

Human Trafficking: A Legal Perspective

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Abstract

Human Trafficking is a crime against Humanity, as human beings are sold as commodities and purchased as goods; someone sells a human being and the other purchases a human being. The purchaser is called “customer” and the sold person is called “accused or criminal”. The economics of demand and supply works in the case of human beings. There is a demand for cheap Labour ,bonded labour, tourism, sex trade, organs, drugs, brides, illegal activities, sports, pornography websites, house help, agricultural labourers, workforce for hazardous employments, child soldiers ,beggars etc and there is a supply of vulnerable people who are lured, forced, abducted, tortured, bribed, mislead and kidnapped by the traffickers and sold for meeting the demands. Customers who are traffickers and violators of law purchase and sell them in markets, villages, houses, secluded places and on social media platforms by seeing their physical appearance, body type, colour, utility etc for money. The welfare state should ensure that the vulnerabilities are removed, and the victims and witnesses are protected, and traffickers are dealt strictly. The stakeholders must ensure that awareness regarding human trafficking is there in all parts of the country, people are aware of their Constitution and legal rights. The present Article studies the Definition of human trafficking and its elements. It also critically evaluates the Constitutional and Legal provisions related to Human Trafficking. There is a need to implement the law strictly and create awareness about human trafficking at all levels. The stakeholders should also work in proper coordination and follow the Standing Operating Procedures while addressing the issues of human trafficking. The Laws should be implemented strictly and this paper studies different aspects of Human Trafficking. The suggestions and conclusion given in the end will help in curbing the issues related to Human Trafficking and re-trafficking of the vulnerable people.

Keywords: Human Rights, Human Trafficking, Bonded Labor, Sexual Abuse, Pornography, Online Gaming, Social Media.

Introduction

Trafficking in persons is a serious crime and a grave violation of their human rights, Constitutional Rights and Legal rights. Article 21 of The Constitution of India guarantees Right to life with dignity. But, in reality, thousands of men, women, young population, and children are trafficked every year in India and abroad. Globally, we see that people are trafficked from a place which is called ‘Origin’, they are moved from one place to another which is called ‘Transit’ and they are exploited, tortured and abused physically, emotionally and mentally and kept at a place which is called ‘Destination’. As per the Trafficking in Persons Report, June 2020 1the countries have been divided into 3 tiers. Tier 1, tier 2 and tier 3. Tier 1 countries have the human trafficking laws and follow them. They also fully meet the minimum standards for the elimination of trafficking and continued to demonstrate serious and sustained efforts during the reporting period. Tier 2 countries have a law but the implementation of the law is not as per the standards. Tier 3 countries either do not have the law or fail to comply with minimum standards for the elimination of trafficking in their country. Tier 3 countries are also not making significant efforts to bring itself into compliance with such standards.

As per the report, the Government of Afghanistan does not fully meet the minimum standards for elimination of trafficking and is not making significant efforts to do so. So they have marked it as tier 3 country. The Government of Albania also does not fully meet the minimum standards for elimination of trafficking but is making significant efforts to do so and it is marked as tier 2 country. The Government of Algeria does not fully meet the minimum standards and is neither making significant efforts to do so, therefore it was marked as tier 3 country. The Government of Antigua and

Barbuda also does not fully meet the minimum standard for elimination of trafficking but is making significant efforts to do so, so it is marked as tier 2 country. As per the report, the government identified and protected fewer victims but never convicted any trafficker. The Government of Argentina has been marked as tier 1 country as its fully meet the minimum standards for the elimination of trafficking, the government also demonstrated serious and sustained efforts during the reporting period. The Government of Australia fully meets the minimum standards for elimination of trafficking, so it is marked as tier 1 country. As per the report, these efforts included prosecution and convicting more traffickers and sentencing more traffickers. The Government of the Bahamas fully meets the minimum standards for the elimination of trafficking so it remained on tier 1 ranking. The efforts included significant increased investigation of traffickers, increased identification of victims, implementation of the national action plan and continuing anti-trafficking training for officials. In the report it was found out that they do not adequately screen several vulnerable groups which traffickers may target including domestic workers and migrant workers, the government also did not publish its annual assessment of progress implementing the national action plan for a second consecutive year. The Government of Austria fully meets the minimum standard for elimination of trafficking so it is marked as tier 1 country. The Government of Bahrain fully meets the minimum standards for elimination of trafficking so it remained on tier 1 ranking. The Government of Bangladesh does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so therefore it was upgraded to tier 2 country. The efforts included convicting more traffickers, identifying more victims, establishing 7 anti-trafficking tribunals as stipulated in the Bangladesh anti-trafficking law. The Government of Belgium fully meets the minimum standards for the elimination of trafficking so it remained on tier 1 ranking. The Government of Bhutan does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so therefore it was upgraded to tier 2 watch list. The Government of Burma does not fully meet the minimum standards for elimination of trafficking so it remained on tier 3 ranking. The Government of Brazil does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so therefore it remained on tier 2 ranking. The Government of Cambodia does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so therefore it remained on tier 2 watch list. The Government of Canada fully meet the minimum standards for the elimination of trafficking so it remained on tier 1 ranking. The Government of the People's Republic of China does not fully meet the minimum standards for elimination of trafficking and is not making significant efforts to do so therefore it remained on tier 3 ranking. Government of Costa Rica does not fully meet the minimum standards for the elimination of trafficking so it remained on tier 2 ranking. The Government of the

Republic of Cyprus fully meets the minimum standards for the elimination of trafficking so it remained on tier 1 ranking. The Government of Denmark does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so therefore it remained on tier 2 ranking. The Government of Egypt does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so therefore it remained on tier 2 ranking. The Government of Ethiopia does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so therefore it remained on tier 2 ranking. The Government of Finland fully meets the minimum standards for the elimination of trafficking so it remained on tier 1 ranking. The Government of France fully meets the minimum standards for the elimination of trafficking so it remained on tier 1 ranking. The Government of Germany does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so therefore it remained on tier 2 ranking. The Government of Greece does not fully meets the minimum standards for the elimination of trafficking but is making significant efforts to do so therefore it remained on tier 2 ranking. The Government of Hong Kong does not fully meet the minimum standards for elimination of Trafficking and did not enacted any law to fully criminalize all forms of trafficking so was downgraded to tier 2 watch list. The Government of Hungary does not fully meets the minimum standards for the elimination of trafficking but is making significant efforts to do so therefore it was upgraded to tier 2 ranking. The Government of India does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so therefore it remained on tier 2 ranking. The efforts included convicting traffickers and completing a high-profile investigation into a case that involved official complicit in trafficking at a government funded shelter home in Bihar, convicting 19 individuals in the case including three state officials, an influential former legislative was among the 12 that received the sentences. First Information Report was also filed against the government funded shelter home in Bihar that abused residents including trafficked victims. The Madras High court reversed an acquittal in a bonded labour case. The central government also added investigation of interstate and transnational trafficking cases to the mandate of the National Investigation Agency. The government is working on anti trafficking bill and expanded the role of anti human trafficking units to all 732 districts areas which need focus attention and are reporting of the cases, investigating and convicting traffickers, providing Compensation to the victims of trafficking. The Government of Iran does not fully meets the minimum standards for elimination of trafficking and is not making significant efforts to do so therefore remained on tier 3 ranking. The Government of Israel fully meets the minimum standards for the elimination of trafficking so remained on tier 1 ranking. The Government of Italy does not fully meet the minimum standards for elimination of trafficking but is making

significant efforts to do so therefore remain on tier 2 ranking.

The Government of Japan does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so. But the law enforcement bodies continued to identify children exploited in commercial sex without formally designating them as trafficking victims, in some cases hindering their access to protection services and judicial recourse therefore Japan was downgraded to tier 2 country. The Government of Jordan does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so. But the authorities continued to arrest, detain and deport some victims for unlawful acts which traffickers had compelled them to do such as immigration violations and fleeing abusive employer's. Under the Jordan's anti-trafficking law penalties for sex trafficking offences were not as serious as penalties for other serious crimes so Jordan was downgraded to tier 2 watch list. The Government of Kuwait does not meet the minimum standards for the elimination of trafficking but is making significant efforts to do so therefore remained on tier 2 ranking. The Government of Malta does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so therefore remain on tier 2 ranking. The Government of Mauritius does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so therefore remain on tier 2 ranking.

The Government of Nepal does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so therefore remain on tier 2 ranking. The Government of Netherlands fully meet the minimum standards for the elimination of trafficking and the government continue to demonstrate serious and sustained efforts during the reporting period therefore remained on tier 1 ranking. The Government of Pakistan does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so the government continued to lack overall adequate resources for victim care and only referred 4% of all victims identified to care therefore Pakistan was downgraded to tier 2 watch list. The Government of Peru does not fully meet the minimum standards for elimination of trafficking but is making significant efforts to do so therefore remain on tier 2 ranking. The Government of Saudi Arabia does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so and made achievements during the reporting period so was upgraded to tier 2 watch list. The government of Singapore fully meets the minimum standards for the elimination of trafficking and made key achievements to do so during the reporting period therefore Singapore was upgraded to tier 1 country. The Government of Spain fully meets the minimum standards for the elimination of trafficking so remained

on tier 1 ranking. The Government of Switzerland fully meets the minimum standards for the elimination of trafficking therefore continue to remain on tier 1 ranking. The Government of Taiwan fully meets the minimum standards for illumination of trafficking therefore remained on tier 1 ranking. The Government of Uganda does not fully meet the minimum standards of elimination of trafficking but is making significant efforts to do so, but the government did not demonstrate overall increasing efforts compared to the previous reporting period so was downgraded to tier 2 watch list. The Government of United Arab Emirates does not fully meet the minimum standards for the elimination of trafficking was making significant efforts to do so therefore remained on tier 2 ranking. The Government of United States fully meets the minimum standards for elimination of trafficking therefore remained on tier 1 ranking. The government of United Kingdom fully meets the minimum standard for elimination of trafficking and continued to demonstrate serious and sustained efforts during the reported period therefore remained on tier 1 ranking. The Government of Venezuela does not fully meet the minimum standards for the elimination of trafficking and is not making any efforts to do so therefore Venezuela remained on tier 3 ranking.

Trafficking is the worst form of crime still we do not have a comprehensive legislation in India to deal with human trafficking. At present, the definition of human trafficking at national level is also missing, so the present paper will address the issue of human trafficking and the measures provided under the Constitution of India, and under the Statutes viz. *the Indian Penal Code, 1860; the Immoral Traffic (Prevention) Act, 1956; the Transplantation of Human Organs and Tissues Act, 1994* and under various Labour Laws. Vulnerability, poverty, lack of legal education, poor implementation of the different laws to deal with this heinous crime gives an opportunity to the trafficker to protect himself and use the loopholes for acquittal.

Definition of Human Trafficking

Article 3 paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons defines Trafficking in Persons as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery, or practices similar to slavery, servitude or the removal of organs².

As per the above definition of Human Trafficking, we can give a chart to explain the elements of Human Trafficking:

Which Acts Constitute Trafficking?	What are the means of Trafficking?	What is the purpose of Trafficking?
Recruiting a person	By using threat or force	Exploitation, Torture and Violation of Human Rights
Transportation	Coercion	Prostitution and Sexual exploitation
Transfer	Fraud	Forced and hazardous labour
Harbouring	Abduction	Slavery
Receipt of Person	Abuse of power	Illegal Activity and employment
	Abuse of Vulnerability	Beggary and Organ Trade
	Lurement	Beggar

Criminalization of Human Trafficking

The definition contained in Article 3 of the Trafficking in Persons Protocol is meant to provide consistency and consensus around the world on the phenomenon of trafficking in persons. Article 5 therefore requires that the conduct set out in article 3 be criminalized in domestic legislation. Domestic legislation does not need to follow the language of the Trafficking in Persons Protocol precisely but should be adapted in accordance with domestic legal systems to give effect to the concepts contained in the Protocol. In addition to the criminalization of trafficking, the Trafficking in Persons Protocol requires criminalization also of:

1. Attempts to commit a trafficking offence
2. Participation as an accomplice in such an offence
3. Organizing or directing others to commit trafficking.

National legislation should adopt the broad definition of trafficking prescribed in the Protocol. The legislative definition should be dynamic and flexible so as to empower the legislative framework to respond effectively to trafficking which:

Which acts constitutes trafficking?	What are the means of trafficking?	What is the purpose of trafficking?
procurement	threat	Monetary gain
recruitment	use of force	Illegal purpose
transportation	coercion	Misuse the vulnerability of a person.
Transfer	abduction	Sale
harbouring or receipt of children legally or illegally	fraud	
Giving or receiving payments or benefits to achieve the consent of a person having control over another person.	deception	
	Abuse of power	

Section 370 of Indian Penal Code, 1860 defines Trafficking of person.—(1) “Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by— First.—using threats, or Secondly.—using force, or any other form of coercion, or Thirdly.—by abduction, or Fourthly.—by practising fraud, or deception, or Fifthly.—by abuse of power, or

Which acts constitutes trafficking?	What are the means of trafficking?	What is the purpose of trafficking?
Recruits	force	Exploitation
Transports	coercion	
Harbours	abduction	
Transfers	fraud, or deception	
Receives	abuse of power	
	inducement	
	giving or receiving of payments or benefits	

1. Occurs both across borders and within a country (not just cross-border)
2. Is for a range of exploitative purposes (not just sexual exploitation)
3. Victimized children, women and men (Not just women, or adults, but also men and children)
4. Takes place with or without the involvement of organized crime groups.³

Section 2(z) of the Goa Children's Act 2003, defines child trafficking as under:

Child trafficking means the procurement, transportation, transfer, harbouring or receipt of children legally or illegally within or across borders by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving payments or benefits to achieve the consent of a person having control over another person for monetary gain or otherwise.⁴

As per the above definition of Child Trafficking, we can give a chart to explain the elements of Child Trafficking.

Sixthly.— by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking⁵. We can understand this definition by following chart:

The section explains further that exploitation shall include physical exploitation, sexual exploitation, slavery, servitude, or forced removal of organs. It also states that consent of the victim is immaterial as nobody can give consent for illegal activities and consent obtained by above mentioned means is not a free consent as per the Indian Contract Act, 1872. Secondly one cannot consent to be harmed and abused every second.

The Trafficking Victims Protection Act (TVPA) in 2000.6 defines "severe forms of trafficking in persons" as: „ sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. A victim need not be physically transported from one location to another for the crime to fall within this definition.

Objective of the Study

1. To explain the linkage between tier1, tier 2 and tier 3 Countries as mentioned in Trafficking in Persons Report June, 2020
2. To define Human Trafficking
3. To discuss the elements of Human Trafficking
4. To discuss the provisions related to Human Trafficking in the Constitution of India
5. To discuss the provisions related to Human Trafficking under various Laws
6. To discuss important Judgments related to Human Trafficking in India

The Constitution of India and Human Trafficking 7:

The preamble to the Constitution of India says India is a socialist state. In the present state it is very difficult to get the benefits of the socialist state as we find concentration of wealth and resources in few hands and deprivation of the basic facilities at all levels to the others. There is a lack of implementation mechanism at the grass root level for most of the welfare programs and schemes irrespective of the government efforts at local and national level. It is very difficult for a commoner to believe that we the people of India are living in a socialist state in reality.

Preamble

1. The preamble further ensures justice which includes social justice, economic justice, and political justice. But in real sense it is very difficult to get social, economic, or political justice. Because of the vulnerability factor the victim or the survivor of a crime never approaches the judicial system and is always exploited at the hands of the traffickers. The discrimination and illiteracy adds to this problem and the non implementation of government schemes and programmes makes him further vulnerable.
2. Social Justice can only be achieved if there is a feeling of brotherhood, fraternity, and implementation of the constitutional mandates. If people look down upon others based on various reasons, if the opportunities are not same for all

irrespective of their background and other elements of division, then it is very difficult to achieve social justice for all. Dignity and worth also needs to be respected by the state and the people of India but in real sense it is hard to realize.

3. Economic justice can only be achieved if vulnerabilities are removed and people are given equal opportunity to develop and grow irrespective of their background etc. Quality education, proper skill-based training, and availability of jobs at local level for all as per their choices and capabilities can only ensure economic justice in true sense.
4. For political justice it is very important that people are educated and understand the value of their vote and do not vote to non-performers based on their caste, creed, religion, or other benefits. Lots of funds are available with the leaders for development work in the constituencies and educated voters can only ensure transparency and accountability of the leaders for the all-round development of their constituency and Nation as a whole.
5. Liberty of thought in expression, belief, faith, and worship. This can only be realized if we the people of India act with responsibility, diligence and respect to all religions. Hate speeches and any other form of violation should be addressed strictly by the constitutional machinery under Articles 32 and 226. Fundamental duties should also be followed in true letters and spirit.
6. Equality of status and opportunity to all. To ensure this the state should work with commitment and dedication. Transparency and accountability of the administrators and service providers is a need of the hour.
7. Fraternity assuring the dignity of the individual. The state should ensure that fraternity and dignity of the individual is not compromised in any case and any violation of the preamble should be taken seriously irrespective of the face value.

Fundamental Rights

1. Article 12 8 says that the State includes:
 - I. Government of India and Parliament of India
 - II. Government and the legislature of each State
 - III. Local or other authorities within the territory of India
 - IV. Local or other authorities under the control of government of India
2. Article 149 talks about right to equality. It mentions two equality rights i.e.
 - I. Equality before law.
 - II. Equal protection of the laws.

The practical aspect shows that due to illiteracy, vulnerability, lack of legal awareness equality before law and equal protection of law is very difficult to be achieved in majority cases. The vulnerability and ignorance of a person result in deprivation of this right. Sometimes the stakeholders fail to implement the equality principle and thereby violate the Article. Many a times the person whose equality rights are violated is unaware about such right being in existence.

3. Article 15 (1) 10 says that the state will not discriminate against any citizen on the following grounds:
 - I. Religion
 - II. Race
 - III. Caste
 - IV. Sex
 - V. Place of birth or any of them.

In reality, we find lots of discrimination cases before the court of law. People treat other people based on their caste, creed, religion, sex, place of birth knowingly or unknowingly thereby violating this Article. In villages still we have bifurcations based on above-mentioned grounds and one can clearly differentiate between the lifestyle and infrastructure available to them on these bifurcations.

4. Article 15(3) 11 mentions that the state can make special provisions for women and children. Proper implementation and awareness about these laws is a need of the hour. The laws which are made for women and children are not known to women and children because of their illiteracy, poverty, discrimination and other factors. The implementation of the laws at local level is a big challenge for the marginalised groups.
5. Article 17 12 talks about abolition of untouchability. In few parts of the country we find that un-touchability is still practiced and reported. Laws should be properly implemented, and strict action should be taken against violators with speedy disposal of cases. Awareness programs should be conducted at all levels and stakeholders should be trained to handle such cases. False cases should also be handled strictly so that this law is not misused.
6. Article 19 13 talks about right to freedom. Article 19 (g) says that the citizens shall have the right to practice any profession or to carry on any occupation, trade or business. This right it is very important for all round development of the masses and to ensure dignity and worth of the population. The state shall not discriminate based on residential status, language, region or any other ground. The state shall take serious action against people who differentiate on this basis knowingly or unknowingly, thereby creating hardships for people of other states who are working in their state. The state should also not have any discriminatory provisions for availability of infrastructure, basic utilities, and access to public distribution system for other state people.
7. Article 21 14 of the Constitution of India talks about protection of life and personal liberty. It also focuses on dignity and worth of the individual. In real sense protection of life and personal liberty of all the people of India is a big challenge and frequently violated. Dignity and worth have different meanings for different classes so when the infrastructure availability is not same for all people of India then dignity rights in a welfare state is a big question mark. In cases of human trafficking where humans are sold and purchased the dignity rights are abused and violated every second.

8. Article 21 A 15 talks about right to education. It says that the state shall provide free and compulsory education to all children of the age of 6 to 14 years. The focus should be on quality education so that children are able to sustain themselves with dignity and worth. The concept of reading and writing names to qualify themselves as literates needs to be re looked upon. The basic infrastructure at all levels i.e. school education, college education and University education should be decided by the government irrespective of their location and region and it should be the duty of the district magistrate in all districts to ensure that the minimum standards are maintained. The authorities while giving permissions should ensure that the basic requirements are met including physical infrastructure, staff, sanitization, training and updating along with the approval from the education department officials. Technology should be used to monitor and train the people working at all levels. The administrative authorities should also use modern technology to interact with the students, teachers and administrators of school, college and university. Any lapse should be handled strictly and with transparency. The financial expenditure should also be cross checked by the available resources.
9. Article 23 16 talks about right against exploitation. Article 23 (1) prohibits traffic in human being and beggar and other similar forms of forced labour. This Article also mentions about punishment in case of contravention of this provision. In India the cases of trafficking are increasing every year as per the data given by the Crime Records Bureau so this issue should be addressed collectively by following multidimensional approach amongst the stakeholders.
10. Article 24 17 says that child below the age of 14 years shall not be employed to work in any factory or mine or any other hazardous employment. In actual we find children on the streets, working in factories, *dhaba*, hazardous employments, house help, pornography sites, prostitution, sold and purchased as commodities and exploited by the employees. Their vulnerabilities make them easy target for the traffickers. The children are also exploited for labour, organ trade, drugs, crimes etc.
11. Article 32 18 talks about right to constitutional remedies. So, if Part 3 is violated then one can move directly to the supreme court under this Article. In reality people are ignorant about this article and do not know where to go in case their fundamental rights are violated. Ignorance of law is no excuse in India, but many few people are aware about Constitution of India and other statutory provisions related to human dignity and worth.

Directive Principles of State Policy

1. Article 37 19 states that the provisions contained in this part are not enforceable by any Court but the principles laid down are fundamental in the

governance of the country and it shall be the duty of the state to apply these principles in making laws. Today, when we are living in fifth generation of human rights then part 4 of the Constitution of India should be enforceable in a welfare state.

2. Article 38 (1) 20 says that the state shall strive to promote the welfare of the people. As a Welfare state the state should ensure that public distribution system reaches the masses in a transparent way. The state should also work positively and ensure that the vulnerabilities are removed.
3. Article 38(2) says that the state should try to minimise the inequalities in income, status, facilities and opportunities. The welfare state should have skill-based education system so as to ensure that everybody gets dignified job as per their capabilities and interest so that people contribute positively in the development of the nation and work with commitment and dedication.
4. Article 39 21 talks about securing adequate means of livelihood for men and women along with equal pay for equal work. It further says that the health and strength of workers should not be abused, and citizen should not be forced by economic necessities to enter into locations that are unsuited to their age or strength. It also talks about freedom and dignity of children and protection of children against exploitation and moral and material abandonment. The labour laws should be in the interest of the workers who are vulnerable, and workplace should be facilitated as per the need of the hour keeping in view the needs and interest of the workers and their well being. Social legislations should be implemented strictly to address social issues at all forums. The working conditions should be positive and motivating with proper updating, transparency and regular training.
5. Article 39A talks about equal justice and free legal aid to all. The commoners should be made aware about the provision of equal justice and free legal aid. Free legal aid should be provided at all levels with a sense of responsibility, merit and dignity towards the profession.
6. Article 40 talks about organisation of village panchayats so that they can function as units of self government. It is said that the majority of population of India live in villages so if we provide basic infrastructure like quality schools, colleges, universities for education, sanitation, proper roads, good infrastructure, 24 hours electricity, good health facility, modern technical colleges and institutes, skill based learning programs, job opportunities, training programs for farmers to do agriculture related activities, opening of accounts of all the people staying in villages, linking the *aadhar* cards, proper updation of the population register, providing technical knowhow and use of modern equipment's in farming, promoting skill based activities in the villages and focusing on local talents, ensuring that the government

programmes and policies are implemented with coordination, transparency and motivation in all the villages, bringing transparency in the public distribution system and utilisation of funds at all levels for the overall development of the village, accountability of the administrator and politicians in ensuring that the programs and policies are utilized properly by the stakeholders and ensuring that the money allotted for development is utilized in a coordinated way keeping in view the need and interest of the villages, then we can say that India has reached fifth generation of human rights and the constitution ethos is achieved. Panchayat response to Human Trafficking can handle the issues of trafficking at local levels. Panchayats can play a very important role in preventing and addressing the issues of Human Trafficking.

7. Article 41 22 says that state within its economic capacity shall make effective provisions for securing right to work, education, public assistance in cases of unemployment, old age, sickness and disablement and any other case of undeserved want. The shelter homes, observation homes, old age homes etc. should be places of safety and development as per the needs of the people who are staying there. Technological intervention should be done for upgrading and improving the infrastructure, management, and administration of these homes.
8. Article 42 23 talks about just and humane conditions of work and maternity relief. If dignity rights are ensured at the place of work and for pregnant ladies, then we can think of a better world to live.
9. Article 43 24 talks about living wage for workers. The Minimum Wages Act and the other labour laws should be amended in the interest of the workers. Technological intervention should be used in monitoring and administering places of employment. New kind of work profiles should be added under the labour laws as per the need of the changing times. The labour laws should be implemented strictly at all places of work irrespective of its nature and organization.
10. Article 45 25 talks about provision for free and compulsory education for children. Free and compulsory education for children below the age of 14 years should be a mandate to be followed after the amendment in fundamental rights chapter by inserting article 21 A in it.
11. Article 46 26 talks about protecting schedule caste and scheduled tribes and weaker sections of the society from social injustice and all forms of exploitation. The Commissions and NGOs working for vulnerable people should work in close coordination along with each other to address the issues of vulnerable people.
12. Article 48 27 talks about organization of agriculture and animal husbandry by the state. This should be the priority of the state as, if people have better living standards in villages then only, we can say that we are a welfare state.

Fundamental Duties

1. Article 51A (a) 28 says that it is the duty of every citizen of India to abide by the Constitution of India. This should be the mantra of developing together.
2. Article 51 A(e) talks about promoting harmony and brotherhood amongst all the people irrespective of their religion, language, region or other diversities. It also says to renounce practices derogatory to the dignity of women. If we do this duty, then our rights will never be violated.

Judicial Approach

In Vishal Jeet v. Union of India 29 the Court laid down following directions in this regard:

In this case the petitioner filed a writ petition in the supreme court under article 32 of the Constitution of India by way of public interest litigation for seeking directions to enquire against the police officials under whose jurisdiction the forced prosecution, devadasi system and jogin traditions were flourishing and to rescue victims of commercial exploitation and provide them with proper medical aid, shelter, education and training in various disciplines of life so as to enable them to choose a more dignified way of life and to look into issues pertaining to dedication of young girls as *Devadasi* and *Jogan*.

The Court said that:

'this devastating melody can be suppressed and eradicated only if the law enforcing authorities in this regard take very severe and speedy action against all the erring persons such as pimps, brokers and brothel keepers.'³⁰

The Supreme Court further issued the following directions to the State Governments and Union Territories:

1. All the state governments and governments of union territories should direct the concerned Law enforcement authorities to take appropriate and speedy action to eradicate Child Prostitution.
2. To take steps in providing adequate rehabilitative homes.
3. To set up advisory committee for giving suggestions eradicating child prostitution and *Devadasi* and *Jogan* traditions and suggest measures for Care, protection, treatment, development, and rehabilitation of victims.

Gaurav Jain v. Union of India³¹

PIL was filed by an advocate seeking directions for the respondent for making provision of separate schools with vocational training facilities and separate hostel for children's of prostitutes. In this case notice was issued not only to the original respondents but also to all the states and union territories. The court held that segregating children of prostitutes by locating them to separate schools and providing separate hostels was not be in the interest of such children.

The court for the said that the children of prostitutes should however not be permitted to live in inferno and the undesirable surroundings of prostitution homes

The Supreme Court had constituted Mahajan Committee to investigate into the problem of human trafficking in human beings and to submit a detailed

report along with guidelines for addressing the issue.

The court further observed that if we segregate children of prostitutes and provide them separate schools and hostels it will not be in the interest of the child and society at large as they will not be allowed to mingle with others and become the part of the society.

After Supreme Court judgment in Bachpan Bachao Andolan v. Union of India³², the Ministry of Home Affairs, Govt has issued detailed advisory to the Additional Chief Secretary / Principal Secretary, Home of all the States and the Union Territories to file FIR in cases of missing child.

In State of Uttarakhand v. Sartaj Khan³³ the high court convicted the respondent for the offence of Sections 363,366-B,370(4) and 506 IPC and Section 8 of POCSO Act for human trafficking and kidnapping of a 15 years girl from Nepal to India and issued "following mandatory directions to the State Government/other agencies: -

1. All the Central agencies, local agencies in the State of Uttarakhand should insist for proper verification and identity of children, more particularly, minor girls/women coming to India from Nepal. The antecedents should be verified and counter verification be made from the authorities of Nepal.
2. The minor children coming from Nepal should be properly counseled and telephone numbers of their guardian should be taken along with the permanent address to be verified and re-verified from the counterpart agencies of Nepal.
3. The Court recommends to the Central Government to frame law based on model law against trafficking in persons, as drafted by United Nations Office on Drugs and Crime mentioned in Paragraph no.73 of the judgment, in relation to trafficking, victim and witness protections, assistance and compensation, protection of victims and witnesses in court, protection, relocation of victims and/or witnesses, repatriation of victims to their countries of origin.
4. The police authorities should invoke provisions of Money Laundering Act, 2008 against the persons who are involved in human trafficking, since the Immoral Trafficking Prevention Act, 1986 has been included in Para 7 of the Schedule prepared under Section 2(y) of the Act and also to attach the properties of persons involved in human trafficking.
5. The Central agencies should increase patrolling on the international borders with the help of genuine Non- Government Organizations to check the human trafficking, more particularly, of minor girls/women by setting up more check-posts and by providing additional manpower.
6. All the anti-human trafficking units in the State of Uttarakhand must be headed by a person not below the rank of DSP/CO, one Inspector, two Sub-Inspectors and three ASI and 10-15 Constables. 50% of these officers/officials should be sensitized women.

7. All public prosecutors, police officers should be adequately trained. Legal aid should be provided to the victims of human trafficking.
8. The State should take preventive measures to check the trafficking of children from the State of Uttarakhand by improving the socio-economic conditions of the areas which are vulnerable to human trafficking.
9. The State Government is directed to provide safe and proper accommodation for the victims of human trafficking. They should be provided basic health care. They should be properly counseled by a psychiatrist. The Court should appoint a legal guardian of an unaccompanied minor. His/her identity should be established. Steps should be taken to locate his/her family in the interest of the child. The trial under Sections 366(B) and 370 IPC should be held in camera.
10. The State Government is directed to constitute a Special Investigation Team (SIT), if not already constituted, headed by the Senior Superintendent of Police to investigate the matter, as per the details given in the report by Mr. Manoj Chandran, the then Additional Secretary of the State Social Welfare Department, regarding 'Rampant Child Trafficking', within four weeks and to register FIRs against the persons, who were/are involved in human trafficking of boys/girls from shelter homes.
11. The Court can take judicial notice of the fact that the minors are kidnapped by the organized gangs to force them into beggary. The Police Department should conduct DNAs of the parents as well as of the children of the beggars to ensure that the children found in their company are their own children. The Court again recommends that the begging should be banned throughout the State of Uttarakhand by bringing suitable legislation on the analogy of Uttar Pradesh Prohibition of Beggary Act, 1975. The religious places should be free of beggars.
12. The State Government is directed to constitute special wing to locate/trace and restore the missing boys and girls with their lawful guardian. The State Government is also directed to setup Photo Bank Data to trace the missing children and to display it on their official website. The Police Department is also directed to have effective liaisoning with the adjoining States as well as with the Central agencies. The Police Department should flash the photographs of missing children at the earliest at bus stands, railway stations. The FIRs in the cases of missing children should be registered promptly and investigated in a time bound manner. The photographs of the missing children should also be predominantly displayed in the regional as well as national newspapers and also on television. It is a very sensitive issue. The newspapers and news channels should reasonably charge the police for displaying the photographs of the missing children under corporate social responsibility. The State should

also involve the Gram Panchayats at the grass-root level to trace the missing children.”³⁴

In *Achiya Bibi Alias Achiya Sardar v. The State Of West Bengal And Others* ³⁵ The court said that “We are in 2020 now, and not in '1984' (as contemplated by George Orwell). As such, the 'Big Brother' approach of the disbursing authority should be shunned and the victim should be free to spend the compensation granted to her/him at her/his option. The right to commit a mistake inheres in the right to personal liberty and freedom and should not be curtailed mandatorily and arbitrarily by the SLSA merely because it is in charge of the purse- string that too for such meagre amounts of compensation as contemplated under the Scheme.

41. In view of the foregoing discussions, W.P. No. 233 (W) of 2020 and W.P. No. 19305 (W) of 2019 are allowed on contest, thereby setting aside and quashing the impugned orders, being the order dated August 9, 2019 in the case of *Achiya Bibi* and the order dated September 6, 2019 in the case of *Supiya Bibi* respectively, and the associated notifications³⁶.

Statutory Provisions and Human Trafficking The Immoral Traffic (Prevention) Act, 1956

Under this Act human trafficking is not defined but prostitution, protective homes, shelter, corrective institution, trafficking police officer has been defined along with provisions related to punishment for keeping a brothel home. This Act should be amended keeping in view the new dimensions of human trafficking and the law should also address the technological vulnerabilities.

1. Section 2 (a) 37 defines brothel. This definition of brothel needs to be amended as per the technological interventions and changing dimensions. Today brothel is not restricted to a physical space i.e. room but can be done on social platform in any part of the world so amendment is needed in this section. With the rise of cases of online pornography and online rape the law should also be amended. The concept of International criminality and cross border trials should be discussed before amending the legislation.
2. Section 2 (aa) 38 defines child which also needs to be amended to bring parity among various laws which define child. Child shall mean a person under the age of 18 years.
3. Section 2(b) 39 defines a collective institution which also needs to be amended as per needs of the current times. The multi dimensional approach should be followed in addressing the issues of human trafficking.
4. Section 2(f) 40 defines prostitution which also needs to be changed as per the current times as it does not talk about the vulnerability factors of people who are forced in prostitution. The Supreme Court judgments should be taken into consideration by the legislatures and accordingly this definition should be amended. The issue of consent should also be taken into consideration while defining prostitution.

5. Section 2(g) 41 defines protective homes which can also be further elaborated keeping in view the basic facilities to be provided in these homes for safety, dignity, rehabilitation, and reintegration of trafficked victims/ survivors.

The Indian Penal Code, 1860

1. This Act has been amended by the **Criminal Law (Amendment) Act 2013** in which Section 370 of the Indian Penal Code deals with Trafficking of persons and Section 370A deals with exploitation of trafficked persons.
2. **Section 371** 42 deals with habitual dealing in slaves, Section 372 deals with selling minors for the purpose of prostitution etc. and 373 of the Indian Penal Code deals with buying minor for purposes of prostitution etc.
3. **The Protection of Children from Sexual Offences Act, 2012**

It is a special law to protect children from sexual abuse and exploitation. It provides precise definitions for different forms of sexual abuse, including penetrative and non-penetrative sexual assault, sexual harassment.

Conclusion

Human beings are not commodities, so should be treated with dignity and worth. The vulnerability of a person should not deprive him of his rights. The Trafficker should not be treated as customers and should be dealt strictly under the law. The law should be implemented properly and any crime big or small should be immediately reported. Fear of social stigma and family reputation should not come in the way of a person's security and well being. Sensitization and awareness programs should be done at all levels of stakeholders so that prevention and rehabilitation happen. The society and family members should always play a positive role in rehabilitation and re-integration of the victims of trafficking. Victims should be treated with love, belongingness, and care. Consent given under fear, coercion, threat, misrepresentation, fraud should not change the status of the victim/survivor. We all should follow the Constitutional mandates and never exploit people for monetary or physical gains. If we cut the demand factors, then the crime related to trafficking will reduce and slowly vanish. We can prevent a person from being trafficked and rehabilitate and re-integrate trafficked persons by following measures:

1. Create legal awareness amongst the masses.
2. Addressing Border trafficking by workable bilateral agreements between the states.
3. Human trafficking should be defined in a comprehensive legislation. Trafficking related data should be collected by using technological interventions.
4. Victims should be respected and not looked down.
5. Training of Judicial officials at regular intervals will help in updating them with the latest technological and law.
6. Strict implementation of the existing laws and to bring a comprehensive and exhaustive Law.

7. Providing Education and Employment avenues for the trafficked person as per their potential and capabilities.
8. Providing Medical and Psychological support to trafficked person.
9. Forming Anti human trafficking clubs at School, College and University level.
10. Close Coordination amongst the different stakeholder in bringing justice to the trafficked person and protecting him from being re-trafficked.
11. Proper training of Police Personnel's at all levels, especially for officials working in Human Trafficking Units.
12. Proper implementation of Rehabilitation and Reintegration schemes for trafficked people.
13. Conviction of Traffickers and closure of brothels.
14. Shame and Identification of all the criminals which are at present called "customers" by traffickers.
15. Proper Psychological support to the family members of the trafficked person.
16. Reporting of missing persons.
17. Action by the local level at *Panchayat* in creating awareness and sensitization programmes at village level.
18. Awareness and alert attitude of the family member towards trafficking.
19. Proper implementation of schemes of Government through public private partnership.
20. Positive and responsible role of NGOs in creating awareness about the issues of human trafficking.
21. Poverty alleviation programmes should be carried out at village level properly and should be monitored by stakeholders.
22. The demand for trafficking should be checked, and people should not become customers.
23. The vulnerabilities should be addressed at village, district, state and national levels.
24. Community policing should be encouraged.
25. The advisories issued by MHA should be followed in letter and spirit both to prevent and address the issues of Human Trafficking.

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