

CHAPTER - 3

PREVENTIVE LAWS REGARDING

HUMAN RIGHTS AND CHILD TRAFFICKING IN INDIA

3.1 Introduction

The United Nations General Assembly declared in 1989 that "Children are the future of the world." In his early years, the child is not required to take on the role of earning money or bread. Adult men should play this role. Every child must contribute to their education during their formative years and to the development of their hidden talents. The continuation of society and the growth of civility are connected to this role of the child. The development of children's latent abilities is prioritized for the society's future prosperity. It is thought to be crucial for children to develop physically, mentally, intellectually, and educationally in a balanced manner overall. The first step in developing human resources is ensuring that children are growing up in a balanced and holistic way. Each and every child is a priceless resource for society. As a result, it is expected of every society to offer the conditions and opportunities that will allow children to develop their dormant abilities.

Article 24 of the Indian Constitution states that anyone younger than 14 is regarded as a child. According to the Child Labor Control Act of 1986, a child is anyone under the age of fourteen (14). A person under the age of 14 is classified as a child in the census. The Compulsory Perimeter Education Act states that a boy or girl must be at least six years old and no older than fourteen years old to be eligible for this program.

3.2 International Law and Human Trafficking¹⁰⁸

3.2.1 Instruments of International Law

International law can be an effective tool in the fight against human trafficking. The United Nations Convention against Transnational Organized Crime and its two related protocols, the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, and the United Nations Protocol against the Smuggling of Migrants by Land, Sea, and Air, which came into effect in 2003–2004, are the most respectable and recent pieces of international law that have established guidelines for defining, preventing, and prosecuting human trafficking. These treaties were drafted by the UNODC, which has bolstered the effectiveness of international legislation in the fight against human trafficking. UNGIFT, the United Nations Global Initiative to Fight Human Trafficking, was founded by the UNODC in 2007 to facilitate the enforcement of these weapons.

Laws pertaining to human trafficking have existed since slavery was abolished. The Slavery Convention (1926) and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956) both contain provisions pertaining to slavery. The 1948 Universal Declaration of Human Rights, the 1966 International Covenants on Civil and Political Rights, the 1949 United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, and the 1979 Convention on the Elimination of All Forms of Discrimination Against Women are further international legal instruments that contain provisions against the trafficking of persons. These documents established the groundwork for current practices and initiatives to end human trafficking.

¹⁰⁸ Lindsey King. International Law and Human Trafficking, Retrieved from https://sherloc.unodc.org/cld/uploads/res/bibliography/international_law_and_human_trafficking_html/InternationalLaw.pdf

3.2.2 Observance of International Law

The most challenging aspect of ending trafficking is adhering to international law. Signing, ratifying, and enforcing international agreements are actions taken to ensure adherence to treaties. After a state ratifies and signs a treaty, U.N. committees oversee it and receive feedback from non-governmental organisations (NGOs). States are also required to provide periodic reports outlining their degree of adherence to the treaty. In order to keep an eye out for treaty violations and compliance, the UN Human Rights Council also assigns mandates to country rapporteurs, special rapporteurs, and thematic working groups.

In 2008, there were 112 parties to the United Nations Protocol against the Smuggling of Migrants by Land, Sea, and Air, 119 parties to the United Nations Protocol to Prevent, Suppress, and Punish Human Trafficking, Especially Including Women and Children, and 143 parties to the United Nations Convention against Transnational Organised Crime. Because it was designed as a tool for law enforcement, the Trafficking Protocol differs from other treaties and theoretically has more power than aspirational agreements. The Trafficking Protocol contains provisions requiring parties to: prosecute trafficking, safeguard trafficking victims, and provide victims with temporary or permanent residency in the countries of destination. As a result, any state that ratifies the Convention and its Protocols is required to enact domestic legislation in support of these provisions.

The Trafficking Protocol is unique in that it upholds the idea that people do not have the choice to choose to be trafficked or to allow their children to be trafficked. The distinction between trafficking and smuggling is made clearer by this one. However, the crime is considered trafficking if the individual was brought in illegally and then held as a forced labourer. The fact that a person does not need to be directly coerced or threatened into being trafficked is another feature of the Trafficking Protocol. A person may be in compliance with Trafficking Protocol provisions if they can demonstrate that they had no other option than to comply. These features of the Trafficking Protocol make compliance easier by enabling a more expansive definition of human trafficking.

The "Human Rights Standards for the Treatment of Trafficking Persons" and the "Recommended Principles and Guidelines on Human Rights and Human Trafficking" are two comprehensive documents that draw from various international law instruments to outline standards about how victims of trafficking should be treated. In order to guarantee that people who have been trafficked are treated as victims rather than as criminals, these two documents were created. The Special Rapporteur on the trafficking of persons, particularly women and children, is one intermediary who strives to safeguard the rights of victims and prosecutes those who violate those rights. Around the globe, a plethora of non-governmental organisations undertake the intricate duty of overseeing human rights breaches related to human trafficking. The U.N. is better equipped to determine who is abiding by international law and who is not thanks to the reports these organizations produce.

3.2.3 Implementing International Law

The Local Remedies When international law against human trafficking is integrated into regional and national laws, it is most effectively and efficiently enforced. The United States Victims of Trafficking and Violence Protection Act (2000), the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), and the Council of Europe Convention on Action against Trafficking in Human Beings (2008) are just a few examples of the regional and national instruments that have been instrumental in the prevention and eradication of human trafficking.

Globally, regions are working together to put an end to human trafficking. For instance, China, Laos, Thailand, Cambodia, Myanmar, and Vietnam formed the sub-regional Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) in 2005. Its goal is to establish guidelines for the region's anti-trafficking laws, enabling each state to enact legislation that complies with these requirements. By including provisions that comply with international agreements against human trafficking, as well as by customising their enforcement and monitoring strategies to the specific needs of each state or region, the domestic and regional instruments seek to combat human trafficking.

3.2.4 Challenges in Implementing International Law

Enforcing anti-trafficking laws is difficult because victims of trafficking are reluctant to identify traffickers for fear of negative consequences. Moreover, trafficking is an international crime that crosses national boundaries. Applying international law to a non-resident of another state is an expensive and difficult undertaking. Furthermore, human trafficking is a persistent problem that typically involves multiple legal violations. It might take a lot of time, money, and effort to develop a case against traffickers. These complexities can make it more difficult for anti-trafficking laws to be enforced in nations with limited resources.

The state's local enforcement officers are not properly trained, which presents another challenge to the enforcement of anti-trafficking laws. It is unlikely that border patrol agents, federal agents, and local police officers are knowledgeable about local or international laws pertaining to human trafficking, even in the event that the state has enacted anti-trafficking legislation. Trafficking victims are frequently handled like criminals or undocumented immigrants, and they may be arrested or deported. Information-gathering becomes more difficult because victims of trafficking are typically not in their country of origin and there is frequently a language barrier between them and law enforcement.

Most states lack the substantial resources required to guarantee that the officers can effectively enforce anti-trafficking laws. However, raising awareness of the problem and offering technical support are two of the objectives of the United Nations Global Initiative to Fight Human Trafficking (UNGIFT). Draft legislation, guides for different law enforcement agencies and victims, and fact sheets to increase awareness are just a few examples of the help that would be provided. States that have already started implementing awareness programmes for law enforcement officers include the United States. Furthermore, non-governmental organisations (NGOs) worldwide are vital in promoting awareness and keeping an eye on human trafficking.

Despite the complexity of the problem, international legal tools have been put in place to support victims of human trafficking and stop this global epidemic. The

Universal Declaration of Human Rights contains provisions that require states to protect the rights of trafficked persons, even if they are not parties to the United Nations Convention against Transnational Organised Crime and its two related protocols. This constitutes customary international law. Although difficult to resolve, the problems with anti-trafficking laws' enforcement and compliance can be resolved. States will receive additional funding to combat human trafficking through initiatives under the United Nations Global Initiative to Fight Human Trafficking (UNGIFT). However, states cannot rely solely on UN programmes to address the issue of human trafficking. Given that human trafficking is a transnational crime and that identifying and apprehending traffickers requires coordinated efforts, regional efforts show promise. States need to be honest about their part in stopping this global epidemic, as human trafficking still has a devastating annual impact on millions of people. Like pollution, trafficking is a problem that affects everyone. The world came together to oppose slavery, and the practice of human trafficking will also require global cooperation to end.

3.3 Juvenile Justice (Care and Protection of Children) Act, 2015¹⁰⁹

One of the most comprehensive Acts to address the issue of children was the Juvenile Justice Act of 2000, which also offers a common definition of the child as "any person under the age of 18 years." The Act divides kids into two more general categories in order to more sensitively address their issues: Children in need of care and protection:

- Children in conflict with the law (defined as a child who is claimed to have committed an offense or was found to have done so and who was under the age of 18 when the offense was committed).
- The Juvenile Justice Act categorizes some crimes as special offenses against children, addresses the crime of trafficking children for prostitution and labor, and generally outlines punishments for those who abuse children while in charge

¹⁰⁹ Ganguly Enakshi (2016). Child Trafficking in India. Retrieved from https://www.researchgate.net/publication/304657887_Child_Trafficking_in_India/link/5776338e08aeb9427e27573a/download Pp.47-48.

of them or under their control. The Juvenile Justice Act of 2015 included a number of other categories of children who could be already be trafficked children or are in situations that make them vulnerable to trafficking, in addition to specifically mentioning trafficked children as those who need care and protection (Section 14):

- who is discovered begging or living on the streets, or who is discovered working against current labor laws; or
- has threatened to harm, abuse, exploit, or kill the child, and there is a good chance that the threat will come true;
- who is a runaway or missing child, or whose parents cannot be located after conducting a reasonable search in the manner permitted by law; or
- who has experienced, is experiencing, or is likely to experience abuse, torture, or exploitation for the purpose of engaging in unlawful or sexual acts; or
- who is deemed to be weak and is more likely to be drawn into drug use or human trafficking; or
- who is undergoing or is likely to undergo abuse for egregious gains; or
- who is a casualty of, impacted by, or involved in any armed conflict, civil unrest, or natural disaster; or
- who is in danger of getting married before reaching marriageable age and whose parents, relatives, guardians, or other people are likely to be in charge of solemnizing the marriage

The Juvenile Justice Act also defines the sale and procurement of children for any reason as a cognizable, non-bailable offense punishable by a strict prison sentence that may last up to five years as well as a fine of one lakh rupees. It also forbids the use of kids for labor, as child soldiers by non-state, so-called militant groups, for drug sales, peddling, or smuggling, as well as for illegal adoption.

3.4 Children's Rights

At the United Nations Convention on the Rights of the Child in 1989, the Convention on the Rights of the Child was drafted. This contract has been ratified by India. A system for enforcing children's rights has been established by the Indian government's Department of Women and Child Development. 37 fundamental rights for children are suggested in the Children's Rights document. Four sections serve as the main divisions of all these rights.

1. The right to life
2. The right to protection
3. The right to development
4. The right to participate

The social norms and values of child rearing in the modern world are based on these rights. Due to the fact that many children do not have access to these rights, it is crucial to create a social environment where they can.

3.5 Constitutional Provisions in Favor of Children

The following provisions for children are found in the Indian Constitution.

1. All children between the ages of six and fourteen may receive free and mandatory education under Article 21A of the Constitution.
2. Early childhood care and education are covered by Article 45 of the Constitution for children under the age of six.
3. According to Article 51.6(d) of the Constitution, a parent or guardian's fundamental responsibility as a citizen is to give their biological child or a foster child, who is between the ages of 6 and 14, the opportunity to pursue an education.
5. Forced labor and human trafficking are prohibited by Article 23 of the Constitution.
6. According to Article 24 of the Constitution, it is illegal to employ a child under the age of fourteen in a mine, factory, or for any other dangerous work.

7. The State shall adopt a policy of not abusing children while they are still in their formative years, in accordance with Article 39(f) of the Constitution.
8. In accordance with Article 39 of the Constitution, the State must pursue a policy of giving children the opportunities and resources they need to develop into healthy, independent, and dignified adults as well as safeguarding children and teenagers from exploitation and neglect on both a moral and financial level.

These constitutional protections for children have been embodied in a number of child-related laws.

3.6 Laws on Children

Numerous laws pertaining to the growth and welfare of children have been passed and put into effect.

3.6.1 The Right of Children to Free and Compulsory Education Act, 2009

Since the passage of the 86th Constitutional Amendment Act in 2002, Article 21A has been added to the Constitution. In accordance with this section, the state must provide all kids between the ages of 6 and 14 with free, legally required education. This constitutional amendment guarantees every child, from the age of six to fourteen, the fundamental right to a free, public education. The Right of Children to Free and Compulsory Education Act, 2009 was passed by the Parliament on August 4, 2009, and it was published in the Indian Gazette on August 29, 2009, to ensure that this fundamental right is protected by the legal system.

Every child has the right to a primary education in a formal school under the RTE Act. On April 1, 2010, this law went into effect. According to the law, all kids between the ages of 6 and 14 are entitled to free, public education. The "Sarva Shiksha Abhiyan" places a special emphasis on this law. It is intended to establish schools close to residential areas and equip them with learning resources and instructors in order to make this law effective. Children from weak and disadvantaged groups like Scheduled Castes, Scheduled Tribes, Other Backward Classes, and Minority Communities are given special consideration in the implementation of this law.

A child has the right to self-development, according to the United Nations Convention on the Rights of the Child. These rights cover a variety of areas, such as the right to culture, sports, care, social security, leisure, and recreation. Sports, leisure, and cultural activities are all a part of education. Children between the ages of 6 and 14 are considered to be in the primary education age range. Free primary education is still crucial for marginalized and at-risk groups.

Basic education includes primary education. Primary education is the foundation upon which science and education are built. Giving a child a primary education entails educating them from standard 1 to 7 or 8. A child who receives a primary education will inevitably be able to better himself or herself, his or her family, and contribute to the growth of the nation. Receiving a primary education sparks a child's interest in continuing their education. Thus, elementary education continues to be fundamental and basic. Therefore, RTE implementation is still crucial. The development and welfare of those who do not recognize the value of education, as well as the weak and the poor, are particularly impacted by this law.

3.6.2 Commission for the Protection of Child Rights Act, 2005

Children's rights to life, health, nutrition, care, protection, freedom from exploitation, freedom from inhumane treatment, protection in case of emergency, education, safety, recreation, etc. are all protected by the law. Under the guidelines of this Act, a National Commission for the Protection of the Rights of Children has been established. The Commission is concerned with ensuring that children's rights are properly upheld and that programs and laws pertaining to them are carried out in an efficient manner. The mission's goal is to safeguard children's rights in India and expedite that process.

3.6.3 Infant Milk Substitutes, Feeding Bottles and Infant Food Act, 1992

The alternative production, supply, and distribution of food for children are governed by law.

3.6.4 Protection of Children from Sexual Offenses Act, 2012

This law was specifically created to stop child abuse. According to this law, a person who is younger than 18 is regarded as a child. Equal protection under the law is given to both male and female children. Depending on the seriousness of the crime, the law offers harsher penalties that can range from simple to severe. Fines may also be imposed by the court. The law allows for the creation of a special court for children's rights. Additionally, provisions have been made for correlating evidence and moving the investigation of the crime forward quickly and amicably.

Anju Shah v. State ¹¹⁰ , The Public Prosecutor has uncovered a case that illustrates the inter-country traffickers' methodology. It also demonstrates how, as a result of a trusted individual betraying their confidence, innocent young girls can find themselves in intricate and terrible scenarios involving severe abuse. It also exposes the premium that the "business" of prostitution places on "virgin girls." It illustrates the necessity of applying strict gang rape and aiding and abetting statutes to women who provide physical assistance to the 'clients' in their rape of young girls. Strict rape laws under the Indian Penal Code and the POCSO Act, 2012's provisions for aggravated penetrative sexual assault should be applied in these cases against both the clients and the abettors since the woman who brought the victim from her village was in a "position of trust" with the young girl and caused harm to her genitalia. It's also noteworthy that no conspiracy charges were brought against the accused despite abundant evidence of a plot to force her into prostitution after luring her to India with the false promise of employment.

In this case, a minor Bangladeshi girl, aged about fourteen years¹¹¹, was enticed to travel to India with the promise of a job in Dubai by a person from her Bangladeshi village and acquaintances. Her father had agreed to send her to Dubai and had made the

¹¹⁰ Anju Shah v. State, Through Public Prosecutor, 2014 SCC OnLine Bom 111.

¹¹¹ As per the statements of the prosecutrix and her father, the age of the prosecutrix was between fourteen and fifteen years. As the medical evidence corroborated their oral evidence, the Court held that the prosecution had proved that the prosecutrix had not crossed sixteen years of age.

necessary financial arrangements to prepare her passport, among other things. She was taken to India with two other girls. Without proper documentation, she crossed the border with the accused and they drove her to Mumbai. She was given a Hindu name and told not to give out her true name or address for fear of losing her ability to travel back to Bangladesh. She was in a foreign country and had only completed her eighth grade of education, so she was unable to speculate as to what these people might be planning. The accused forced her into prostitution. When she refused to let the first customer rape her, she was threatened, physically assaulted, and starved. Upon being presented to a customer once more, it was assumed that the prosecutrix was a virgin and a "sealed pack." On the basis of this false representation, the customer was charged fifty thousand rupees. When she was brought to this customer, the two accused women made her take off her clothes, made her lie on the bed, grabbed her hands, assisted the customer in raping her, and laughed as the customer did so. Her private area sustained severe injuries, necessitating her transfer to Mumbai for medical attention. Another customer forcibly raped her. The accused received four thousand rupees from this customer, who then divided the funds. She was physically assaulted every time the prosecutrix made a covert attempt to call her family. Even photos of her relatives were removed from the prosecutrix by the appellant. The information she attempted to get in touch with to find someone who could have assisted her in going back to Bangladesh was given to the traffickers.

Following her prostitution in Gandhigram, Ahmadabad, and Mumbai, the prosecutrix was tricked once more and brought to Goa, where she was sexually assaulted by a patron. She was questioned by the police following an altercation with the hotel manager where she was brought by the patrons. She initially provided them with false information in accordance with the tutoring, but after being detained in Apna Ghar, she told an NGO the truth. The authorities received this information. The majority of the perpetrators connected to the sex racket, including those who had brought her from Bangladesh and those who had forced her to work as a prostitute at various locations, were located by the police based on information provided by the prosecutrix.

Based on the information provided, the police filed three separate charge sheets against various groups from various locations. In this instance, the accused was charged with both the offenses listed above and the offense covered by Goa Children's Act section 8. The appellant was found guilty and given a sentence for offenses that were covered by sections 4 and 5 of the ITPA as well as sections 342, 323, and 366-A of the IPC. According to the ITPA provisions, the trial court sentenced them to a minimum of seven years in prison. Every sentence was meant to flow simultaneously. The Bombay High Court upheld the conviction and sentence. Regarding sentencing, this case highlights a relevant question: why, in cases where organized transnational networks of traffickers engage in serious child exploitation, do courts fail to impose the maximum sentence permitted by law?

Regarding jurisdiction, the court dismissed the appellant's claim that the Goa court lacked authority because Anju was accused of taking part in a sex racket in Gandhigram, Ahmadabad, and Mumbai. The Court noted that in these situations, it is evident that the individuals operating the sex rackets are moving girls around. The brothels are run by different people in each location, and the girls are moved around. Even though the individuals in this business operate in various, far-flung parts of India, they are connected to one another. Given the circumstances of the case, the Court assumed that the offense was ongoing and that section 178(b) through (d) of the Cr.P.C. applied. Since the prosecutrix was taken into custody in Goa after previously being prostituted in Mumbai and Ahmedabad, the Children's Court in Goa was therefore without jurisdiction to try the case. On the other hand, the High Court reversed the appellant Anju's conviction for her involvement in the sex racket in Mumbai, Ahmedabad, and Gandhigram under section 8(9) of the GC Act, arguing that the GC Act was created for the State of Goa and does not apply to the States of Gujarat or Maharashtra.

3.6.5 Child Labor (Control and Regulation) Act, 1986

In accordance with the constitutional clause regarding children, the Child Labor Control and Regulation Act was passed in 1986. The law gives child laborers the

chance to pursue education and career training while also releasing them from child labor. In his early years, the child is not required to take on the financial responsibility of supporting himself. Adults should fill this position. Every child must assume the role of a student during their formative years in order to receive an education and engage in creative pursuits that help him discover his innate talents. The child must be given the opportunity to pursue an education, which requires the support of parents, society, and the government.

The phenomenon of child labor and child labor is a sign of social unrest and a disregard for children's rights in contemporary society. Children's physical, mental, and intellectual development is hampered when they are forced to leave school, participate in sports, arts, and culture programs, and become victims of insecurity, exploitation, cruel treatment, and harassment. Children are deprived of their rights in this situation because they must perform labor that wears them out at a young age.

The Child Labor Control and Regulation Act of 1986 defines a person as a child if they have not attained the age of 14. A person under the age of 14 who works is referred to as a child laborer. This means that the practice of using such a person to earn money is known as child labor.

This law aims to limit the working conditions of children in some jobs and to forbid the employment of children in some dangerous occupations and activities. The law forbids the use of minors in processes and occupations that have been deemed hazardous until they are 14 years old. The employment of children in non-hazardous jobs and processes is governed by law. 65 processes and 16 businesses have been deemed hazardous. It is against the law to use kids in these jobs or processes.

Mat weaving, building and construction, brick kilns, producing hosiery, working as a domestic helper, working in a tea shop, eating and drinking on the street, etc. are a few of the activities that are prohibited. According to the Technical Advisory Committee on Child Labor's recommendations, the hazardous jobs and procedures were added in 2008. As well as processes like mechanized fishing, food processing, the beverage industry, warehousing, the pencil industry, stone grinding, stone quarrying,

etc., it also covers the business of throwing excessive heat and cold. The employment of children in circuses and elephant care has also been prohibited since 2010. There is a clause that allows for the owner who breaks this law to be punished and fined. Anyone who believes the owner has broken the law may bring a lawsuit against them in court.

A system has been established to rehabilitate children by releasing them from hazardous jobs, in accordance with the provisions of this law. Kids are expelled and sent to special education schools. They receive services like education, vocational training, lunch, stipends, child care, etc. in special schools.

Despite being a crucial tool for social welfare and transformation, the law has some restrictions. The effectiveness of the law is impacted in the opposite way by this restriction. In 2013, the Indian government changed its approach to children. The government's dedication to ensuring that all children in the nation have access to their rights is reaffirmed by this new policy. This policy views childhood as a natural component of life. In addition to recognizing the value of childhood.

In *Peoples Union for Democratic Rights vs. Union of India*,¹¹² declared by the Delhi High Court that the Common Wealth Game of 2010 is a matter of common concern. A whopping Rs. 70,000 Crores was allocated exclusively for enhancing the city's infrastructure and sports amenities. In all of the projects during the 2008–2009 construction, over a lakh people were employed. It was discovered that these workers were not receiving minimum wages, nor were they receiving their rightful compensation under labor laws. Following receipt of the complaint, the petitioner conducted an investigation and discovered serious labor law violations.

Following the parties' hearing, the court gave the state and another respondent detailed instructions regarding the following: i. Every Worker Must Register. ii. All workers must receive minimum wages. Living circumstances and safety precautions (iii). iv. Financial support for children's education. v. Pension and maternity benefits. vi. Concerns about CESS collection and the meaning of "employer."

¹¹² AIR 1982 SC 1473 (commonly known as *Asiad* case).

In *People's Union of Democratic Rights v. Union of India*¹¹³ The Supreme Court was informed that children under the age of fourteen were working in the construction industry. It was decided that since construction work is already a dangerous profession, it is imperative that no form of construction work permit the employment of minors younger than fourteen.

In *Labourers Salal Hydro Project vs. State of Jammu & Kashmir*,¹¹⁴ The Indian Express reported on August 26, 1982, that a great number of migrant laborers from various States, including Orissa, were working in the Salal Hydro Electric Project under harsh working conditions. They were also denied the protection of various labor laws and were vulnerable to exploitation by the contractors and employers who were given work assignments by the Central Government. In an effort to give the underprivileged laborers justice, the People's Union for Democratic Rights sent a letter and a copy of the news report to Mr. Justice D.A. Desai. We regarded the letter as PIL.

The Supreme Court noted that parents' desire for their children to work is solely motivated by economic reasons, making child labor a challenging issue. Because it is an economic issue, legislation alone cannot resolve it. Nonetheless, through appropriate education, an effort must be made to lessen, if not completely eradicate, the prevalence of child labor.

In *Rajangum ,Secretary District Beedi Worker Union vs. State of Tamil Nadu*¹¹⁵ A PIL was filed for the emancipation of bonded labor in response to a letter from a beedi worker to the Supreme Court. The definition of "forced labor" was established by the Supreme Court taking into account Article 23 of the Constitution. The Supreme Court has noted that it is a violation of Article 23 of the Constitution for someone to work for the government or for another individual and receive less money than the legally required minimum wage. Generally speaking, no one wants to voluntarily perform labor or provide services to another for less than the minimum wage when they are aware that they are legally entitled to it. As a result, it is assumed that someone is

¹¹³ Id.

¹¹⁴ (1983)2 SCC 181.

¹¹⁵ AIR 1993 SC 404.

working under duress or coercion when they provide services to another for payment that is less than the minimum wage.

Forced labor, defined as labor or service that an individual is coerced into providing and force that would result in such labor or service, is prohibited by Article 23 of the Constitution. Force to perform labor or provide a service to another person can take several forms. It can involve physical force, legal provisions that impose fines or imprisonment on an employee for failing to perform labor or provide a service, or even pressure brought on by destitution, hunger, or poverty. Any circumstance that denies someone their freedom of choice and forces them to take a specific course of action can legitimately be viewed as force, and if labor or service is required as a result of such force, it would constitute forced labor.

In this case, the Supreme Court also directed the implementation of specific welfare and protection programs to enhance the working conditions of children in Tamil Nadu's beedi and cigar industries. It is therefore mandated that all employees obtain insurance coverage for a minimum of Rs. 50,000, with employers bearing the cost of the premium and workers being strictly prohibited from recovering it.

In *M.C Mehta vs. State of Tamil Nadu*¹¹⁶ In what is officially referred to as the "child labor abolition case," the Supreme Court issued an order prohibiting minors from working in dangerous industries. This is essentially a reminder of the constitutional requirement that no child under the age of fourteen shall work in a factory or in any other hazardous occupation. The Supreme Court gave all of the states some guidelines and instructions in this case.

The Supreme Court, with Justices K.G. Balakrishnan and G.P. Mathur on its bench, sent notices to every State and Union Territory requesting the enforcement of every child's right to an education by outlawing child labor in all its forms. The court also requested data on child labor in the nation from the Registrar General of Census.¹¹⁷

¹¹⁶ AIR 1997 SC 699.

¹¹⁷ The Hindu, 2nd Feb 2006.

In *M C Mehta vs. State Of Tamil Nadu*,¹¹⁸ The Supreme Court established a number of actions that must be performed in order to support the child laborer and his family. The Court decided that each offending party using child labor must have their premises sealed and be required to pay a fine of Rs 20,000; the money collected will go toward the victimized child's rehabilitation. Additionally, the Court ordered a nationwide study on child labor. The Supreme Court noted that in order to ensure compliance with the Act's provisions, the Inspectors designated under Section 17 must be tasked with collecting compensation from the offending employer for each child employed in violation of the Act's provisions, up to a total of Rs 20,000/-. The inspectors would make sure that the employers responsible for any child employed in violation of the Act's provisions paid Rs 20,000, which could then be deposited into the Child Labor Rehabilitation-cum-Welfare Fund. Even if the employer wanted to discharge the child from his current employment, his liability would still exist. Establishing a fund of this kind based on district or area would be appropriate. The money raised will create a corpus, the income from which will go exclusively toward helping the affected child. Money can be deposited in any nationalized bank or other public entity's high-yielding program to increase income.

In *Bandhua Mukti Morcha vs. Union of India and others*¹¹⁹ The Supreme Court ruled that in cases where it is demonstrated that an individual is coerced into performing forced labor, the Court will presume that the individual is obliged to do so in exchange for an advance or other financial benefit. As a result, the individual is considered a bonded laborer and is eligible for benefits under the law. The State government, District Magistrates, and Vigilance Committees will enlist the aid of non-governmental organizations (NGOs) to guarantee the enforcement of legal provisions. The State government must take the required steps to implement the law, which is a crucial tool for preserving human dignity. The Central and State governments will take the required actions to guarantee that workers employed in stone quarries and stone crushers receive minimum wages directly from them rather than through intermediaries.

¹¹⁸ 1996 6 (SCC) 756

¹¹⁹ AIR 1984 SC 802.

In *Neerja Chaudhury vs. State of Madhya Pradesh*¹²⁰ The Supreme Court ruled in this case that rehabilitation had to happen immediately after identification and release because, in the absence of such action, released bonded laborers would once more be forced into serfdom by desperation, poverty, and helplessness. The task of identifying and releasing bonded laborers should be entirely undertaken by grassroots social action organizations. It is necessary to reorganize and reactivate the Vigilance Committees at the district and subdivision levels. Officers should receive the necessary training and sensitization if they are assigned to various levels to address the issue of the bonded labor system. Officers who exhibit social commitment, natural motivation, idealism as inspiration, are unaffected by external pulls and pressures, and are willing to face difficult opposition should be supported and their achievements acknowledged through appropriate public recognition.

In *Santhal Pargana Antyodaya Ashram vs. State of Bihar and Others*¹²¹ The Supreme Court ruled in this case that each bonded laborer who was freed should receive a release certificate from the Collector. As temporary relief, each of the bonded laborers will receive Rs. 3000. The State government is required to provide permanent rehabilitation and employment opportunities for the bonded laborers.

In *Public Union for Civil Liberties vs. State of Tamil Nadu & Others*¹²² In this particular case, the Supreme Court has directed that the National Human Rights Commission be involved in overseeing the state of the law's implementation, as well as national policies, programs, and the Supreme Court's occasionally issued directives. The National Human Rights Commission (NHRC) keeps an eye on the nation's bonded labor situation. Officers from the federal government and state governments made up the Task Force that the ministry of labor established to make sure the above directives were followed. To gather information about the living conditions of the workers, the Task Force is mandated to visit and inspect the stone quarries and crushers on a regular basis. The task force meets frequently to carry out its mandate, and it reports to the Central

¹²⁰ AIR 1984 SC 1099.

¹²¹ 1987(1)SCALE679, 1987Supp(1)SCC141.

¹²² (2013)1SCC585.

and State Governments on the extent to which the relevant authorities are adhering to the Supreme Court's directives and the statutes.

In Court on its own Motion and with Other¹²³ In this instance, the Delhi High Court sent the case to the National Commission for Protection of Child Rights, which is tasked with formulating a Plan of Action to end child labor and carry out the mandate of Articles 23, 24, 39, 45, and 47 of the Indian Constitution.

The Supreme Court had issued number of directions in *M.C. Mehta vs. State of Tamil Nadu*.¹²⁴ One of the key directives was to require an employer to reimburse the Child Labour (Prohibition & Regulation) Act, 1986 of 1986 by paying Rs. 20,000/-for hiring a child under the age of 14 for dangerous work. It was also mandated that the relevant government provide a grant or deposit of Rs. 5,000 for every child working in a hazardous job. The aforementioned sum of Rs. 25,000 was to be deposited into the Child Labor Rehabilitation-cum-Welfare Fund, with the rescued child's rehabilitation to be funded by the fund's earnings.

The Delhi High Court¹²⁵ instructed the National Commission for Protection of Children Rights to create a thorough Action Plan for the rigorous application and enforcement of laws pertaining to children. The National Commission was given instructions to recommend policies for the rescue children's health, education, and financial support. The National Commission was also instructed to recommend actions for the prompt recovery and appropriate use of funds obtained in compliance with the Supreme Court's order in the *M.C. Mehta* case.

3.7 THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956

The latent market for buying and selling sex-sex has grown in modern times, and supply determines demand in this market. In the sex market, both women and children are trafficked. This trade distinguishes itself from the prostitution industry. On the one hand, there are companies that sell women and children in secret, and on the

¹²³ 163 (2009) DLT 641.

¹²⁴ AIR 1997 SC 699.

¹²⁵ vide a detailed order dated 24th Sept 2008.

other, there are individuals who buy it in secret. They trade sex for money, which has a value of its own. This trade is profitable on the black market. It involves the economic and sexual exploitation of girls and women. In actuality, the illegal trade in women and children is a trade in people and in blood. which is referred to as prostitution, and the women who engage in it as sex workers or prostitutes. In today's society, a woman who gives another person sexual satisfaction in exchange for money is referred to as a business sex worker. The woman who sells sex views herself as a sex worker rather than a prostitute. There have been cases of girls being kidnapped and raped for prostitution. There have been instances of these girls being pushed forcibly into the prostitution trade. Young women are being kidnapped and raped as part of an unethical business that pays prostitution brokers large sums of money for their services. The sale of child prostitutes has a covert system that has developed in the major cities. Young children are abducted, courted, and made into prostitutes by him. In India, prostitution has claimed the lives of numerous young people between the ages of 10 and 18. As sex workers, millions of women are employed. A clandestine network of sex workers and brokers has grown within the industry. In it, brokers entice young women with promises of a job and marriage. Even though she is being sold, the woman is unaware of it. Children are taken or stolen in order to sell them. These infants are exploited, lose the affection and warmth of the family, are denied the right to an education and marriage, as well as a portion of their developmental potential.

In *Guria, Swayam Sevi Sansthan vs. State of U.P. and Ors*¹²⁶ briefly, the fact that several children had been imprisoned without authorization in Varanasi, Uttar Pradesh's redlight area. Based on information, the Varanasi police found thirty girl children, filed a case, and, upon the conclusion of their investigation, filed a charge sheet against thirty-six people under the Immoral Traffic (Prevention) Act, 1956 and the Indian Penal Code. Later on, a few accused people attempted to get bail before the relevant Sessions Court, but their petitions were denied. However, the Allahabad High

¹²⁶ 2009(2)ALD(Cri)555, 2010CriLJ1433.

Court has granted bail to the accused, citing the fact that the witnesses' statements were not recorded by a judicial magistrate in accordance with section 164 of the CrPC.

An NGO petitioned the Hon'ble Supreme Court to have the bail revoked after feeling wronged. It is regrettable that the Investigating Officers and the Courts typically fail to distinguish between the rescued children and the people who are involved in such immoral traffic, aiding and abetting the commission of crimes. The Supreme Court held that the Immoral Traffic (Prevention) Act, 1956 was enacted in pursuance of the International Convention for the Prevention of Immoral Traffic. It has also been the failure of the Legislature and the Executive to develop a well-thought-out plan for the reintegration of the rescued children into society through appropriate laws or programs. The majority of young girls and minors who fall victim to immoral trafficking are released on bail. Most of the time, after they have recovered, they are compelled to return to the brothels, where they are once more forced to become prostitutes by the same people. Bail is also granted to other accused who are taken into custody from the brothels, regardless of whether they are suspected of working behind closed doors or of more serious offenses.

In Vishal Jeet vs. Union of India,¹²⁷ An advocate filed a Public Interest Litigation (PIL) under Article 32 of the Constitution with the Supreme Court, requesting that the CBI investigate all police officers under whose jurisdiction red light areas, as well as the flourishing Devdasi and Jogin tradition, and take necessary action against those officers and other individuals involved in such rackets. Additionally, the PIL directed the CBI to provide shelters and other facilities to rehabilitate the inmate and their children.

Although the Supreme Court denied the CBI's request for an investigation, it held that issuing such a directive would be counterproductive and that it is neither desirable nor feasible for the CBI to conduct a nationwide open-ended investigation. The owners of brothels, brokers, and pimps are among the exploiters that the Supreme Court called for swift and severe legal action against. The Court issued a number of

¹²⁷ (1990) 3 SCC 318.

directives, among them the creation of advisory committees comprising professionals from all disciplines to offer recommendations on how to end child prostitution, care for and rehabilitate rescued girls, establish rehabilitation facilities, and conduct an examination of devadasi and jogin customs. The Court ruled that it is abhorrent and heartbreaking that many underprivileged children are coerced into the flesh trade, which is conducted in flagrant violation of all morality, decency, and human dignity standards. The Court further declared that all forms of unimaginable vulgarity ought to be outlawed at all levels through severe enforcement. The Supreme Court demanded an impartial, multifaceted analysis and investigation of the situation.

In *Munni vs. State of Maharashtra*¹²⁸ In this instance, the Nagpur police conducted a raid in the Ganga Jamuna red light district, rescuing numerous young girls from the brothel. The minor girls were brought before the Judicial Magistrate in Nagpur, where they were deemed victims. The Magistrate ordered the Investigating Officer to bring the girls before the Child Welfare Committee (CWC) and denied the petition filed by Smti Munni, who was seeking custody of her minor daughter, Kumari Mamta. The rationale for the CWC's care and custody of the victim was that she is a minor and needs to be rehabilitated.

The Bombay High Court denied the victim's mother's request for custody, ruling that the threat of sexual abuse by immoral child trafficking to force them into prostitution is a long-standing phenomenon that requires the utmost care and precaution from both the federal and state governments. The High Court further held that minor girls are susceptible to sexual abuse and exploitation due to their poverty, illiteracy, and helplessness, and that it is imperative to safeguard these children from any danger or risk to their lives. The Court further declared that the CWC can effectively combat child abuse and shield affected children from other types of maltreatment. The CWC may be given the authority to decide whether to grant protective custody of the child in need of care and protection in order to aid in the rehabilitation of the minor children who have been rescued. When it comes to cases involving the development, care, protection, and

¹²⁸ *Munni vs. State of Maharashtra* - Criminal Writ Petition No. 227/2011 (Bombay High Court).

rehabilitation of children in need of care and protection, the CWC will have the final say.

In *Central Bureau Of Investigation vs. Birendra Kumar Singh@Virendra*¹²⁹ In this instance, an email from an NGO concerning the disappearance of a 14-year-old girl from Darjeeling was received by the CBI Crime Branch in Delhi. It appears that there is an interstate trafficking gang involved. Information led to the victim child's recovery from New Delhi. The victim claimed that after being brought to Delhi under false pretenses for a job, Anand Vishwa sexually assaulted her and used her for commercial sex. The victim was forced to have sex with more than eight or ten customers every day, according to the case investigation, and the accused were profiting from this exploitation of the defenseless young victim. Further investigation showed that the accused individuals had a practice of luring young girls from impoverished backgrounds to Delhi by pretending to offer them suitable jobs. These girls were brought from West Bengal, North-Eastern States, Andhra Pradesh, Orissa, and other places. The traffickers bought and sold small girls who were forced into forcible sex with eight to ten clients every day while living in various rented homes in the neighborhood. Up to five child traffickers were apprehended in this case by the CBI anti-trafficking unit. With the help of this arrest, the CBI was able to identify a somewhat organized network of traffickers operating in the vicinity of Delhi and apprehend up to 21 traffickers who were involved in the trafficking of minors for the purpose of exploiting them for commercial gain.

An accused person, Birendra Kumar Singh, who had been detained for eighteen months, was given bail by the learned Trial Court. The CBI filed a request for bail cancellation before the Delhi High Court after feeling wronged. In light of this, the Delhi High Court revoked the accused's bail and held the respondent and other accused parties accountable for offenses under Sections 120B read with Sections 342, 342, 344, 366A, 376, and 420 and 506 IPC in accordance with Sections 4 and 5 of The Immoral Traffic (Prevention) Act, 1956. As per section 366A, the prescribed penalty is

¹²⁹ 2002 CrLJ2951 (SC) , 2011 CrLJ 2305.

incarceration, with the possibility of lifelong imprisonment. The Immoral Traffic (Prevention) Act's Section 5 prescribes a seven-year sentence, with the possibility of a 14-year prison sentence. Because of this, the offense that is being leveled against the accused is extremely serious.

In *State of Maharashtra and Anr. vs. Mohd. Sajid Hussain Mohd. S. Hussain*,¹³⁰ The Supreme Court noted that unethical trafficking is becoming more common. The goal of luring victims into the trade is to coerce, threaten, or lure them in. These victims should receive all available protection. Additionally, it has been noted that instances of child rape are often instances of perverse lust for sex, in which even defenseless children are sacrificed in the name of sex. This is the height of obscenity, and it is a crime against humanity. Children have been said to be humanity's greatest gift. One of the worst crimes is the sexual abuse of minors. It is a heinous betrayal of their confidence and an egregious transgression of our pledge to safeguard the defenseless. The Constitution contains particular protections for children that are applicable to them only. The Constitution guarantees children a childhood free from exploitation and abuse, one that is happy and healthy.

In *Geeta Kancha Tamang vs. State of Maharashtra*¹³¹ the Immoral Traffic (Prevention) Act, 1956 found petitioner Geeta Kancha Tamang, a brothel owner, guilty under Section 6 for holding a minor victim in the brothel and using her in commercial sex with patrons. This verdict was rendered by the Bombay High Court. According to the case report, a minor child who was taken from her home country and detained by the accused, subjected to mistreatment, and used for commercial sex purposes, complained during a police raid at the brothel. She was then saved by police, along with a few other girls' children who also needed care and security. Following the trial, the petitioner was found guilty. The High Court noted that trafficking is an extremely serious offense that is forbidden by Article 23 of the Indian Constitution. As a result, every citizen has the fundamental right to be free from human trafficking. Such an act is

¹³⁰ AIR2008SC155.

¹³¹ 2010 CrI LJ 2755.

the most egregious violation of the victim child's human rights. Additionally, it is decided that since the petitioner owns a brothel and operates a business where a child was detained, the offense is likely to be repeated.

In *Kamaljeet Singh (In Judicial Custody) vs. State*¹³² The case's actual situation is that SI Sajjan Singh was tipped off to the fact that Kamaljeet Singh and his associate Pappi had been providing prostitutes with girls for several Five Star Hotels. After that, the staff posed as customers and approached Pappi, who agreed to provide a girl for sex, telling the SI Sajjan Singh to meet him outside the Taj Palace Hotel's main gate and requesting payment in advance of Rs. 5,000. As a result, a raiding party was formed, and Arvinder Pal Singh @ Pappi and the two girls—Pooja @ Bijli and Sonali—were captured along with a fictitious customer. It is evident from the evidence gathered during the investigation that Kamaljit Singh and his associates have numerous phone connections. Kamaljit Singh and his associates communicate over the phone frequently and establish relationships without providing any business or personal explanations. There are numerous phone bills for brief periods of time. Numerous calls to five-star hotels were made without any relevant business. Confessional statement provided by the CJM's co-accused. Many airline tickets were purchased by Kamaljit Singh and his partners. Based on this evidence, the court declined to dismiss the case, ruling that various forms of violence against women, such as rape, trafficking in women, child sexual abuse, domestic abuse, pornography, selective abortion of female fetuses, and dowry deaths, diminish the dignity of women.

In *Orissa Patita Udhar Samiti vs. State Of Orissa And Ors.*¹³³ An non-governmental organization filed a Writ Petition in this case regarding the rights of sex workers living in Bhubaneswar. The petition claimed that members of the weaker section were forced to engage in these activities by their abductors and had no other option but to work as such in order to survive. More than 40,000 sex workers reside in Bhubaneswar, where they are housed on government land and in shantytowns. The

¹³² 148(2008)DLT170, 2008(101)DRJ582, (2008)ILR 2Delhi575.

¹³³ 2007 (1) OLR 150.

authorities have threatened to forcibly remove them from their home, where they have lived for forty years, on several occasions. The Orissa High Court ruled that the State, all non-governmental organizations, and public-spirited individuals have a responsibility to assist these individuals in leaving prostitution, rehabilitating them with a helping hand so they can live a dignified life, finding self-employment through appropriate education and financial support. Furthermore, the State has a constitutional obligation to restore them through socioeconomic empowerment and justice. Their fundamental rights are to economic empowerment and social justice with dignity, and the government should actively work to uphold these rights.

The High Court ordered that the State of Orissa take immediate action to assist the women who had fallen, including giving them access to basic utilities like electricity and water, holding awareness camps to inform these victims of their constitutional rights, giving their children a minimum education, providing health care to stop the spread of AIDS, and finding them alternative places to live. If it is determined that the aforementioned Mallisahi residents who fall into that category will be removed from their homes without following the previously mentioned directive, victims or commercial sex workers who have been living on government property for the past forty years will not be forced to leave their current residence.

In *Suo Moto Proceedings in Flesh vs. State and Ors.*¹³⁴ In actuality, the case involves some distressing press reports that surfaced in the state of Jammu and Kashmir in May 2006 concerning the enticement and blackmail of young girls into engaging in unethical physical relationships, with high-ranking officials in the state directly implicated. The Jammu and Kashmir High Court took up the case *suo motu* and ruled that the CBI will conduct the investigation and that the High Court will monitor it. The CBI will also submit a report to the court on a daily basis detailing the progress of the investigation under a confidential cover. Given the gravity of the situation, the investigating officer will require that victim and witness statements be recorded in front of the Principal District and Session Judge.

¹³⁴ 2008 (1) JKJ 161.

Eighteen people have been taken into custody by the CBI, including two MLAs (former ministers), an IAS officer, a BSF DIG, a former State Additional Advocate General, and two Dy. SPs of Police. Additionally, 14 of them are the targets of cases that the CBI has filed. A total of eighteen people were taken into custody, while some others were not detained or listed as suspects because there were not enough evidence. The High Court securitized the evidence gathered by the I.O., but it was not entirely content with the I.O.'s findings and issued the following orders:

- a) The CBI will present all documents, evidence, and materials pertaining to Sheikh Mehmood SP, Niyaz Mehmood DIG, G.H. Khan MLA (former minister), Yogesh Sani MLA (former minister), Nissar Ahmed Sheikh, Manzoor Naik, and Sh. Hakeem Mohd Yaseen (the current cabinet minister), Dr. Pritipal Singh Goja, and Amit Amla to the CJM, Srinagar, who will review them in order to determine whether to take cognizance of the offenses or issue orders that seem appropriate and legal.
- b) The CBI will look into the cases of Sh. Raj Tickoo, the former Vigilance Commissioner, Sh. M.Y. Khan, the former Chairman of JK Bank, and Sh. Zahoor Ah. Malik.
- c) The J&K DGP will establish a special team of police officers with a good reputation, led by a DIG, to handle cases pertaining to drug abuse and illicit sex trafficking in addition to drug trade cases in any form.
- d) He will also give the victim girls listed here security right away.
- e) Through the Women's Development Board and Department of Social Welfare, the government will implement a rehabilitation program for all girls involved in or coerced into the sex trade.

In *Gaurav Jain vs. Union of India*,¹³⁵ the Supreme Court ruled, among other things, that while some notable women, such as Margaret Thatcher, Indira Gandhi, Golda Meir, and Srimovo Bhandarnaike, have succeeded in democratic governance, a

¹³⁵ AIR 1997 SC 3021.

class of women remains victimized by forces, limitations, and coercion towards the flesh trade. A few enlightened segments are approaching this court in search of relief for those class members. One such segment is the petitioner, Gaurav Jain, a public-spirited advocate who asserted that the magna carta is the right of free citizens, the right to remain untrapped, adjustment in economic empowerment, social justice, the dignity of the human person in reality, and social integration. The petitioner has requested that distinct educational facilities be set up for the offspring of those deceased women. The children of prostitutes were not to be allowed to live in the squalor and chaos of their mothers' homes, the court had decreed. It was determined that this was especially true for young girls whose mothers' careers would likely subject them to abuse as they grew older, both physically and mentally. In light of this, the Court established a Committee made up of a few advocates and other people to conduct a thorough investigation into the issues surrounding prostitution, the children of those who have fallen victim to it, and the rescue and rehabilitation of these children.

The committee's report states that the court ordered a program for children of prostitutes and children who associate with prostitutes and prostitution. Many factors have contributed to the continuation of the flesh trade, which has resulted in a sizable population of prostitutes and their offspring. The children frequently lack care for their general development due to factors such as the mother's income, work schedule, and living situation. It must be addressed in order to keep them from turning to prostitution. It is intended for the Child Development and Care centers to offer specialized services that will enable these kids' bigger interests to be realized. The locations of those centers are to be found in: (i) the vicinity of red light areas; (ii) the vicinity of other areas where a concentration of prostitutes has been identified; and (iii) those areas where there is a concentration of communities where prostitution is the customary occupation of the women and girls. The government will provide funding for these centers, which will be managed by nonprofit organizations under the direction of advisory and monitoring committees at the federal, state, and local levels.

At different levels, advisory and monitoring committees will be established to guarantee the scheme's successful execution. A Central Committee, a State Committee in each State, and an equal number of Local Committees as the number of CDCCs operating in each State would be present. A representative of the Department of Women and Child Development, a retired police officer, three social workers, a representative of the Ministry of Welfare, and the Chairperson of the Central Social Welfare Board are among the members of the Central Committee.

- i) The State Social Welfare Advisory Board Chairperson;
- ii) A Department of Women and Child Development Representative;
- iii) A Department of Social Welfare Representative; iv) A Retired Police Officer; and v) Three Social Workers comprise the State Committee.

The Local Committee is composed of the following individuals:

- (i) The CDCC Program Coordinator;
- (ii) A Mothers' Representative;
- (iii) A Community Representative;
- (iv) A Local Club Representative, if applicable;
- (v) The Secretary or an official from the volunteer organization running the program.
- (vi) A pair of social workers

In *Public at Large vs. State of Maharashtra and Others*,¹³⁶ An article about sex workers working in Mumbai was published in the daily Indian Express on January 13, 1996. Additionally, it was reported in the newspaper that: i) Girls who are rescued from brothels face harassment and their guardians are forced to pay large sums for protection; ii) The owners of the brothels regularly extort large sums of money in exchange for their protection; iii) The State Government makes no effort to rehabilitate 40,000 sex workers; and iv) A significant number of minors are recruited by some local agents to work in brothels where they are detained illegally. v) It was estimated that 65% of these

¹³⁶ (1997) 4 Bom. CP 171.

women were infected with HIV. Based on the news, the Bombay High Court took up the case suo motu and issued orders directing the immediate release of the sex workers from their confinement and frequent monitoring in order to facilitate the release and rehabilitation of minors and others.

473 young girls were taken from brothels by raids carried out on the orders of the authorities; the majority of these girls were brought from the States of Karnataka, Kerala, Tamil Nadu, Andhra Pradesh, and Assam, as well as from nations like Bangladesh and Nepal. In the end, the Court has given the following instructions:

- (1) The State Government is responsible for ensuring that areas with red lights are kept under strict surveillance and for rescuing child sex workers. Sufficient measures to penalize the traffickers while giving the investigating agencies instructions to act right away. In instances where cognizable offenses are committed, all police officers are required to act promptly.
- (2) The State Government should establish homes for the rehabilitation of rescued victims, including children, and train them in alternative skills so they can find alternative employment. This is in accordance with the directives of the Vishal Jeet case.
- (3) Continually run programs raising awareness of AIDS in the red light districts.

In *State vs. Freddy Peats and Others*,¹³⁷ The case revolves around the accused, 66-year-old Freddy Feats, who oversaw a boys' orphanage in Goa. Regarding the complaint submitted by an engineer, it was stated that Peats, claiming to be a religious leader, physician, philanthropist, and social worker, had sexually assaulted his ten-year-old son, causing injuries to his genitalia. Peats, who additionally captures nude photos, had also sexually molested two other boys. As a result, police detained him and found 2306 negatives and photos, as well as drugs, syringes, torture equipment, multiple passports, and bank books. Following the involvement of Mumbai-based lawyer and social worker Sheela Barse, the case of Freddy Peats from Goa has garnered significant attention.

¹³⁷ Sessions Case No. 24/1992.Criminal Appeal No. 4/1996.

Freddy Peats was found guilty by the relevant Sessions Court and given a life sentence. The High Court also rejected his appeal. Child rights activist Sheela Barse's intervention allowed the Freddy Peats trial to proceed in a child-friendly manner, including the following: The trial was conducted in camera to ensure that the witnesses wouldn't feel intimidated by the formal setting of the court. (2) Everyone involved in the trial was dressed casually. (3) Neither the chamber nor the location of the trial had a police officer in attendance. (4) The child was instructed to face the judge while providing testimony so that he wouldn't have any opportunity to see the accused and become alarmed.¹³⁸

In *Perna vs. State of Maharashtra and Others*¹³⁹ According to the fact sheet, the Social Service Branch raided the Santacruz brothel on May 16, 2002, found 24 women inside, and arrested four people they suspected of being pimps or brothel keepers. Charges under the Immoral Traffic (Prevention) Act of 1956 were brought against the accused. The 24 females who had been saved were brought to the Government Special Rehabilitation Center for custody. The learned magistrate then ordered the release of a few adult females and ordered the production of a few recovered juveniles before the Juvenile Justice Board.

As a result, the juvenile girls appeared before the Juvenile Justice Board. On behalf of the young girl, a petition was filed pleading for their release, claiming that they had committed no crimes. The minor girls' guardians or parents weren't present to request custody. The Board did, however, release the minor girls, noting that upon asking each girl individually, she had all expressed a desire to be freed.

The Board also noted that since the girls were victims of their circumstances and had not committed any crimes, their continued detention was unlawful and unjustified.

In the appeal, the High Court gave the following instructions:

¹³⁸

Asha Bajpayee, "Child Right in India: Law, Policy and Practice", (2003) Oxford University Press, New Delhi

p.260.

¹³⁹ 2003BomCR(Cri)481, 2003(3)RCR(Criminal)365.

1. When a juvenile who appears to be minor and is in legal trouble or in need of care is produced, the magistrate is required to investigate the matter as soon as feasible to determine the juvenile's age. If the juvenile is determined to be minor, the case is referred to the Juvenile Justice Board.
2. When someone is produced who has been rescued under the Immoral Traffic (Prevention) Act of 1956 or who has been seen soliciting in a public place, the magistrate must determine their age. If the magistrate determines that the person is a minor, the case will be sent to the Juvenile Justice Board if the person is a juvenile in violation of the law, or to the Child Welfare Committee if the person is a child in need of care and protection.
3. The Probation Officer should not release a minor who has been rescued from a brothel or who has been caught soliciting in a public setting until the investigation is finished.
4. Only after a parent or guardian has been deemed suitable by the CWC may the aforementioned juvenile be released into their care.
5. The JJAct, 2000 procedure should be followed for the rescued child's rehabilitation if the parent or guardian is determined to be unfit.
6. The Child Welfare Committee may only be contacted by the parents directly, or through an attorney they have chosen.
7. Attorneys hired by pimps or brothel owners are not permitted to represent the rescued victims in court.

It appears in Delhi High Court Legal Services Committee vs. UOI that the Delhi Police saved two young girls, A and B, who were roughly 14 and 16 years old, respectively, from a brothel. Both victims came from very low-income West Bengali families; they were brought to Delhi in search of work before being sold and forced into prostitution. Following the rescue, the police brought them before the CWC for Care and Protection with the assistance of an NGO, and they were subsequently sent to a children's home. After receiving a custody petition, the learned trial magistrate determined that the petitioner was the girl's father and issued an order placing the girl in

the applicant's care. The Delhi High Court received the petition after the petitioner became enraged.

The High Court issued the following directive:

- i) Children are generally incapable of giving consent, and any sexual activity involving children exposes the participating adult to severe legal penalties; however, since the children are victims, there is no need to impose criminal liability on them.
- ii) Children who are discovered to be working, begging on the streets, or who are suspected of being mistreated, tortured, or exploited for illicit or sexual purposes should not be considered offenders. They will be handled like a victimized child in need of support and shielding.
- iii) According to the JJ Act, 2000, a minor who is discovered to be involved in any kind of prostitution or trafficking or who is saved during a police raid cannot be treated as a juvenile in violation of the law; instead, they must be treated as a child in need of care and protection.
- iv) When it comes to the custody and rehabilitation of a child victim—a child in need of care and protection—only the CWC has the final say.
- v) A person who has been rescued by the police and presented before the magistrate must be moved right away to the Child Welfare Committee, which will handle the case in line with the law if the person looks to be a minor.

In *Smt. Babita W/o Vikram Kalkhor vs. State of Maharashtra through PSO and Child Welfare Committee through its Chairperson*¹⁴⁰ In this case, several girls were saved when Nagpur Police stormed the notorious Red Light District. The recovered girls were treated as victims and brought before the learned Judicial Magistrate, who ordered them to appear before the CWC. The victim's mother filed a petition seeking custody on the grounds that the girls are minors, roughly 15 and 16 years old, and that the CWC's care and custody are necessary for their rehabilitation. The petition was denied. A writ petition has been filed in opposition to the rejection order.

¹⁴⁰ MANU/MH/0745/2011.

The High Bombay Court ruled that minor girls were actually treated like minor victims when they were placed under the care of CWC. The girls who were rescued are regarded as children in need of nurturing and security. Young girls need to be treated with extreme caution because they may be driven to areas with red lights and are at a higher risk of being forced or coerced into engaging in illicit sexual activity or the flesh trade. The magistrate's authority ended when she sent the girls to CWC. The petitioner must then get in touch with CWC so that they can consider their request to have the victim minor girls released.

In *State of Maharashtra & Anr vs. Mohd. Sajid Husain Mohd. S. Husain etc*¹⁴¹ In this case the victim, a girl between the ages of 14 and 16, described how accused Tabassum forced her into the flash trade. After being assaulted, the victimized girl fled the home and traveled to Aurangabad, where she met accused Tabassum and began working as a maid-servant in her home. The victim was asked to accompany one of the girls who used to frequently visit the house but one day did not show up. When they arrived at the Dhaba in a white car with the other one sitting inside, they discovered someone was there. where a soft drink was given to her. After finishing the beverage, she experienced dizziness and eventually lost her ability to move.

The individual then sexually assaulted her. After that, she had been dispatched on a regular basis with different people. Occasionally, the amount she was given was to be split 50/50. She had been brought to a guest house run by the government and, once, their own apartment by other accused. The other accused individuals arrived at Accused No. 1's home on April 22, 2007, with the intention of transporting her to Mumbai. They were to take a bus and stop at a hotel along the way to pick up alcohol. When the accused began acting inappropriately around her prior to the bus arriving, the police arrived and brought them all to the police station. Subsequently, the accused individuals managed to escape and applied for anticipatory bail before the relevant Sessions Judge in Aurangabad, a request that was ultimately denied. However, the High Court granted the accused anticipatory bail, ruling that, prima facie, no case under Section 376 IPC

¹⁴¹ 2008(1)ACR616(SC), AIR 2008 SC155.

has been made out due to the prosecutrix's major status and her voluntary consent to have sex.

After feeling wronged, the state petitioned the Supreme Court to have the bail revoked. The Supreme Court noted that immoral trafficking is now pervasive in the case and revoked the bail that the High Court had granted. It is important to provide complete protection to victims who are threatened, manipulated, or seduced in order to further the trade. Of the eight people charged, two work as politicians, five as police officers, and one as a hotel owner. They had been evading for a while after learning of the prosecutrix's assumption about them through her statement. The court further ruled that it is improper to support police officers' immoral behavior. We don't understand how the police officers were able to go undercover and why they were constantly moving addresses.

In *Manjappa vs. State of Karnataka*¹⁴² In actuality, the victim's father filed a formal complaint, claiming that his 13-year-old daughter Shilpa had been abducted from his home by the accused appellants and sold for Rs. 5,000/-in Bombay to support her prostitution business. As a result, the investigating officer traveled to Bombay and located the girl. The victim's statement was taken down, and she was taken to the hospital for a checkup. Later, after being detained, accused, and found guilty of crimes covered by Sections 366A, 372/373/ 34 I.P.C., the appellants and Shanta were cleared of one accusation, Manjappa.

The State filed an appeal with the High Court challenging the acquittal of Manjappa and requesting an extension of the sentences of those found guilty in response to the aforementioned order. Manjappa was found guilty of offenses covered by Sections 366A/372/373/ 34 IPC and given a seven-year prison sentence. The High Court upheld the conviction and increased the sentence. It also overturned Manjappa's previous acquittal. Based on the victim's testimony, the Supreme Court upheld the sentences after an appeal. In her testimony, she said that in 1997, when the incident occurred, she was a sixth-grader, and these defendants lured her to Bombay in the hopes

¹⁴² 2010 CriLJ 4729.

of finding employment. The accused individuals sold her for Rs. 5,000 after they arrived in Bombay, and accused appellant no. 1 used to regularly force her into prostitution against her will.

In *Vinod Kumar vs. State of Punjab*¹⁴³ in this case the reliability of the testimony of the "trap witnesses," who typically carry out raids in brothels or other locations to recover or rescue victims of human trafficking, has come under scrutiny. The police officers who participate in the rescue operation are competent witnesses, and the Supreme Court has held unequivocally that their testimony should be taken into consideration alongside that of any other interested witness.

3.8 Constitutional Provision

Every Indian citizen has a right against exploitation under the Constitution. Human trafficking is forbidden by Article 23 (1) of the Constitution, and anyone found in violation of this provision will be prosecuted. According to Article 39 of the Constitution, the state will use all reasonable means to safeguard children and teenagers from exploitation and their moral and financial neglect.

Article 51A (f) of the Constitution states that it is every citizen's fundamental responsibility to abstain from actions that degrade women's dignity.

This constitutional clause was codified through legislation, which are listed below.

3.9 Unethical Trade Detention Act, 1987

A law outlawing the trafficking of women and girls was passed in 1956. Any woman who leases out her body for unprotected sex is referred to as a prostitute under the law.

This law was intended to stop the commercialization of the prostitution industry, not to punish specific prostitutes or the prostitution industry as a whole. A prostitute is only held legally accountable if she operates her business in or near public areas.

¹⁴³ AIR 2015 SC 1206

Consequently, the law lost its ability to stop prostitution. As a result, this law was modified and altered.

The 1987 Unethical Trade Prevention Act is the law that has been amended. Prostitution is defined by law as the sexual exploitation or abuse of people for financial gain. Prostitution itself is not against the law, but using prostitution to profit from the exploitation of women is. The law stipulates harsher penalties for offenses related to prostitution.

A distinct Ministry of Children and Women's Development was established in 2006. This ministry's main goals are to close the gender gap in state action for women and children, to promote gender equality, and to hasten the adoption of laws, policies, and initiatives that are centered on women. The Ministry of Women and Child Development is in charge of promoting women's and children's rights and interests as well as their overall survival, protection, development, and participation. The Ministry seeks to properly raise children with opportunities for growth and development in a safe and secure environment, as well as to empower women and children to live a dignified life and contribute as partners in development in an environment free from violence and discrimination.

Trafficking for any form of Slavery

Trafficking in slaves in any capacity Slavery in the form of human trafficking for the purpose of commercial sexual exploitation is acknowledged. A general provision known as Section 370 of the Indian Penal Code made it illegal to import, export, remove, buy, sell, or dispose of someone as a slave, or to accept, receive, or detain someone as a slave against their will. The crime carried a maximum seven-year jail sentence as well as a fine. Habitual slave trading carries an enhanced penalty of up to ten years in prison or life in prison. 187 Section 370 of the Indian Penal Code has been replaced with a new section that defines the offense of trafficking in persons, thanks to the Criminal Law (Amendment) Act of 2013.

3.10 Clarity of the Trafficking Concept

Definitions of the phenomenon take up a sizable portion of the trafficking literature. There are many definitions of trafficking, which reflects the lack of agreement on its exact definition. The idea itself has changed over the years, adding many more characteristics and features than it did at first. So much so that "it has been recognized that historical descriptions of trafficking are out of date, ill-defined, and unresponsive to the nature and extent of the abuses inherent in and incidental to trafficking" (United Nations 2000, 8).

Different interpretations, understandings, emphases, inclusions, and exclusions of particular elements and attributes of trafficking are reflected in the definitions. The topics of consent and movement, the relationship between smuggling and illegal immigration, and the treatment of children appear to be the main topics of debates, arguments, and misunderstandings.

As an addendum to the UN Convention against Organized Crime, the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, adopted in November 2000, "provides the first internationally recognized" definition of trafficking (ESCAP 2003). The United National Protocols definition for its work was adopted by the National Human Rights Commission, UNIFEM, and Institute of Social Science in a joint report (NHRC 2002-03, 2).

This definition has broadened the scope of potentially exploitative situations that may arise from trafficking, which were previously limited to prostitution. As a result, it is regarded as being more inclusive.

The fact that the "concept of "trafficking" can easily be expanded, limited, or shifted to accommodate institutional objectives and context" (ILO 2002a, 5) may help to explain why this debate has persisted. A report from ESCAP also came to the conclusion that trafficking is a multifaceted form of exploitation, with each dimension having its own conceptual and legal framework. There are various forms of trafficking, each with distinct consequences and a place in "an interconnected web of varying

contexts." Therefore, any hopes for a uniformity in trafficking definitions around the world seem unfounded (ESCAP 2003). The literature amply supports the idea that geographic and contextual factors affect how a term is interpreted.

Human trafficking is an organized crime that infringes on fundamental human rights, particularly those of women and children. (MWCD 2008, 3). According to the Goa Children's Act of 2003, child trafficking is the acquisition, recruitment, transportation, transfer, harboring, or receipt of individuals, legally or illegally, within or across borders, through threats of use of force or other forms of coercion, kidnapping, fraud, deception, the abuse of power or of a position of vulnerability, or by giving or receiving payments or benefits in order to obtain the consent of a person having control over another individual.

Another factor contributing to the wide variation in the suggested forms of trafficking is the multiplicity of characteristics and variables involved in the criminal enterprise as well as the various viewpoints on the matter. These forms cannot be categorized using a standardized system. For instance, some suggested forms are defined based on differences at the place of origin, while others place more emphasis on differences at the destinations, while still others base their definitions on the tactics used by traffickers (Mattar 2002).

There appears to be widespread agreement regarding the causes of trafficking in the literature review. These variables have an impact on people's socioeconomic and political environments, are interconnected, and may be categorized into two groups: personal circumstances and structural forces that shape the environment (Raymond et al. 2002). Typically, they are mentioned in relation to commercial sexual exploitation. According to Mukherjee's research (SEVA 2003), "fifty-seven factors play the role of causal agents to push women and girls towards prostitution."

Nearly all studies and reports discovered that a sizable portion of trafficked individuals come from lower socioeconomic groups. The risk of becoming a victim of trafficking increases with the level of poverty (UNDP 2002). Women who may experience "disfigurements" or people with disabilities are also at risk (Gathia 2003, 5).

People are more susceptible to trafficking in a dysfunctional home environment where there is family dissolution, marital strife, physical and sexual abuse, drug use, family pressures, large families, families facing uncertain times, children in substitute care, gender discrimination within the family, husbands abandoning their wives, and husbands taking a second or third wife. Prostitution in pilgrim towns and other tourist destinations, cross-border trafficking, and sexual exploitation through sex tourism, as well as child sex tourism and pedophilia, are a few worrying trends that have recently emerged (MWCD 2008, 4).

The constant pressure to work and earn money in environments with few options for a living or economic opportunity makes life for most people a "battle for survival." Industrialization and globalization, economic crises, underdevelopment, economic policies like privatization and liberalization, promotion of sex tourism, withdrawal of subsidies, and commercialization of agriculture, the ensuing erosion of subsistence agricultural practices, loss of traditional livelihoods, and inflation are listed as the structural factors influencing and determining these conditions. Policies and labor demand have an impact on vulnerability as well. Women and girls are increasingly being hired as service providers in a global market, putting them in danger (Sanghera 1999).

Following the trafficking of weapons and drugs, it has been determined that human trafficking is the third-largest source of income for organized crime worldwide. Trafficking occurs for a variety of reasons, including labor, prostitution, the organ trade, the delivery of drugs, the smuggling of weapons, etc. These, however, cannot be viewed in isolation because of their cross-cutting nexus and linkage, which exacerbates the challenges encountered in tackling the issue. Additionally, it is evident that although the techniques used for trafficking, such as coercion, deception, luring, abduction, kidnapping, etc., are frequently mentioned, the victims' social and financial limitations are what make them most vulnerable (MWCD 2008, 3).

Contributing factors include the speeding up of urbanization and the increased mobility brought on by the construction of road networks. Family needs and personal

desires are distorted by a culture of consumerism, materialism, commoditization of people, and commercialization of sex (Raymond, 2002). Groups like Scheduled Tribes, Scheduled Castes, Other Backward Castes, and ethnic minorities, tribal communities, undocumented migrant workers, stateless people, or people in refugee camps are more vulnerable as a result of discriminatory practices and social exclusion.

In relation to women, vulnerable groups' physical or geographical locations have been examined. Locations of poor women in India (rural and urban) have been identified, though the list is not all-inclusive (Murthy and Sankaran 2001). Contrary to popular belief, a study from Orissa discovered that "developed areas with improved infrastructure have invariably been the source as well as the destination of trafficking in women," despite the fact that 80% of the population or victims in these areas still belonged to landless households and families that relied on wage labor for survival (Pandey 2002). This suggests that in order to fully comprehend and explain vulnerability, it may be necessary to look more closely at the areas where the wealthy and less wealthy coexist.

The idea of a trafficking triangle is one put forth by Alison Phinney, and it refers to the area where trafficking occurs due to the supply, demand, and impunity of the criminal justice system. She asserts that "sex trafficking is driven by a demand for women's and children's bodies in the sex industry, fueled by a supply of women who are denied equal rights and opportunities for education and economic advancement, and perpetuated by traffickers who are able to exploit human misfortune with almost complete impunity" (Phinney 2001). Trafficking will continue to occur as a result of insufficient or ineffective laws, poor enforcement, ineffective penalties, low chances of prosecution, the relatively low risks involved, corruption and complacency, the issue being ignored, and governments' failure to put policies into place and provide adequate services for victims (Nirmala Niketan, College of Social Work, 2003).

3.11 Trafficking Process

Despite clarity of the trafficking concept issues with definitions of trafficking, the stages involved are generally accepted throughout the literature reviewed. They

include gathering people from a village or city, getting them to a designated place or transit point, possibly moving them to a central location, and then moving them to their final location. Before they reach their final location, where the 'Sale' takes place, the trafficked individuals may be moved several times. There appear to be an insurmountable number of permutations and combinations possible thanks to the various components involved in this process. As a result, the majority of research on human trafficking uses case studies to try to capture its variations. However, some patterns in these processes can be found at the regional level (ILO 2002a, 14–15).

Tribal people of Dahod, Panchmahal and Mahisagar districts of Gujarat state migrate to different regions for employment. Especially the people of this tribal community who migrate from Dahod, Panchmahal and Mahisagar districts migrate to Saurashtra and other districts. According to some studies, traffickers pick particular times of day to recruit. They take advantage of challenging times when many locals look elsewhere for income to survive, such as just before harvest or during a drought (HRW 1995). Traffickers also stay up-to-date on regions that are extremely impoverished or that have experienced natural, man-made, or political disasters. They allegedly also hire people during celebrations (ISS 2003a). According to some studies, traffickers choose specific times of the day to recruit. They take advantage of challenging times when many locals look elsewhere for income to survive, such as before harvest or during drought (HRW 1995). Traffickers also stay up-to-date on regions that are extremely poor or that have experienced natural, man-made or political disasters. They also reportedly hire people during celebrations (ISS 2003a).

From the extremely violent (drug use, kidnapping, and abduction) to persuasion, material inducements, befriending, and deception, a variety of tactics and strategies are reportedly being employed. False job offers and fake marriages are used to seduce people. It is simple to set up fictitious marriages in the South Asian region because proposals of nuptials without dowries are accepted. The majority of prostitution studies provide some details on the methods that are employed for recruitment (Joshi 2002, 15). In the CSWB study, 11.90% of the participants named another person's deception as the

reason they became prostitutes. 23.15 and 27.2 percent, respectively (Mukherjee and Das 1996, 42). Another study found that 9.2% of the women were sold and resold, 11% were lured, and 11% were kidnapped (Rozario 1988, 76). In order to gain the trust of women and girls, traffickers often approach them in groups (Sangroula 2001). Recent news reports from India have revealed a pattern whereby traffickers lure victims using marriage bureaus, placement agencies, and tutorial services.

Women who have migrated or who have been trafficked, women friends who have returned from abroad, husbands, fathers, boyfriends, or lovers can all be recruiters. They can also be neighbors, friends of families, relatives of friends, and acquaintances who have recently returned from abroad. Because of their sex orientation, some recruiters were gay men who women trusted (Raymond, 2002). Drug dealers, head masons at construction sites, band leaders in dancing or live bars, motorcycle pilots like in Goa (CRG 2003), or labor contractors (ISS 2003c) are just a few examples. They either rely on word of mouth or use friends and acquaintances as recruits. Traffickers are referred to as dalal or dalali (Gupta 2003).

3.12 Characteristics of Traffickers

In contrast to the young women and children they recruit, traffickers are typically middle-aged or young men. They are locals and agents who frequently travel between their home countries or regions and the receiving regions, and they typically have connections to the villages where the victims are from. According to reports, procurers are gamblers or substance abusers. Many of the traffickers are older women who either used to prostitution or are currently forced into it and are looking to escape abuse and servitude by offering a replacement. These agents frequently speak multiple languages (Giri 1999, 77). They might play several roles.

According to ILO 2002a, 13 a variety of actors are involved in trafficking "along the road from acquisition to exploitation." Usually, they are associated with organized trafficking. Police, passport and visa officials, railroad and bus authorities and staff, taxi and auto rickshaw drivers, and rickshaw pullers may all be a part of networks (DWCD 1996). According to Raymond (2002), the various roles include financiers or investors,

procurers or recruiters, organizers, document forgers, corrupt public officials or protectors, owners and managers of sex establishments such as brothels, as well as escorts, guides, or traveling companions. Additionally, there is the classification of an initial spotter, known in Bengali as choghat/arkathi (ISS 2003a).

The Department of Women and Child Development (DWCD) (1996) has distinguished between primary and secondary traffickers. In order to protect themselves, it is said that the latter work covertly and have connections in government circles. The main traffickers are pimps and procurers.

People may be trafficked by infrequent traffickers, local trafficking rings, or organized international trafficking networks. As a result, traffickers may work alone, in small gangs, or as a component of organized crime organizations (Richard 1999). According to Nirmala Niketan (2003), the last two are the main forms of trafficking in South Asia.

According to the United Nations Convention on Organized Crime, an organized crime group is described as a structured group of three or more people who have been together for a while and are "acting in concert with the aim of committing one or more serious crimes or offences to obtain directly or indirectly a financial benefit" (United Nations 2000, 4). Traffickers typically follow the rules of the marked zones and do not transgress them. As a result, when you change zones, completely different groups of people take over the activities. Additionally, they frequently relocate in an effort to both evade the police and expand their operational area (ISS 2003a).

3.13 Movement/Transportation

Trafficking "patterns and routes are often highly complex, ranging from intra-national flows to cross-border flows between neighboring countries to intercontinental and globalized trade," In 2000, Tumlin. People who have been trafficked typically move from less developed to more developed areas. As a result, the flow of trafficked women and children moves from South to North or East to West, respectively, with the former being marked by relative poverty and the latter by affluence; alternatively, it moves

from countries experiencing economic, social, and political crises to nations with more stable social and political systems; or it moves from rural to urban areas. From South-East Asia and South America, people have been trafficked to the US, UK, Italy, and other countries. They are also moving in the direction of the Middle East. There have been some cases of trafficking from India to South-East Asia. According to HAQ (2001), Delhi and Mumbai serve as the primary international transit hubs. Nepal and Bangladesh are the two main suppliers in the Indian market. According to news reports, girls from Russia and other CIS nations like Uzbekistan were trafficked into India following the fall of the USSR.

Around 89% of trafficking is thought to occur between states (ADB 2002: 8). The internal trafficking routes in India, as well as the locations of centers for commercial sexual exploitation and interstate flesh trade triangles, are described in detail by studies by Rozario (1988), Gathia (1999), Mukherjee (1997), CSWB (1991), SAP (2001), and HAQ (2000). These studies also pinpoint exploitation hotspots, such as the pink triangle connecting Agra, Jaipur, and Delhi. It appears that the main states from which trafficked people are sourced are Andhra Pradesh, Bihar, Karnataka, Madhya Pradesh, Rajasthan, West Bengal, Uttar Pradesh, and Maharashtra. In Mumbai, 45.6% of the prostitutes are female from Karnataka. 72.11% of women in Bangalore moved across state lines, and 93.60% of prostitutes in Hyderabad were Andhra Pradesh natives (Mukherjee and Das 1996, 34–35).

When the women arrive at their destinations, they might be "sold" or "transferred." Rozario et al. (1988) described the characteristics of the girls being "sold" and identified the market areas in various states. Somewhere, they are "resold." Based on factors like appearance, age, etc., the "rates" for women range from Rs. 400 to Rs. 70,000 (Ibid., p. 83).

To guarantee adherence to the exploiters' demands, numerous control mechanisms are employed. Three types of control are possible for people who are being trafficked: physical seclusion, financial restriction, and violence. Initiation, intimidation, punishment, and control are all accomplished through the use of violence

(Bales 1999, 246). Trafficked individuals are put in positions and circumstances where they have little to no control over their bodies and lives. To exert indirect control over the victims, efforts are made to make them dependent on drugs and alcohol.

In the industries targeted by trafficking, the use of debt bondage as a basis for labor acquisition is very common. India is a prime example of this. According to Bales (1999, 8–9) in his study on slavery, there are approximately 27 million slaves in the world who work as bonded laborers in Bangladesh, India, Pakistan, and Pakistan. Over 20 Indian states are alleged to have a high rate of bonded labor. In fish processing plants in Gujarat, stone quarries in Haryana, and brick kilns in Punjab, it has been discovered that migrant workers are employed in conditions resembling the bonded labor system (ILO 2001c).

At least 15 million children are working as virtual slaves, according to Human Rights Watch (HRW 1996).

Several industries have a need for trafficked people. The HAQ study on child trafficking served as the inspiration for the broad categories listed below.

3.14 Commercial Sexual Exploitation

The reporting and research on trafficking for the purpose of commercial sexual exploitation is extensive. Prostitution, pornography and cybersex, as well as sex tourism are some of the various forms that commercial sexual exploitation takes.

Prostitution is primarily a commercial phenomenon with strong patriarchal roots. It touches on ethical, religious, medical, and human rights concerns. Governments find it challenging to deal with this industry because of its economic exploitation, corruption, and connections to crime (Lim 1998). The systematic appropriation and devastation of women's and children's bodies is how large-scale capital accumulation occurs. The CSWB survey of six major cities, conducted in 1990, yielded the statistics that are frequently cited in India to illustrate the extent of prostitution. The study estimates that there are between 70,000 and 100,000 prostitutes living in all of the cities combined (Mukherjee and Das 1996). According to another report, there are 900,000

prostitutes in the world (Gathia 1999). The Indian Association for the Rescue of Fallen Women estimated in 1992 that there were 7.5 million call girls and 8 million brothel workers in India. All reports "indicate a dramatic escalation of the number of sexually exploited children all over the world," according to the UN Special Reporter on Sale of Children, Child Prostitution, and Child Pornography from 1996 (Baker 1999). Younger girls are also preferred because they can work as prostitutes for a longer period of time and earn more money as a result (Nirmala Niketan 2003). Almost every report on prostitution repeats these claims and convictions.

The literature that is currently available provides descriptions of various organizational structures and hierarchies, modes of operation, and types of prostitutes (ADB 2002). Along national highways, prostitution is carried out in call centers, friendship clubs, beauty and massage parlors, apartments, small hotels, and exclusive clubs. The term "flying prostitutes" appears to be a new classification that is on the rise. The locations where commercial sexual exploitation occurs are numerous and constantly changing. The sharing of income is a crucial aspect of the sex industry. The nexus between procurers, pimps, brothel keepers, local goondas (Goondas means Rowdy Sheeters), and police is made so strong by this income sharing that they collectively promote prostitution. (Mukherjee and Das 1996, 67).

Prostitution is typically found among women and girls from the most disadvantaged parts of society. The Scheduled Castes and Scheduled Tribes make up nearly 50% of the population, while Other Backward Classes make up between 12% and 27% (DWCD 1998). According to recent press reports, wealthy girls are increasingly being seduced into the sex industry. Married women also participate in the industry for brief (two-month) periods with their husbands' permission. (Nirmala Niketan 2003).

The expansion of the tourism sector has contributed to a rise in child sexual exploitation, which frequently takes intolerable forms. Sex tourism, also known as travel for sex, has entered the mainstream travel industry (CRG 2003). Tourism fosters an environment that makes indulgence simple. The advantage of anonymity provided by

the host nation minimizes the influence of the external impediments. The preference for South Asian nations is a result of their lax legal systems. Travel agencies, tour operators, hotels, and other businesses in the tourism sector are all involved in sex tourism; some even openly "advertise availability of child prostitutes" (Nirmala Niketan, 2003).

According to reports, the Indian states of Rajasthan, Goa (a popular tourist destination), and Kerala are all hotspots for sex tourism, with Mumbai regarded as the country's "biggest center for pedophilia commerce" (Nirmala Niketan, 2003). Out of a sample of 150 children, a study on the commercial sexual exploitation of children by the tourism industry on the eastern coast of India found that 60% had come because they had been promised a better job (Equations 2002, 33). According to another report, "hotels have contacts with adult sex workers, pimps, and other middlemen, including rickshaw pullers, van pullers, and petty traders." According to customer demand, these people approach children living on the streets and bring them to tourist lodges and hotels (Ibid, 28).

In India, the issue of labor exploitation is very common. According to the Supreme Court's definition, bonded laborers are all individuals who receive compensation that is less than the established minimum wage. There are currently 35 crore unorganized sector workers who are not receiving the required minimum wages. In addition, 12 crore children between the ages of 6 and 14 do not attend school. Thus, 47 crore people, or just under 50% of India's population, live in a state of servitude. (Iyer 2003, 436). There are between 60 million and 115 million child laborers in India, according to estimates. Sexual abuse and exploitation may also be perpetrated against children who are being trafficked for forced labor. Children are less expensive, easier to manipulate, exploit, and intimidate, and they work hard, so employers prefer to hire them (Nirmala Niketan 2003).

People are trafficked for agricultural, construction, or industrial work (organized and unorganized), in addition to being forced to work as domestic labor or exploited by the small-scale sector. They might be sold off by adoption rackets or trafficked for

engaging in illegal activities like selling drugs, trading organs, forcing people into marriage, or begging. There are also reports of trafficking for entertainment and sports, such as camel racing, for exotic dancing or the circus.

3.15 Impact of Trafficking

Effects of being a victim of trafficking on the victims' social, emotional, legal, and economic well-being (Wennerholm 2002).

3.15.1 Individual

Posttraumatic stress disorder, depressive disorder, dissociative disorders, psychotic disorders, and eating disorders are among the psychiatric conditions that are common in trafficking survivors (Ibid., 7). By maintaining their sexual purity and chastity, girls are expected to uphold the family's honor (ISS 2003c). They experience additional stress if they are trafficked into CSE (commercial sexual exploitation) because of the moral climate that prevails. In addition to being stigmatized as outcasts and experiencing moral and legal isolation (Giri 1999, 68), trafficked individuals are at risk for contracting HIV/AIDS, developing a drug addiction, and having high-risk abortions or teenage pregnancies, which may permanently harm their ability to conceive. According to a study conducted by an NGO in Dhaka, "more than 20% of street child prostitutes die before they reach adulthood." Nearly 22% of people become physically incapable and are only suitable for begging. All facets of their lives have been impacted by psychological trauma. Because it frequently goes unresolved, "the abused turn into abusers" (SOS 2001, 22), with a high likelihood that they end up committing crimes. It is well known that participating in "child labor" has negative effects on a child's development. HIV/AIDS, gender, and trafficking are all inextricably linked (UNDP 2002). Trafficking victims are forced to live illegal lives. Every aspect of their lives is tainted by illegality, turning them into criminals. They are severely stigmatized by their criminalization as individuals and as workers. It multiplies their victimization, making it impossible for them to seek redress. (Sanghera 2002, 8–9).

There is another perspective that is not frequently presented in the literature on human trafficking. It contends that the social effects of trafficking have contradictory aspects because, while harming many women, these episodes also freed them from other oppressive situations. Numerous women who have returned but have chosen to keep quiet about their experiences, particularly with regard to CSW, may have not only saved money but also gained more global experience.

Some of these women have been successful in using their experiences to empower themselves and their communities (ADB 2002, 46).

3.15.2 Society

A wide range of laws and human rights are broken in the crime of trafficking. Because trafficker cross borders with impunity, organized crime is increasingly involved, and the rule of law is generally undermined, it poses a threat to society. Because it involves both criminals and law enforcement, trafficking "threatens the very fabric of society." It displays and reinforces patriarchal attitudes and behavior, undermining efforts to advance gender equality and end prejudice against women and children (Ibid, 45).

According to a study by the Asian Development Bank, the economic losses to communities and governments are significant when measured in terms of the lost returns on investments in human or social capital. The cost of combating illegal trafficking activities places additional pressure on the government's already constrained law enforcement resources. In "hidden" sectors, a significant portion of the potential revenue from trafficked labor is lost (ADB 2002, 46). Low educational levels, poor health, and potential premature death all contribute to a loss of future productivity and earning power that is also felt at the national and regional levels. Poor countries cannot afford to lose their youth, whose capacity for productivity in the present and the future is crucial to development. A further imbalance between the young and middle-aged potential workforce (those most likely to be impacted) and older people who depend on them is created by the ravages of disease, including HIV/AIDS (ILO 2002a, 29).

People who have been trafficked are typically calculated using CSE. It is particularly challenging to arrive at accurate numbers in India because of the stigma associated with prostitution and the covert nature of operations (Gupta 2003). Estimates of adult and child sex workers in India are given to give an idea of the scope of the issue. In general, all cases of minors engaged in commercial sex work are considered to be trafficking. The figures provided exhibit a significant degree of discrepancy, making it virtually impossible to verify their veracity. Rarely are the original sources or the methodology used to calculate these numbers disclosed. At the time of entry, between 30% and 90% of women and girls are under the age of 18 (Gathia 2003, 9). There are between 70,000 and 1 million women and children working in the sex industry in India, according to estimates. 30 percent of them are under 20 years old. Almost 15% of people started sex work when they were under 15, and 25% did so between the ages of 15 and 18 (Mukherjee and Das 1996). According to a news story that appeared in Statesman on August 12th, 2002, 2 million Indian children are reportedly abused and forced into prostitution each year. There are about 2 million prostitutes in India, and 20% of them are minors, according to a rough estimate made by the NGO End Children's Prostitution in Asian Tourism. According to a 1992 study, 20,000 girls are reportedly transported from one region of the country to another at any given time (Gupta 2003).

However, sex work estimates from NGOs are significantly higher (UNICEF 1994). According to a CEDPA report, 200 women and girls in India engaged in prostitution every day in 1997, with 80% being forced into it (SOS 2001). In India, there are reportedly between 300,000 and 500,000 child prostitutes. According to a UNICEF study on Maharashtra, approximately 40% of CSE and trafficking victims are under the age of 18 at any given time (Patkar, Praveen and Priti, Patkar 2001, 11). In India, there were 9,368 cases of trafficked women and children in 1999, according to NCRB data. Since 1997, the prevalence of trafficking has been steadily rising, rising 7.7% from the rate in 1998. Tamil Nadu had the highest percentage of reported crimes against women (10.5%). Additionally, 15,956 cases of kidnapping and abduction were

reported overall in 1999. Of the total number of female victims, 1,960 were said to have been kidnapped or abducted for marriage and 9,159 were reported to have been taken for prostitution (ADB 2002, 19). Regarding cross-border flows, there are gaps in the national crime data collection systems (Ibid: 31).

3.16 Difficulties in Studying Trafficking

The relative dearth of information and quantitative data on human trafficking is due to the problem's many facets, which make precise assessments challenging. Few details are disclosed due to the clientele's desire for anonymity, the traffickers' clandestine activities, the low visibility of exploitation itself, and the victims' fear of the police and their exploiters. As a result, it is challenging for researchers to find sources because most of the parties involved refuse to cooperate (Pandey, Jena and Mohanty, 2002). This likely explains why the vast majority of studies use extremely small sample sizes. Their preference for qualitative information over quantitative information hinders the development of patterns and trends. Rozario (1988) carried out the only study on trafficking at the national level in India that was based on field research to date. Numerous reports base their findings on information obtained from news articles, law enforcement organizations, and anti-trafficking initiatives, which affects the conclusions they draw. Studies on female trafficking conducted in such facilities (rehabilitation homes), according to Blanchet, "do not adequately represent the life path of most "trafficked" women."

3.17 Approaches to Trafficking

The variety of approaches used to comprehend and combat trafficking also reflects the multifaceted nature of the crime. They stand for the points where human trafficking and other phenomena intersect and take place throughout the course of the trafficking process. The majority of the methods share elements. For instance, an approach will typically approach the issue from a labor or gender perspective. The issue will also be discussed in relation to human rights at the same time. This is the most comprehensive and addresses the widest range of concerns posed by trafficking. Adopted perspectives and approaches have an impact on the strategies created to

combat trafficking. According to Sanghera (1997, 27), human trafficking in South Asia is addressed as a problem of crime and violence against women, child labor and exploitation, or within a sociological framework. It has only recently been attempted to be seen from the perspective of human rights. You can approach the problem of trafficking as one of the following: labor, crime, migration, human rights, development, children's rights, or gender (Wijers 2002).

There are two distinct camps when prostitution is considered a moral issue in India. One is in favor of making prostitution a legal profession through self-governing bodies made up of sex workers, which will control the influx of new recruits, especially in terms of age and health. The anti-legislation movement holds that legalization will only legitimize an unethical industry and improve the position of pimps and brothel owners. Additionally, guardians will defend their actions by noting that their wards have entered a lawful profession (Shalini and Lalitha 1996). Women who engage in prostitution have recently tried to unionize. A national conference of sex workers brought together the Mahila Samanwaya Committee in Calcutta in 1997. Shalini and Lalitha's JWP study revealed that organizations have underlying political and vested interests in the creation of such groups, though. The other demands are a betrayal of the interests of women, with the exception of those for childcare services and education for their women.

3.18 Response to Trafficking

The three main areas of intervention in human trafficking are prevention, protection, and assistance, according to the UN protocol. Following these very broad divisions, the UN High Commissioner's report makes recommendations for principles and policies (UNESCAP 2002). More than half of the space in most reports on trafficking is devoted to interventions and suggestions. The criminal justice system and social welfare policies are the two broad categories under which these are covered (United Nations 2001). The former consists of international and national laws that are pertinent to trafficking. Typically, topics covered include the function of the implementation agencies as well as the policies and programs of both government and

non-government organizations. The evaluation of rescue and rehabilitation measures and facilities is the main goal of two UNICEF-sponsored studies that are currently under way. One of them is a study that examines government rehabilitation facilities for trafficked individuals in all 35 states and UTs in India.

Denying the issue, objectifying the victims and failing to consider their human rights, confusing trafficking with undocumented migration, and using the wrong definition of the crime are the "four main reasons for inappropriate or inadequate responses" to the problem (Jordon 2002).

3.19 Legal Framework

In her critique of South Asian trafficking laws, Sanghera (1999) contends that the legal system deprives trafficked people of their constitutional and human rights in an apparent effort to protect them from harm and abuse, a result that runs counter to the intentions of anti-trafficking measures. She also emphasizes how the laws infantilize women by ignoring cases of women who were trafficked as children rather than those who were rescued as adults (Sanghera 1999).

3.19.1 Judiciary

Vishal Jeet v. Union of India in 1990 and Gaurav Jain v. Union of India in 1997 are two prominent Supreme Court decisions that are credited with spurring government action on the issue of commercial sexual exploitation (DWCD 1998). On the other hand, the judiciary is accused of contributing to secondary victimization because of the way it interrogates witnesses during court proceedings and because of the drawn-out, tiresome procedures involved. Instead of serving as a deterrent to those who commit crimes, the victims view the legal system as formidable (DWCD 1996) Depending on the judges' level of sensitivity, decisions can either help the victims or make their harassment worse (United Nations 2001). With the aid of NGOs, Indian courts typically send rescued foreign national girls, such as Nepalese or Bangladeshi women, back to their home countries; on occasion, they are sent to government homes. There is hardly any activism or research after that. The police and the judiciary take very little action

against the traffickers and those who are initially in charge of violating the rights of these women. The women and girls who have been trafficked are the main witnesses against the offenders in evidence-gathering procedures in trafficking cases. They are extremely vulnerable and run for their lives when dealing with organized crime (Ibid: 16).

3.19.2 Police

The police forces of the respective nations in the SAARC region are considered to be "the most important institutions in the fight to eradicate trafficking." However, in reality, there is evidence of police involvement in trafficking throughout all reports, and it is claimed that corruption is "endemic" within the force (Ibid: 15). Rescue operations' management and conduct have come under harsh criticism. Reports are critical of police behavior, age verification practices, and the ineffective networking with other relevant agencies, such as protective homes (STOP 2002a, 26). Since police officers are detested in the sex industry and are seen as tormentors, prostitutes prefer to be under the protection of a brothel owner (DWCD 1996). STOP (2002a) goes into great detail about a number of flaws in the investigations that led to the accused's acquittal. Due to their responsibility for prevention, the police force is required by law to take a more proactive role. However, they typically keep their involvement to reactive actions and focus on the outward signs of crime rather than its inward causes (DWCD 1996).

The difficulties that police officers face have also been emphasized. They worry that brothel owners will use their political connections to make accusations against them and victimize them. Due to inadequate facilities and communication issues, the police have trouble transferring children to juvenile facilities. They are unable to devote enough attention to trafficking in terms of surveillance and prevention due to understaffing, especially in rural areas. Typically, victims become hostile (DWCD 1996). The lack of infrastructure and resources, as well as the traffickers' influential political and commercial connections, are other factors that hamper the law enforcement apparatus (DWCD 1998). The lack of any authority to conduct an investigation into a crime outside of a state limits swift prosecution; the CBI is said to have many

difficulties. The constabulary is said to have poor living and working conditions. Due to other law-and-order priorities, there is "a lack of per capita time for the constable or sub inspector at the grassroots" (i.e., the number of police constables per thousand is low) (ADB 2002, 63).

3.19.3 Other Factors

Border patrol agents and immigration officers also come into contact with trafficked individuals. According to reports, some work with the traffickers. Due to a conspicuous lack of documentation examination and questioning, many trafficked women claim that immigration officials are involved in their transfer (Raymond et al. 2002). By selling visas, they might encourage trafficking (GSN 1997). The use of new technologies in trafficking is a topic that is generally not addressed in literature from other regions but is in literature from India. "Developments in methods of detection and prevention have not kept pace with the creation of new forms of trafficking," the prosecution's perspective on the matter, reads (Giri 1999, 72). Because of the use of these communication tools and the significance of organized crime involving global syndicates, some studies do suggest that trafficking may necessitate the use of more advanced and creative investigation techniques (ADB 2002, 63 and Nair 2002).

In *Bachpan Bachao Andolan vs. Union of India (UOI) and Ors.*¹⁴⁴ an appeal petition was submitted to the Supreme Court in this case, addressing the growing number of unaccounted-for children in India. The Supreme Court ruled that if a report or piece of information regarding a missing child is brought to the attention of a police station, it will be considered a formal police report (FIR) and necessary action will be taken to ensure that an immediate investigation and follow-up are conducted. Additionally, it is mandated that a Special Juvenile Police Unit be established in each state and that a single officer from the unit be assigned to each police station.

¹⁴⁴ MANU/SCOR/32485/2013.

In *Bachpan Bachao Andolan vs. Union Of India & Ors.*¹⁴⁵ (2014) The following are some astounding guidelines that the Supreme Court issued to address the issue of missing children:

1. All First Information Reports must be registered.
2. The number of police stations in the state in question that have officers assigned to the position of juvenile welfare officer disclosed.
3. Designating volunteer paralegals
4. The existence of an NGO network for missing child recovery and reintegration
5. A provision allowing the police to take a photo graph of each child they find or recover.
6. Developing a standard operating procedure to address child disappearance cases.
7. Cases referred to each state's Anti-Human Trafficking Unit.
8. The Anti-Human Trafficking Unit's status reports.
9. Within one month of the date this order was communicated, all First Information Reports must be registered.

In *Bachpan Bachao and Ors Vs. Union of India (UOI) and Ors, Shramjeevi Mahila Samiti Vs. State and Ors and Kalpana Pandit Vs. State*,¹⁴⁶ decided in a common judgment by the Delhi High Court. Each of the three writ petitions filed as part of the PIL highlights a troubling issue that our society deals with on a daily basis: the threat that child trafficking poses to our community. In the first case, the petitioner, Kalpana Pandit, was employed as a domestic servant and was originally from West Bengal. She arrived in Delhi between 1995 and 1996 as a result of extreme poverty and her inability to find employment. The Petitioner, who had been suffering from a severe illness in the interim, gave her daughter Jharna to Sunita Sen, the proprietor of a placement agency. After getting better from her illness, the petitioner visited Sunita Sen's home to meet her daughter. It was then that she discovered her daughter was employed at a house in Noida. She managed to get the phone number somehow and

¹⁴⁵ MANU/SCOR/39836/2014.

¹⁴⁶ 2012 IAD (Delhi)565: 177 (2011)DLT 198.

tried to call her daughter, but Jharna would not allow her to speak with her. Her persistent requests to Sunita likewise proved fruitless. She didn't find out for another year and a half that her daughter had gone missing on August 29, 2000.

In *Hori Lal vs. Commissioner of Police , Delhi & Ors*¹⁴⁷ The Court established specific guidelines that all State investigation officers must adhere to in order to effectively search for kidnapped minor girls or missing children:

1. Within a week of receiving the FIR, to immediately publish photos of the missing people in newspapers and on television. A missing person's photos must be widely publicized at all notable locations in the city, town, and village as well as at railway stations, airports, interstate bus stops, regional passport offices, and border checkpoints.
2. To inquire from friends, coworkers, acquaintances, and family as well as in the neighborhood, place of employment, or place of study.
3. To get in touch with the missing people's employer, coworkers, class teacher, and students.
4. To interview the missing girl or woman's family, neighbors, teachers, and school friends about their whereabouts.
5. Conduct the appropriate investigations to find out if there have been any prior instances or reports of violence within the family.

3.20 Protection and Assistance: Policies, Program and Initiatives

The Department of Women and Child Development (DWCD), which falls under the ministry of human resource development, is the primary government agency responsible for protection and assistance policies and programs. It serves as the focal point on a national level for the fight against child and woman trafficking in India. Each state government has a department that corresponds to DWCD (ADB 2002, 48). The government was required by the Supreme Court's 1990 ruling in the *Vishal Jeet v. Union of India* case to provide for the victims of commercial sexual exploitation's care,

¹⁴⁷ MANU/SCOR/008/2004.

protection, development, treatment, and rehabilitation, as well as to establish a central advisory committee. A national seminar was held the same year of establishment, following a survey initiated by the Central Social Welfare Board. This led to a national consultation in 1994, accompanied by six regional workshops to develop strategies involving diverse stakeholders. The Indian Leadership Forum Against Trafficking (ILFAT) has raised concerns to the Ministry of Women and Child Development regarding gaps in the Trafficking in Persons (Prevention, Care & Rehabilitation) Draft Bill 2021, set for discussion in the forthcoming Winter session of Parliament.

3.20.1 National Plan

The DWCD devised a comprehensive national action plan in 1998 to address trafficking and the commercial sexual exploitation of women. It encompassed prevention, awareness-raising, economic empowerment of women, rescue, rehabilitation, and various social welfare measures, including education and shelter provisions. While commended for its inclusion of psychological counseling in health services, criticisms highlight shortcomings such as the absence of integrated intelligence on trafficking-related activities and funding details. Additionally, concerns were raised about the exclusion of child pornography and potential implementation challenges. Suggestions to separate children of prostitutes from their mothers faced backlash for infringing on familial rights. The plan was also faulted for lacking specific measures to identify and prosecute traffickers. The rapporteur states that "accountable state institutions are better vehicles for enforcement than social surveillance" and that the method of "social surveillance" to combat trafficking is not considered advisory. Regarding "laws and strategies for identifying and punishing traffickers," the plan is silent (United Nations 2001, 32).

3.20.2 Prevention

The ADB country report on India details various anti-poverty and pro-women programs introduced by various ministries that may shield vulnerable groups from human trafficking. According to the Working Women's Forum, effective source area programming necessitates a holistic approach, which is acknowledged in the report

(ADB 2002, 78). The Integrated Child Development Scheme (ICDS) and Swarn Jayanthi Swa Rozgar Yojana are two of the government programs mentioned. The Swadhar scheme, launched in December 2001, is intended for women in challenging situations, such as rescued victims of trafficking (DWCD 2001). The DWCD intends to develop a national media plan as well. The state partners are in charge of state-level initiatives. The Jabali scheme in Madhya Pradesh targets the Bhedia, Bhancadara, and Sansui tribes and adopts an inclusive strategy programs for victims' children (Ibid.: 57).

3.20.3 Rehabilitation

Women are primarily placed in government-run homes for protective custody during the rehabilitation process, either until their cases are heard or until they are sent back to their original homes. These government-run homes have come under fire for a number of flaws. Corruption, subpar infrastructure, tight budgets, insufficient support for mental health care, and ineffective skill development (DWCD 1996). The majority of women end up sitting around for extended periods of time, and those who do not want to be rescued see their homes as prisons. They can only be found close to the houses. "Protective custody as practiced in South Asia is a serious violation of women's rights, and it is crucial that governments in the area re-examine both this idea and the conditions in the government homes where women are kept." (United Nations 2001, 12). It appears that the Bombay High Court mandated that these homes be under the supervision of outside agencies (ADB 2002, 61). States like Haryana have fallen short in offering temporary housing for young girls. The rescued girls are being kept in nariniketans, which is against the law, due to a lack of adequate facilities. According to the Juvenile Justice Act, short-stay homes and juvenile homes are to be established for the protection and rehabilitation of young girls (Gupta 2003). Only a few of the required states have provided these homes, despite the requirement. The homes that have been constructed are overcrowded and underequipped to meet the most fundamental requirements. Additionally, the Juvenile Welfare Board has come under fire for operating largely in isolation (Nirmala Niketan 2003).

The rehabilitation of trafficking victims can be a challenging endeavor. For instance, a young woman who became pregnant and was "rescued" refused to have an abortion. These children must be institutionalized when the parents are deemed unfit or unreliable. There aren't many foster homes, though. The parents are given custody of the child in the absence of a special court hearing the case. This is a problem because the child will probably be trafficked again (Ibid). Additionally, there have been instances where CSE victims organized them, persistently resisted eviction and brothel closure, and demanded appropriate rehabilitation facilities before any action was taken.

3.20.4 Reintegration

The biggest barriers to reintegration are perceived to be social stigma and rejection (Shah 2003). In addition to the stigma making it difficult to find alternative employment, any source of income that pays less than Rs. 5,000 to 8,000 per month is unviable, and the saved girls frequently return to commercial sex work. There aren't enough recovery, repatriation, and reintegration models that prioritize the preferences and interests of trafficked women and children, according to some studies. Additionally, there are few programs for comprehensive rehabilitation and few support systems. By sensationalizing the situation and revealing the victims' identities, the media impedes the rehabilitation process.

3.20.5 Patterns of media coverage

"Media coverage focuses on activities related to commercial sexual exploitation of women and children," rather than the entire process of trafficking, when discussing the issue of trafficking in women and children. Reports in the media emphasize the "exploitation of sex workers by brothel owners, pimps, and law enforcement agencies; nexus between politicians, traffickers, and enforcement agencies; initiatives taken by NGOs and other civil society organizations; case studies of specific victims; incidents of police raids on brothel houses and arrests of people caught during the raids; and, seminars, and workshops organized on the problem of trafficking." (ADB 2002, 65).

3.20.6 Rescued Foreign Women

In India, there are no laws governing the return of trafficked individuals to Bangladesh or Nepal. These NGOs "have built relationships with several NGOs across the border to lease with the Nepal Embassy and Bangladesh High Commission in repatriation of trafficked women and children," according to an NGO statement. 200 women are reportedly waiting to be returned to Bangladesh (Ibid: 26-27). Girls who have been rescued are frequently forced back into prostitution after being left at the border or left to rot in hoes (DWCD 1998). In addition, there is little information available about the difficulties in reintegrating women and children from Bangladesh or Nepal. Only across India's international borders with Nepal and Bangladesh are NGOs and partner organizations able to assist with repatriation.

3.21 Trends in Trafficking

Some of the trends mentioned in the literature point to an increase in both the volume and significance of human trafficking. According to reports, trafficking "has taken on grave global dimensions in the recent context of globalization." (D'Cunha 2002). Along with an increase in unauthorized and undocumented migration within the region, this trend is present (Sanghera 1999). With new sources and destinations, the flows now encompass the majority of the world's nations (D'Cunha 2002: 3). The "global sophistication, complexity, and consolidation of trafficking networks" has increased and is said to include a variety of advanced mechanisms (Ibid: 5); the penetration of organized crime groups has increased as well (Sanghera 1999). Even though there are other reasons why people are trafficked, commercial sexual exploitation continues to be the main motivator. Its complex socioeconomic and political foundation, which is emphasized by class, gender, and ethnic concerns, has also been brought to light. The inclusion of men and very young children is reportedly preferred (D'Cunha 2002, 3). Other trends noted by D'Cunha and mentioned in almost all reports include "hefty profits, which by some estimates exceed those of the illicit drug and arms trades... Strong ties between trafficking networks and public officials...vertical and horizontal connections between trafficking networks and criminal enterprises, including the transportation and tourism industries" (Ibid.). It has also been

noted that "fewer victims are being kidnapped or abducted in the current context of globalization and migration." In actuality, the vast majority are victims of human trafficking that involves deceit and false promises (United Nations 2001).

3.22 National Strategy to Combat Human Trafficking¹⁴⁸

Marginalized communities, demand-reduction tactics, addressing trafficking in supply chains, and utilizing a variety of legal and technological tools, the Department continues to strengthen its ability to prevent human trafficking. The Department of Justice's initiatives to stop human trafficking are detailed in this section. To be more precise, Department of Justice will improve detection and enforcement activities by utilizing its administrative and civil authority, examining creative demand-reduction tactics, and leveraging its current prevention initiatives.

A. Leverage Existing Prevention Initiatives

The Department of Justice will step up its support of current programs that have been shown to be successful in stopping human trafficking. These include programs aimed at finding missing children and lessening the vulnerability of American Indians and Alaska Natives to violent crime, including human trafficking.

B. Examine Innovative Demand Reduction Strategies

Numerous studies on domestic and international efforts to reduce the demand for sex trafficking have been conducted, but there are few reliable indicators of how effective these efforts have been. Preventive actions and responses from the criminal justice system work together to reduce the demand for sex trafficking. On the other hand, there is disagreement among advocacy groups, governmental actors, and survivors of human trafficking regarding the best ways to lower demand. This is especially true when it comes to the effects of law enforcement tactics meant to disrupt the market and the decriminalization of some or all parties involved in the commercial

¹⁴⁸ National strategy to Combat Human Trafficking. January 2022. Pp. 37-42, Retrieved from https://www.justice.gov/d9/pressreleases/attachments/2022/01/31/Department_of_Justice_ht_strategy.pdf

sex industry. It can be difficult to reduce demand in relation to labor trafficking since, in part because labor has not been the focus of most demand-reduction initiatives, anti-trafficking practitioners do not fully understand this concept. Although there is general consensus that efforts to combat labor trafficking should not be neglected, there is disagreement over the nature of the demand for forced labor or goods made using forced labor in legitimate business sectors. Therefore, further research is needed to identify the specific aspects of demand that should be decreased.

The working group, which is co-chaired by the departments of Justice, Health, and Education, has examined the federal government's ongoing efforts to reduce demand, compiled the body of research on the subject, and held a number of listening sessions with advocates, survivors, and other experts to hear their perspectives on the situation and offer recommendations for federal action. For instance, the Working Group met and discussed, upon request, the report of the Organization for Security and Cooperation in Europe's Special Representative and Coordinator for Combating Trafficking in Human Beings. Through the Working Group, Department of Justice will continue to look at demand-reduction tactics in the upcoming year and assess options for additional action. In addition to conducting research to support evidence-based demand-reduction initiatives, Department of Justice will produce training on dismantling illicit massage industry enterprises in order to improve its examination of demand reduction strategies.

C. Utilize Civil and Administrative Authority

Enacted in December 2018, Title 18 Section 1595A permits the Attorney General to file civil lawsuits to prevent future violations of Chapters 77, 110, or 117, as well as conspiracies to violate those provisions. This is a potentially very helpful new tool that cuts across the criminal and civil equities of Department of Justice components in order to prevent human trafficking violations. In order to guarantee the consistent distribution of information regarding the efficient utilization of this instrument, a national subject-matter expert must be designated.

3.23 Conclusion

The United Nations (2008)¹⁴⁹ highlights numerous ways in which these anti-trafficking policies and initiatives could be made more effective while also summarizing the major responses to human trafficking launched over the past ten years. It emphasizes in particular how important it is to gather information about the numbers of victims of trafficking and the types of exploitation to which they are subject so that prevention programs and nearly all other anti-trafficking initiatives can be tailored to the task at hand. The implication is that anti-trafficking initiatives shouldn't be motivated by widely reported but unsupported estimates that have occasionally greatly overestimated or seriously underestimated the number of people trafficked. It is not the responsibility of any one body or mechanism within the United Nations system to ensure that these standards are followed or to advise States when the level of protection and assistance is significantly less than what is required by the standards. As a result, it should come as no surprise that many trafficked individuals choose not to get in touch with the organizations set up to protect or assist them. This has unfortunate repercussions for both the individual being trafficked, who is unable to receive assistance, and for the States, which are hindered in their efforts to prosecute offenders. Raising these standards and creating mechanisms for reciprocal state accountability for the caliber of the protection and assistance they offer appear to be top priorities. It is perhaps not surprising that responses to trafficking have been so varied given the wide range of (and occasionally conflicting) recommendations made to Governments by international, regional, and specialized organizations. It is encouraging that "good practice" has received more attention in recent years, but there are still no established procedures that would enable various institutions and States to debate and come to an understanding about what qualifies as "good practice." Overcoming this obstacle and prioritizing agreement on what "good practice" is going forward should ensure that anti-trafficking initiatives are more successful and that funding designated for stopping human trafficking is used more effectively.

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