelling any person to labor against his will. (Sec. 374)
- ❖ Raped/gang raped/repeatedly raped. (sec. 375)
- ❖ Subjected to perverse sexual exploitation. (sec. 377)
- ❖ Physically tortured/injured. (sec.327,329)
- ❖ Subjected to criminal force. (sec.350)
- ❖ Mentally tortured/harassed/assaulted. (sec.351)
- ❖ Outraged of her modesty. (sec.354)
- ❖ Defamed. (sec. 499)
- ❖ To insults the modesty of a woman. (sec. 509)

**(C). The Indian Evidence Act, 1872**

- ❖ Sections 114 A and 151 are relevant in this context.
- ❖ Section 114-A provides Presumption as to absence of consent in certain prosecutions for rape. It provides where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states inhere evidence before the Court that she did not consent, the Court shall presume that she did not consent.
- ❖ Section 151, provides Indecent and scandalous questions - The Court may forbid any question or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court unless they relate to fact in issue or to matters necessary to be known in order to determine whether or not the facts in issue existed

**(d). Immoral Traffic (Prevention) Act, (ITPA) 1956**

[renamed as such by drastic amendments to the Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA)

The main outage of the ITPA is that it allows for the arrest of those engaging in acts of prostitution (seducing or soliciting for the purpose of prostitution) under sec.8.

The ITPA also allows for special courts to be set up for the purpose of trafficking cases. "to date, none of these provisions have been enacted either by the state or central governments. This makes the trial process in trafficking cases unnecessarily lengthy, and the end result is low conviction rates."

The Act deals exclusively with trafficking and its objective is to inhibit / abolish traffic in women and girls for the purpose of prostitution as an organized means of living; offences specified are:

- ❖ Procuring, including or taking persons for prostitution;
- ❖ Detaining a person in premises where prostitution is carried on;
- ❖ Prostitution is or visibility of public places;
- ❖ Seducing or soliciting for prostitution;
- ❖ Living on the earnings of prostitution;
- ❖ Seduction of a person in custody; and Keeping a brothel or allowing premises to be used as a brothel.

#### **(e) Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA)**

It was enacted under Article 35 of the Indian Constitution with the object of inhibiting or abolishing the immoral traffic in women and girls. It was also in pursuance of the Trafficking Convention, which India signed on 9 May 1950. The Act aimed to rescue exploited women and girls, to prevent deterioration of public morals and to stamp out the evil of prostitution, which was rampant in various parts of the country. In 1978, SITA was amended by the Amendment Act 46 of 1978, which took effect from 2 October 1979. This was owing to the realization that the social evil needed to be curbed and that existing provisions failed to do so. In 1986, SITA was drastically amended and renamed the Immoral Traffic (Prevention) Act, 1956.

#### **(f) Child Labour (Prohibition and Regulation) Act, 1986**

The child labor act defines a 'child' to be a person who is under 14 years of age and lays down the industries in which children should not be employed apart from laying down a few safety measures and other requirements which shall be met irrespective of what is stated in the other labor legislations.

However, this act does not apply to any employment that is undertaken with the help of family members in one's own residence. Any person, police officer, or (labor) inspector may file a

complaint of the commission of an offence under this act in a court not lower than Metropolitan Magistrate or a Magistrate of the First Class. The trafficked children are to be treated as victims and to be protected under the juvenile justice act, 2000. The act provides for penalties to the employer if children are proved to be employed in prohibited employments.

#### **(g) The Bonded labor (Abolition) Act, 1976**

The Act prohibits anyone from making any advance or compelling any person to render any bonded labor, land states further that any agreement or custom requiring any person to do work as a bonded laborer is void and provides for punishment for anyone who compels any person to render bonded labor or even advance any bonded debt. Punishment in both cases of enforcing bonded labor and advancing bonded debt is imprisonment up to three years and fine up to two thousand rupees. The bonded laborers are to be treated as victims and no offenders.

#### **(h) The Scheduled Castes and Scheduled Tribes (prevention of atrocities) Act, 1989**

Many victims are from the marginalized groups because traffickers are targeting on vulnerable people in socially and economically. This act provides an additional tool to safeguard women and young girl's belongings to scheduled caste and scheduled tribes and also to create a greater burden on the trafficker/offender to prove his lack of complicity in the matter.

This can effective if the offender know the status of victims. It specifically covers certain forms of trafficking, forced or bonded labor (clause-vi) and sexual exploitation of women (clause xi, xii). A minimum punishment of six month is provided and that could be extending up to five years in any offence in any offence covered sec.3.

#### **(i). Transplantation of Human Organs Act, 1994**

This act deals with criminal responsibility in cases of harvesting of organs and trafficking of persons for this purpose includes traffickers, procurers, brokers, intermediaries, hospital/nursing

staff and medical laboratory technicians involved in the illegal transplant procedure.

Sec 11 declares prohibition of removal or transplantation of human organs for any purpose other than therapeutic purposes, and sec 19 clarifies that it punishes those who seek willing people or offer to supply organs, it should be punishable with imprisonment for a term which should not be less than two years but which may extend to seven years, and should be liable to fine which should not be less than ten thousand rupees but may extend to twenty thousand rupees.

#### **(j). Immigration (carrier's liability) Act, 2000**

Immigration act can be used to prosecute the persons who are involved in the illegal transport of human being from other countries.

In its definition, 'Carrier' means a person who is engaged in the business of transporting passengers by water or air and includes any association of persons, whether incorporated or not, by whom the aircraft or the ship is owned or chartered. This act applies only to carriers by air or by sea. The carrier may be punished by the competent authority under the Passport Act by imposing a penalty of one hundred thousand rupees.

#### **(k) The prohibition of Child Marriage Act, 2006**

This act declares that marriage of a minor child to be void in certain circumstances, sec 12 defines that marriage where the minor has been taken out of lawful guardianship, or been by force compelled, or been by any deceitful means induced to go from any place should be prohibited, and any marriage after the minor is sold or trafficked, or used for immoral purposes should be also null and void. Child marriage prohibition officers are notified by the state Government and such officers have the duty of preventing child marriages as well as collection of evidence for prosecution (sec. 16) However, there is no specific section for the punishment.

#### **(l) Information Technology Act, 2000**

This act penalizes the publication or transmission in electronic form of any material

which is lascivious or appeals to prurient interest or if its effect is such as to tend to deprive and corrupt persons to read, see or hear the matter contained or embodied therein. The law has relevance to addressing the problem of pornography. India has also adopted a code of conduct for Internet Service Providers with the objective to enunciate and maintain high standard of ethical and professional practices in the field of Internet and related services.

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

The act has been enacted in consonance with the U N Convention on the Rights of the Child. It consolidates and amends the law relating to juveniles in conflict with law and to children in need of care and protection. The law is especially relevant to children who are vulnerable and are therefore likely to be inducted into trafficking.<sup>viii</sup>

#### **State Laws relating for Preventing Human Trafficking**

- ❖ **Karnataka Devadasi (Prohibition of Dedication) Act, 1982** Act of dedication of girls for the ultimate purpose of engaging them in prostitution is declared unlawful – whether the dedication is done with or without consent of the dedicated persons.
- ❖ **Andhra Pradesh Devadasi (Prohibiting Dedication) Act, 1989** Penalty of imprisonment for three years and fine are stipulated in respect of anyone, who performs, promotes, abets or takes part in *Devadasi* dedication Ceremony.
- ❖ **Goa Children's Act, 2003-** The prevention of Child trafficking in tourism is main objective of this act. Under this law child sexual exploitation is included in the definition of sexual assault. It entrusted the responsibility of ensuring safety of children in hotel premises is assigned to the owner and manager of the establishment. Photo studios are required to periodically

report to the police that they have not sought obscene photographs of children. The Stringent control measures established to regulate access of children to pornographic materials.

## ROLE OF JUDICIARY

Indian judiciary has played an important role in prohibiting human trafficking through its landmark judgments. Some of important judicial judgments are discussed below:

In the case of **Peoples Union for Democratic Right v/s union of India**<sup>ix</sup> considered the scope and ambit of Article 23 is wide and unlimited and strikes at “traffic in human beings” and “*begar* and other form of forced labour” wherever they are found. It is not merely “*begar*” which is prohibited by Art. 23 but also all other forms of forced labour.

**Bhagwati, J.** said “the word ‘force’ must there for be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for sit is less than the minimum wage”.

The court directed the Government to take necessary steps for punishing the violation of fundamental rights of citizens guaranteed by Article 23 by the private individuals.

In **Sanjit Ror v/s State of Rajasthan**<sup>x</sup> it has been held that payment of wages lower than the minimum wages to the person employed on Famine Relief Work is violation of Art. 23. Whenever any labour or service is taken by the State from any person who is affected by drought and scarcity condition the State cannot pay him less wage than the minimum wage on the ground that it is given them to help to meet famine situation. The State cannot take advantage of their helplessness. Under clause (2), state can impose compulsory service for public purpose e.g., conscription for national defence or for social service. The term ‘public

purpose’ is used in wide sense to include all that is believed to promote the welfare of the people.<sup>xi</sup>

In **Deena vs. Union of India**<sup>xii</sup> it was held that labour taken from prisoners without paying proper remuneration was “forced labour” and volatile of Article 23 of the Constitution. The prisoners are entitled to payment of reasonable wages for the work taken from them and the Court is under duty to enforce their claim.<sup>xiii</sup>

In **Bandhu Mukti morcha vs. Union of India**<sup>xiv</sup> the Supreme Court held that this is the constitutional obligation of the Government under Article 23 which prohibits “forced labour” in any form.

In **Dubar Goala v. Union of India**<sup>xv</sup> court held that slavery is also include in human trafficking.

In **Kahason Thangkul vs. Simtri Shaili**<sup>xvi</sup> a custom required that each householder of the village should offer one day’s free labour to the Headman of the village. It was held that the custom was violation of Art. 23(1) of the constitution which prohibits *begar* and other form of forced labour.

In **Chandra vs. State of Rajasthan**<sup>xvii</sup> an order of the *Sarpanh* of village calling one person from each family to come with spade and spade and iron pan for making the embankment of the village tank and providing for a fine to be imposed upon person who failed to come, was held to be violation of Article 23(1).<sup>xviii</sup>

The Honorable Supreme Court in **Vishaljeet vs. Union of India**<sup>xix</sup> laid down certain guidelines for eradication of the malady: *This devastating malady can be suppressed and eradicated only if the law enforcing authorities in that regard take very severe and speedy legal action against all the erring persons such as pimps, brokers and brothel keepers. The Courts in such cases have to always take a serious view of this matter and inflict consign punishment on proof of such offences. Apart from legal action, both the Central and the State Government who have got an obligation to safeguard the interest and welfare of the children and girls of this country have to evaluate various measures and implement them in*

the right direction. Bhagwati, J. (as he then was) in **Lakshmi Kant Pandey v. Union of India**<sup>xx</sup>, while emphasizing the importance of children has expressed his view thus: "It is obvious that in a civilized society the importance of child welfare cannot be over-emphasized, because the welfare of the entire community, its growth and development, depend on the health and well-being of its children. Children are a 'supremely important national asset' and the future wellbeing of the nation depends on how its children grow and develop."

Having deep and anxious consideration on the child trafficking matter, the Court has made the following suggestions:

1. All the State Governments and the Governments of Union Territories should direct their concerned law enforcing authorities to take appropriate and speedy action under the existing laws in eradicating child prostitution without giving room for any complaint of remissness or culpable indifference.

2. The State Governments and the Governments of Union Territories should set up a separate Advisory Committee within their respective zones consisting of the secretary of the Social Welfare Department or Board, the Secretary of the Law Department, sociologists, criminologists, members of the women's organisations, members of Indian Council of Child Welfare and Indian Council of Social Welfare as well the members of various voluntary social organisations and associations etc., the main objects of the Advisory Committee being to make suggestions of:

(a) the measures to be taken in eradicating the child prostitution, and

(b) the social welfare programmes to be implemented for the care, protection, treatment, development and rehabilitation of the young fallen victims namely the children and girls rescued either from the brothel houses or from the vices of prostitution.

3. All the State Governments and the Governments of Union Territories should take steps in providing adequate and rehabilitative homes manned by well-qualified trained social workers, psychiatrists and doctors.

4. The Union Government should set up a committee of its own in the line, we have suggested under direction no. (2) the main object of which is to evolve welfare programmes to be implemented on the national level for the care, protection, rehabilitation etc. of the young fallen victims namely the children and girls and to make suggestions of amendments to the existing laws or for enactment of any new law, if so warranted for the prevention of sexual exploitation of children.

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

6. The Advisory Committee can also go deep into devadasi system and Jogin tradition and give their valuable advice and suggestions as to what best the Government could do in that regard.

The Supreme Court in **Bandhua Mukti Morcha**<sup>xxi</sup> has elucidated the rehabilitation of Bonded Labour and directed the Government to award compensation to Bonded labour under the provisions of Bonded Labour System (Abolition) Act 1976 after taking note of serious violation of Fundamental and Human Rights. (i) Psychological rehabilitation must go side by side with physical and economic rehabilitation; (ii) The physical and economic rehabilitation has 15 major components namely allotment of house-sites and agricultural land, land development, provision of low cost dwelling units, agriculture, provision of credit, horticulture, animal husbandry, training for acquiring 134 new skills and developing existing skills, promoting traditional arts and crafts, provision of wage employment and enforcement of minimum wages, collection and processing of minor forest

*produce, health medical care and sanitation supply of essential commodities, education of children of bonded labourers and protection civil rights;*

***In MC Mehta vs. State of Tamil Nadu and Others<sup>xxii</sup>, the Supreme Court seeing the severe violation of fundamental rights in cases of child labour laid down guidelines for compensation and rehabilitation. It emphasized the need of providing school education to children liberated from the child labour. Moreover, it viewed, "unless the family is assured of income allude, problem of child labour would hardly get solved." Therefore, government must ensure the effective implementation of the Child Labour (Prohibition and Regulation) Act, 1986, provide adequate compensation to the child laours taking penalty from the child labour employer. It also suggested for creation of Child Labour Rehabilitation-cum-Welfare Fund for rehabilitation of child labour.***

## CONCLUSION

The paper is written with the aim of understanding the nature ,trends and patterns of human trafficking. It also points out the causes, factors and process of human trafficking prevailing across the world. Seeing the magnitude of problem of human trafficking prevalent in the world and particularly in India, it needs the attention of everyone be it State or non-state agencies for eradication of this menace.

In order to prevent the human trafficking problem, governments including nongovernmental organizations need to collaborate and work together to identify victims and punish criminals. The Indian Anti-Human Trafficking Act passed in 1956 is a step in the right direction. Also, the United Nations protocol of 2000 strengthened the anti human trafficking measures by instituting units under the police criminal division to rescue victims of human trafficking. Other anti-human trafficking organizations can now be found practically in every regional bloc with an oversight responsibility to detect and punish human traffickers. Again while all

these are laudable, not all countries in Asia and elsewhere have these policies put in place. Even countries that boast of anti human trafficking rules are sometimes underfunded making it difficult to combat human traffickers. As we embark on the crusade to combat human trafficking, the international community urges countries to realize and implement the protocol that deal with human trafficking for labor exploitation, especially, in multiple economic sectors, including and among others agriculture, construction, hospitality and domestic service. According to the International Labor Organization (ILO), about 40% of trafficking takes place in forced commercial sexual exploitation, and about one third in other forms of coerced economic exploitation.

The intensity of the problem of human trafficking has become a global pandemic that is rooted in every community organized by human traffickers who by overt and covert activities use several means possible including among others coercion and wealth to sustain the continues enslavement of vulnerable people across the globe. Again, this phenomena permeate every nation state and involves the recruitment, transportation, and to a large extent the enslavement of the economically vulnerable.

The government of India has undertaken several measures in the past to combat this menace. The Ministry of Women and Child Development was made the nodal agency by the government to deal with human trafficking in India. A nodal cell against human trafficking has been constituted in the Ministry of Home Affairs. The National Human Rights Commission has formulated an integrated plan of action to prevent and combat human trafficking with special focus on women and children. However there is still a lack of clarity in government policies with regard to human trafficking. The existing laws have not been properly defined and there are several loopholes in them due to which the perpetrators of human trafficking escape from being punished. To combat human trafficking, several short-term and long-term measures are needed to be taken up at all

levels. There is an urgent need to create awareness among the public about human trafficking. Media can play a very effective role here. Poverty alleviation measures too will help in combating it in the long run. Since India is also a transit point for human trafficking, the government should take speedy measures to secure India's borders by completing its fencing and ensuring strict vigil. There is a need to develop an institutionalized system of co-ordination between the law enforcement agencies and who sometimes prove to be more effective than government agencies in exposing human trafficking networks. There is a need to have

greater co-ordination between different states in India as trafficking has a long trail from the source point to the destination with several transit points in between. Investigation in the cases involving human trafficking should be carried out with the aim to destroy this long trail. Increased co-ordination between government departments like police, public welfare, health, women and child is required to ensure an effective response. Government and NGOs should work together to ensure post-rescue rehabilitation of the victims in terms of providing them healthcare, education and other employment opportunities.

Copyright © 2013. Dr. Shashi Kumar. This is an open access refereed article distributed under the Creative Common Attribution License which permits unrestricted use, distribution and reproduction in any medium, provided the original work is properly cited.

<sup>i</sup>Article 3, paragraph (a) of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; Supplement to the UN Convention Against Transnational Organized Crime, 2000.

<sup>ii</sup> <http://www.madebysurvivors.com/about-slavery>, Accessed on 24/02/2011

<sup>iii</sup> <http://www.state.gov/j/tip/rls/tiprpt/2011/164220.htm>

<sup>iv</sup> <http://www.interpol.int/.../Trafficking..human.../Types-of-human-trafficking>. Accessed on. 09/03/2012

<sup>v</sup> Nair P.M., *Trafficking in Women and Children in India*, p. 116

<sup>vi</sup> The Constitution of India -by P M Bakshi, Universal Law Pub. lucknow

<sup>vii</sup> Jain M.P., *Indian constitutional law*

<sup>viii</sup> [www.asiafoundation.org/publications/pdf/719](http://www.asiafoundation.org/publications/pdf/719), Accessed on 27/01/2012

<sup>ix</sup> AIR 1982 SC 1943

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

<sup>xi</sup> State of Bihar vs. Kameshwar Singh, AIR 1952 SC 252 (1952) 1 SCR 102-0

<sup>xii</sup> AIR 1983 SC 1155

<sup>xiii</sup> Peoples' Union for Democratic Right V. Union of India (Asia worker's case) AIR 1982 SC1473: (1982) 3 SCC 235: (1983) 1 SCR 362.

<sup>xiv</sup> AIR 1984 SC 802

<sup>xv</sup> AIR 1952 Cal. 496

<sup>xvi</sup> AIR 1961 Manipur 1

<sup>xvii</sup> AIR 1959 Raj. 186

<sup>xviii</sup> Constitution of India-by P M Bakshi, Universal Law Pub. lucknow

<sup>xix</sup> 1990, 3 SCC 318

<sup>xx</sup> (1984) 2 SCC 244

<sup>xxi</sup> **1984 (3) SCC 161**

<sup>xxii</sup> (1996) 6 SCC 756