
A Study on the Right of Children against Trafficking for Sexual Exploitation in India

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Children are like buds in a garden and should be carefully nurtured, as they are the future of the nation and the citizens of tomorrow.

-Jawaharlal Nehru

ABSTRACT-

All children constitute the most fundamental and valuable resources of any society and any developmental activity have to include the child rights perspective. In a civilised society the importance of child welfare cannot be over emphasized, because the welfare of the entire community, depends on the well being of the children. All children have the right to protection. A family is the first line of protection for children. Schools and communities are responsible for building a child friendly environment outside the child's home. There is a need to establish a protective background so that the child could develop intellectual and flourish socially and spiritually. Born and brought up under conflicting conditions, the status of children, particularly the orphaned, lone, uncared, weaker are open for exploitation and they fall easy victims to several crimes perpetrated against them. Innocence, lack of experience, exposure, and improper care is some of the contributing factors for their vulnerability and external influences. Crime against children those involving violence including physical and mental such as child abuse, forced labour, child trafficking are becoming matters of serious concerns nationally as well as internationally. The points which have been illustrated in the article are as follows-

- a. Child and the need for protection.
- b. Abuse of children and child trafficking.

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- c. Past scenario of the problem.
 - d. Aspects of child trafficking and child as a victim of sexual abuse and exploitation.
 - e. Magnitude of the problem.
 - f. International and National Instrument in the area of sexual exploitation and trafficking of children.
 - g. Judicial response on child trafficking and sexual exploitation of children.
 - h. Conclusion.

It is essential that the issues relating to the rights of the child have to be viewed not in isolation but within the context of development. The core value of the universal legal principle is that the policies be made, structures be established and actions be taken that are always and invariably in the best interests of the child should be followed always.

INTRODUCTION:

Children have a special place in all the wisdom and traditions of the world. All children constitute the most fundamental and valuable resources of any society and any developmental activity have to include the child rights perspective. Childhood is the time when children should be given the opportunities to grow and develop in their own best way. Their lives should be mature gradually, as they gain experiences. Childhood must be preserved. Children have the right to survive, develop, to be protected, and participate in decisions that impact their lives.¹

CHILD AND THE NEED FOR PROTECTION-

Childhood across the world, have broadly been construed in terms of a 'golden age' that is synonymous with innocence, freedom, joy, play and the like. It is the time when, spared the rigours of adult life, one hardly shoulders any kind of responsibility or

¹ DR. SAVITA BHAKHRY, CHILDREN IN INDIA AND THEIR RIGHTS 9 (2006).

obligations.² Children are the potential beneficiaries who stand to make the greatest gains from sustainable development. There must be urgent steps by every one of us including government, civil society, and the private sector to assure the well being and security of the future generations.³

In a civilized society the importance of child welfare cannot be over emphasized, because the welfare of the entire community, its growth and development depends on the health and wellbeing of its children. All children have the right to protection. They have the right to survive, to be safe, to be heard, to receive adequate care and to grow up in a protective environment.⁴

The Supreme Court in Sheela Barse and another v Union of India⁵ has declared that a child is a national asset. A child requires proper care, love, affection and nourishment but experience shows that they are subjected to maltreatment. It is true that children are vulnerable; they need to be cared for and protected from the harshness of the world outside and around.

The Declaration of Rights of the Children adopted by the General Assembly of the United Nations on November 20, 1959⁶ in its Preamble states that-“The child, by reason of his physical and mental immaturity needs special safeguards and care, including appropriate legal protection, before as well as after birth and that mankind owes to the child the best it have to give and proceeds to formulate several principles of which some of the following are material for our present purpose”. Principle 2- The child shall enjoy special protection and

² *Id.*

³ ASHA BAJPAI, CHILD RIGHTS IN INDIA XXVII (2nd ed. 2006).

⁴ DR. S.C.TRIPATHI & VIBHA ARORA, LAW RELATING TO WOMEN AND CHILDREN 407 (4th ed. 2010).

⁵ Sheela Barse and another V Union of India, A.I.R. 1986 S.C. 1873(INDIA).

⁶ DR. S.K.KAPOOR, HUMAN RIGHTS UNDER INTERNATIONAL LAW AND INDIAN LAW 221 (6th ed. 2014).

shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose the best interests of the child shall be the paramount considerations. Principle 10 – The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance and universal brotherhood and in full consciousness that his energy and talents should be devoted to the service of his fellow men.

The Convention on the Rights of the Child, 1989⁷ set out the rights that must be realized for children for full and harmonious development of his or her personality. Article 2 states that- State Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination of punishment on the basis of the status, activities, expressed opinion, or beliefs of the child’s parents, legal guardians or family members.

Article 19- Protection of Child from abuses and neglect- State parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical and mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parents, legal guardians or any other person who has the care of the child.

Article 32- Protection from Economic Exploitation-State parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, spiritual, mental, moral or social development.

Article 33-Protection from illicit use and trafficking of Harmful Substances- State parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect the children from the illicit use of narcotic drugs and psychotropic substances.

⁷ *Id.* at 223.

Article 34- Protection from Sexual Exploitation- State parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes state parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent- (a) Inducement or coercion of a child to engage in any unlawful sexual activity. (b) The exploitative use of children in prostitution or other unlawful sexual practices. (c) The exploitative use of children in pornographic performances and materials.

Article 36- Protection from other forms of Exploitation- State parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37- Protection from torture and punishments etc to prevent below 18 years of age- State parties shall ensure that-(a) no child shall be subjected to torture or other cruel or inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age.

It is significant to note that that the Constitution of India mandates special protection to children by adopting 'positive' discrimination such as making special provisions for them. Article 15(3) of the Constitution of India enables the state to make special provisions for the children. Article 24 provides that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Article 39 requires the State to direct its policy towards securing the following principles:⁸

(e) To protect health and strength of workers and tender age of children and to ensure that they are not forced by economic necessity to enter avocations unsuited to their age or strength.

(f) That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

⁸ DR. J.N.PANDEY, THE CONSTITUTIONAL LAW OF INDIA 406 (47th ed. 2010).

These constitutional provisions reflect the great anxiety of the Constitution makers to protect and safeguard the interest and welfare of children in the country.

Observations made in Bandhua Mukti Morcha v Union of India⁹ are relevant in this context. It says that a child of today cannot develop to be a responsible and productive member of tomorrow's society unless an environment which is conducive to his social and physical health is assured to him. Neglecting the child means loss to the society as a whole.

There is a need to establish a protective background for children so that the child could develop intellectually and flourish socially and spiritually.

ABUSE OF CHILDREN- CHILD TRAFFICKING-

Throughout the history of our society, children have been bought, sold, enslaved, exploited and killed. Born and brought up under conflicting conditions, the status of children, particularly the orphaned, lone, uncared, weaker are open for exploitation and they fall easy victims to several crimes perpetrated against them. Crime against children those involving violence including, physical and mental such as child abuse, forced labour, child trafficking, are becoming matters of serious concerns nationally as well as internationally.¹⁰

A large number of children in India still live much below the standards set by the Constitution, national and international law. They suffer an array of threats to their development, well-being, survival. They suffer from poverty, diseases, famine, and war, and they also suffer from acts and omissions by their own caretakers, guardians, and parents. Hundreds and thousands of girls are trafficked and used for prostitution in brothel in cities. The phenomenon of sale of children is universal. Children are not only sold and exploited at national level but they are also trafficked across frontiers far and wide.¹¹

⁹ Bandhua Mukti Morcha V Union of India, A.I.R. 1997. S.C. 2218 (India).

¹⁰ S.K.PACHAURI, CHILDREN AND HUMAN RIGHTS 1 (1999).

¹¹ Bajpai, *supra* note 3, at 449.

Human Trafficking is generally understood to refer to the process through which individuals are placed and maintained in an exploitative situation for economic gain. The Oxford English Dictionary defines traffic as ‘trade, especially illegal (as in drugs)’. It has been described as ‘the transportation of goods by road, rail, air, sea, etc. The word trafficked and trafficking is described as ‘dealing in something, especially illegally. The concept of trafficking in people refers to the criminal practice of exploitation of human beings, when they are treated as commodities for profit and after being trafficked, are subjected to long term exploitation.¹²

The most comprehensive definition of trafficking is the one adopted by the United Nation Office of Drugs and Crime in 2000 that came into force in December 2003 ‘United Nations protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children’, also called the ‘Palermo Protocol’, trafficking in persons is defined under Article 3 as-¹³

(a) Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another persons, 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 services, slavery or practices similar to slavery, servitude or the removal of organs.

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in sub paragraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.

¹² NHRC-UNIFEM-ISS, A REPORT OF TRAFFICKING IN WOMEN AND CHILDREN IN INDIA (2003-2004).

¹³ N.I.OBI NBBE & DILIP.K.DAS, GLOBAL TRAFFICKING IN WOMEN AND CHILDREN 131(1st ed. 2008).

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking of persons” even in sub-paragraph (a) of this Article.

The first major instrument dealing with the trafficking of children is part of the 2000 United Nations ‘Palermo protocol’ titled The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. Article 3(a) defines child trafficking as the “recruitment, transportation, transfer, harbouring and/or receipt’ of a child for the purpose of exploitation. The International Labour Organization expands upon this definition by asserting that movement and exploitation are the key aspects of child trafficking.

Child Trafficking according to UNICEF¹⁴ is defined as” any person under 18 who is recruited, transported, transferred, harboured or received for the purpose of exploitation, either within or outside a country”.

Under Sec 2(z) of the Goa Children’s Act 2003¹⁵ “Child Trafficking” means the procurement, recruitment, transportation, transfer, harbouring or receipt of persons 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.

PAST SCENERIO OF THE MENACE OF CHILD TRAFFICKING-

The history of childhood is a nightmare from which we have only recently begun to awaken. The further back in history one goes, the lower the level of childcare, and the more likely children are to be killed, abandoned, beaten, terrorized and sexually abused. Since ages, children have been victimized by one abuse or the other. Throughout the history of our

¹⁴ Shehzad Noorani, *Child Protection from Violence, Exploitation and Abuse* (Sep 6, 2016, 4:00 P.M), <https://www.unicef.org/protection/57929-58005.html>.

¹⁵ Bajpai, *supra* note 3, at li.

society, children have been bought, sold, enslaved, exploited and killed. They have been abandoned, severely beaten and physically abused. Poverty and man situation have especially led to killings of children. Ironically, the children have hardly ever enjoyed complete protection from the adults in society. If we go deep into the pages of history, we would find a catalogue of abuses from which children have suffered in the past.¹⁶

Child trafficking has existed since the dawn of time. As long as poverty exists, so does child trafficking. The huge gap between the rich and poor gave the rich all the power and left the poor with no choice but submission. Since childhood cost money to raise, many poor families sell them for good price. Some children ran away from their home to escape the miserable conditions of their life, but get caught by traffickers.¹⁷

Trafficking in human beings is one of the fastest growing forms of criminal activity in the present day world, especially in women and children. It is a growing global phenomenon and is considered as a contemporary form of slavery. Historically, trafficking in human beings was associated with slavery and bonded labour. The term trafficking needs to be understood along with its linkage with the exploitative slave like conditions under which the victims have to undergo untold exploitation of their body and mind. The traffickers, to gain in terms of cash, labour or any kind of services do not hesitate to nullify the basic right of life and personal dignity of poor and helpless victims. This problem cannot be restricted to the idea of buying and selling of human beings, but must be expanded to include all processes that precede and follow such trade.¹⁸

Child trafficking has been practiced just as a long as slavery. Slavery can be dated back to the establishment of any form of human civilization. In fact this practice had

¹⁶ ARUNIMA BARUAH, CRIME AGAINST CHILDREN 9 (1st ed. 2002).

¹⁷ Leo Tang, *Child Trafficking Is A Global Phenomenon* (Aug 17, 2016, 11:30 A.M).
<https://Childtrafficking101.wikispaces.com/History-of-Child-Trafficking>.

¹⁸ *Id.*

become so common that time had accepted it as a truth of life. However child trafficking continues behind the scene and is widely popular due to large demands.¹⁹

India has the dubious distinction of being the source, transit, and destination country- all in one. There are various forms of trafficking within the Indian context, even though trafficking has most often been linked to prostitution. The issues of forced marriage for labour and other forms of forced labour in agriculture as well as in industry, domestic service, begging, camel jockeying, organ transplant, etc, cannot be ignored. Entry and consolidation of major crime syndicates in the sphere of trafficking makes it difficult to probe and intervene into special cases. Evidence of trafficking for forced begging, marriage and labour are on the rise within the Indian context. There are some evident forms of trafficking with religious and community sanction- the Bassanis, Joginis, in Andhra Pradesh; the Thevadiyars in Tamil Nadu, the Tamasha girls in Maharashtra; the Sansi communities in Madhya Pradesh; and the Nat community in Uttar Pradesh. The community justifies and legitimizes the practice and ultimately many of victims get trafficked into prostitution. In India, traditional systems of children in prostitution varied as the Devdasi or the Jogini, and the trafficking system that moves young girls across South Asia and into urban centres reveal the active exploitation and the socio economic realities that make such exploitation possible.²⁰

Although times have changed and the miseries of children have reduced with the help of passage and implementation of certain laws yet their lot as a whole has not improved much. In India too state of affairs, regarding the lot of the children has begun changed for better. National criminal justice systems must be involved in responding to violence against children. It can become more effective tool in denouncing, preventing and responding to incidents of violence against children.²¹

¹⁹ *Id.*

²⁰ Bajpai, *supra* note 3, at 252.

²¹ K.D.GAUR, CRIMINAL LAW AND CRIMINOLOGY 739 (3rd ed. 2015).

ASPECT OF CHILD TRAFFICKING AND CHILD AS A VICTIM OF SEXUAL ABUSE AND EXPLOITATION-

Trafficking of children threatens the social stability and development of many families and communities and damages the lives of many people who are its direct or indirect victims.²² Trafficked children often end up in virtual slavery, with little or no say over their lives and fates.²³ A range of factors that make children particularly vulnerable to traffickers can be classified into two categories- Push and Pull factors.

The vulnerability of children gets increased due to various conditions that they find themselves in- these have been discussed as the “push factors”: poverty, dysfunctional home environment, marriage, education level, and decline in the sex ratio, political and social insecurity. The Pull factors are- lack of informed choice, commercial sex work, urbanisation and globalisation, consumerism.

Along with these push and pull factors, insufficient and inadequate laws and their poor implementation, ineffective penalties, minimal chances of prosecution, the relatively low risks involved, corruption and complacency, the failure of the government to implement policies and provide adequate services for victims- all play a role on perpetuating trafficking.

The phenomenon may be old, but it has taken on new forms as globalisation has fuelled growth in certain economic sectors with demands for cheap labour, particularly of women and children in the sex industry and other service sectors. The opening up of national borders has spurred the activities of the traffickers, who much like terrorist operate boldly across sovereign borders. Some of the more common forms that trafficking has grown to include- forced labour, sexual exploitation, children in armed forces, children in drugs trade, child begging, organ trading, children as instrument used in criminal activities, adoption, trafficking for and through marriage.

²² 2 JYOTSNA TIWARI, CHILD ABUSE AND HUMAN RIGHTS 63-64 (2004).

²³ *Id.*

Child trafficking has a significant negative impact, first and foremost on the trafficked children and their families, but also on their communities and on the nation as a whole. Trafficking has devastating consequences for all those who fall victim to it, but it is specially damaging for children because its impact will last into the child's future. Trafficking and the exploitation can cause a child's death, serious illness or permanent injury. The threat of such physical violence is in itself a form of psychological violence. Girls are at risk of sexual abuse, although boys may also face sexual violence. Depending on the type of labour the children will face different health repercussions, agricultural work, for example, may expose them to toxic chemicals. Many trafficked children are exposed to substantive abuse. They may be given drugs to keep them quiet and exploitable or to ensure that they become dependent on their supplier and therefore less likely to try to run away.²⁴

From the available data it is clear that the children who are being trafficked for commercial sexual exploitation are vulnerable to sexually transmitted diseases, some of them get HIV/AIDS. Poor, unhealthy and unhygienic working conditions, low or no education about sexually transmitted diseases increases the vulnerability of getting HIV/AIDS more. If multiple children in a community are trafficked, it can result in the entire community being corrupted and then devastated by trafficking. In addition, trafficked girls face more obstacles in that their prospects for marriage might be diminished if the community becomes aware that they have been trafficked, particularly into sexual exploitation. The consequences of trafficking are in the form of irreparable damages to the society. Society and nation lose potential human resource, which is required for building a healthy and economic strong society.

Child Sexual Abuse (CSA) has been defined as any kind of physical or mental violation of child with sexual intent usually by a person who is in position of trust or power vis-a-vis the child. CSA is also defined as any sexual behaviour directed at a person under

²⁴ 1 UNDERSTANDING CHILD TRAFFICKING, TRAINING MANUAL TO FIGHT TRAFFICKING IN CHILDREN FOR LABOUR, SEXUAL AND OTHER FORMS OF EXPLOITATION/INTERNATIONAL LABOUR OFFICE, IPEC, GENEVA 35.

sixteen, without informed consent.²⁵ Sexual abuse is inflicted by someone who stands in a position of power over the victim. It can be a family member, a member of the victim's community, a teacher or any other authority figure. Vulnerability and defenceless children are often the targets and victims of adults who abuse their powers in order to prey upon them. The aim is to recognise factors that contribute to children's vulnerability. Saakshi a non-governmental organization in New Delhi defines child sexual abuse as any behaviour directed as a person under sixteen, without that person's informed consent. Sexual Exploitation is a direct affront to and assault on the dignity and fundamental rights of the children. A sexual exploiter is someone who unjustly profits from certain disequilibrium of power between himself and a person less than 18 years of age in the hope of sexually exploiting that person either for profit or for personal pleasure. Factors within the abused child includes lack of knowledge regarding sexual behaviour, lust for attention, low self-esteem, emotional neediness and insecurity.²⁶ Other factors are- a disrupted family life, a history of abuse and disadvantage, disengagement from education, going missing, poor health and well being, poverty or social inequality, gender, mentally and physically disabled children.

Commercial sexual exploitation of children commonly refers to using a child for sexual purpose in exchange for cash or favours in kind between the client/customer and the intermediary or agent who profits from such trade in children. Those who profit may be from a wide range of persons, including parents, family members, community members- largely men but women.²⁷ The groups at risk and the areas prone to commercial exploitation of children can be identified as-

1. Children living in brothels,
2. Children living in communities where religious and cultural norms force them into prostitution, such as jogins, devadasi, bedias, dommaras etc,
3. Street Children, slum children and children without shelter,

²⁵ ASHA BAJPAI, CHILD RIGHTS IN INDIA- LAW, POLICY AND PRACTICE 207 (2nd ed. 2006).

²⁶ ARUNIMA BARUAH, CRIME AGAINST CHILDREN 183 (2002).

²⁷ SIBNATH DEB, CHILDREN IN AGONY 198 (2000).

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4. Children of alcoholic patterns and drugs traffickers,
 5. Children who have been sexually abused, raped, molested²⁸.

As defined in the Declaration of the First World Congress against commercial sexual exploitation of children, held in Stockholm in 1996, Commercial Sexual Exploitation of children is sexual abuse by an adult accompanied by remuneration in cash or in kind to the child or third persons.

Sex Tourism- The World Tourism Organization has defined sex tourism as trips organized with the primary purpose of affecting a commercial sexual relationship by the tourist with the residents at the destination. The advent of sex tourism in India has rung the death knell for the thousands of children who are being forced into sexual slavery. Child sex tourism is tourism for the purpose of engaging in the prostitution of children, that is commercially facilitated child sex abuse. In Goa, the police underwent an elaborate programme child sex tourism arrives with baggage and international NGO's like End Child Prostitution and the Trafficking of Children for Sexual Exploitation have already expressed concern about India's rising prominence on the world sex map.

In a landmark judgement on child abuse The Anchorage Case (2011), which has a very long history dating back to 2001 when the offence had taken place and embarks a valuable contribution in understanding and development of law relating to child abuse. The Supreme Court Bench of Justices P Sathasivm and BS Chauhan said, "Children are the biggest gift to humanity. The sexual abuse of children is one of the most heinous crimes." The Supreme Court restored the conviction and sentence to six years rigorous imprisonment imposed on two British nationals who were acquitted by the Bombay High Court in a case. The judges, while passing the judgement, rightly said, "A deterrent punishment is being imposed in order to help wipe out the name of India from the map of sex tourism.

CHILD PORNOGRAPHY- Child pornography which is the audio- visual material using children in a sexual context is another form of commercial sexual exploitation of children and

²⁸ Bajpai, *supra* note 4.

is in great demand. Child pornography is the fastest growing crime against children. In India, there are provisions in Section 61 of the Information Technology Act, 2000, which deals with publishing of information which is obscene in electronic form.

CHILD PROSTITUTION- According to the UN Convention on the Rights of the Child (1990), child prostitution means sexual exploitation of a child below the age of 18 for remuneration in cash or in kind. In other words “child prostitution” refers to the sexual exploitation of children for remuneration in cash or in kind, usually but not always organized by an intermediary like parents, family members and for procurer. This malady is not only a social but also a socio-economic problem. In Vishal Jeet v. Union of India²⁹, the Supreme Court has directed the State Government to instruct their law enforcing authorities to take action under the law to eradicate child prostitution.

MAGNITUDE OF THE PROBLEM-

Trafficking in children threatens the social stability and development of many families and communities and damages the lives of many people who are its direct and indirect victims. Innocent children who are the future of the nation are trafficked for various vested interests of some anti- social and criminals for the purpose of sex industry, for begging, soliciting, forced marriage, manual labour³⁰.

There is a movement of children through procurement and sale from one country to another with India being both a consumer and as well as a supplier, there is internal movement of children within the country itself, one town to another, one district to another, and one state to another. It is undertaken in an organized manner by organized syndicates or by individuals and sometimes informal groups. Inter – provincial and cross-borders trafficking are becoming increasingly common.³¹

²⁹ Vishal Jeet v. Union of India, A.I.R. 1990 S.C. 1412 (1990)3 S.C.C. 318(India).

³⁰ 2 JYOTSNA TIWARI, CHILD ABUSE AND HUMAN RIGHTS 62 (2004).

³¹ DR. M.D.ALLEN SELVAKUMAR, CHILD EXPLOITATION- EXPOSING THE UNSEEN 3 (2012).

Trafficking is on the rise across the globe although there is no accurate estimation of the magnitude of the problem. However the UN estimates that around 4 million people a year are traded against their will to work in some form of slavery like either as domestic servant, or to work in construction sites, or begging or to work as child prostitute. Children are also trafficked to work in market stalls or as shop assistants. Prostitution has become a very profitable trade and there is a global market for the same which involves millions of children particularly girls. Brothels in the cities of Bombay, Bangkok and Karachi are playing host to an increasing number of women and children from countries such as Nepal, Burma, Laos and Cambodia where poverty and economic disparity and lack of economic opportunities render many children and women vulnerable to deception.³²

On June 20, 2014, John Kerry, the US secretary of State in his inaugural speech on releasing the 2014 Trafficking in Persons Report(TIP) has reiterated the seriousness and resolve of the US government to address and fight this human tragedy. According to the Report there are over 20 million persons trafficked for various forms of exploitation worldwide. The TIP report mandates that all governments should focus on – Prevention, Prosecution and Protection. According to an estimate 40% of prostitutes are children. NGO's estimate that 12,000 to 50,000 women and children are trafficked every year from the neighboring states. AN estimated 1000 to 1500 children are smuggled every year to Saudi Arabia for begging. Child trafficking is rising due to demands of live-in-maids in urban areas resulting in traffic of girls from villages in Jharkhand, West Bengal to live in extremely poor conditions first in placement agencies that are made to household works and are exploited sexually. Falling sex ration in Punjab and Haryana has led to the need of trafficking of young brides from the villages of Orissa, Jharkhand, Bihar, Assam who are sold off by their parents. Over 90% of trafficking is done within the borders and 10% is from overseas. Trafficking of young girls from Nepal and Bangladesh into India for sexual exploitation is the most common. A lot of young boys are trafficked into India for work as bonded labour in industries like coal, brick kilns, handloom, rice mills and agriculture.

³² SIBNATH DEB, CHILDREN IN AGONY 196-197 (2000).

A Global Report on Trafficking in Persons launched by the UN office on Drugs and Crime provides new information. According to the report the most common form of human trafficking (79%) is sexual exploitation. The victims are mainly women and girls. Second most common form of trafficking is forced labour (18%), worldwide almost 20% of all trafficking victims are children.³³

The Trafficking of Persons Report 2016 which the state government has released on June 30 documents a significant increase in both the numbers of human trafficking prosecutions and the numbers of victims identified worldwide. The TIP report states that “Forced labour constitutes India’s largest trafficking problem, men, women and children in debt bondage sometimes inherited from previous generations are forced to work in rice mills, brick kilns, and agriculture. Children are frequently snatched from their homes or lured away to become beggars, child soldiers or sex slaves. This year TIP’s report statistics on the total number of victims identified in South Asia rose to almost 5 times the number of identification in 2014 mostly because India for the first time released its law enforcement data allowing the State department to include India in its global law enforcement statistics.”³⁴

According to the data published on 6 May 2016 by the National Crime Agency the number of children trafficked chiefly for labour but also for sexual exploitation increased by 46% last year.³⁵

³³ UNODC Report on Human Trafficking Exposes Modern Form of Slavery (Aug 22, 2016, 1:00 P.M), <https://www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html>.

³⁴ Susan Coppedge, *Trafficking In Persons Report 2016- Request For Information No Photos* (Aug 23, 2016, 3:00 P.M), <https://www.wunrn.com/2016/01/trafficking-in-persons-report-2016-request-for-information-Photos/html>.

³⁵ Caroline Young, *NCA Human Trafficking Report Reveals 21% Rise In Potential Victims* (Aug 23, 2016, 3:10 P.M), <https://www.nationalcrimeagency.gov.uk/news/779-nca-human-trafficking-report-reveals-21-rise-in-potential-victims>.

In a recent article published in The Assam Tribune on 31st of August titled “Human Trafficking Cases Highest in State”—Assam has gained notoriety of sorts by recording the highest number of human trafficking cases in the country last year, contributing 21.7% of the trafficking cases to all-India level. According to the ‘Crime in India-2015’ report published by the National Crime Records Bureau (NCRB) last year, a total number of 1494 cases of human trafficking were reported in Assam. The country has reported an increase of 25.8% under crimes against human trafficking (6877 cases in 2015 compared to 5466 cases in 2014). Assam is closely followed by Bengal where 1255 cases were reported last year. Other states which have recorded high human trafficking cases include Tamil Nadu and Telengana. According to media reports CID branch of Assam Police had last year reported that at least 4754 children have gone missing in the past three years in the state. It includes 2753 girls and 2001 boys.³⁶

Over the decades, Assam has witnessed large scale migration of the local population to the comparatively richer parts of the country. The growing need for better livelihood options and employment has turned Assam into a fertile place for human traffickers and in the past few years, thousands of young men and women of the State have fallen prey to the designs of traffickers and have been exploited as cheap labour. The seriousness of the problem in the context of Assam can be gauged from the fact that there is a rapid increase in the number of missing persons in the state. The report entitled ‘Action Research on Trafficking in Women and Children in India’ drew out a very grim picture of Northeast India as far as the status of human trafficking in this region is concerned. According to the report, “the situation in the Northeastern part of the country demands special attention. Trafficking of women and children in this region cuts across the different states and extends beyond national boundaries, involving Bangladesh, Myanmar and other countries.”³⁷

A study by UNICEF, the results of which were published last year, identifies Assam as the country’s second highest trafficking zone. It mentions the BTAD districts of

³⁶ *Human Trafficking Cases Highest In the State*, The Assam Tribune, Aug 31, 2016, at 1.

³⁷ Dibasri Mazumdar, *Human Trafficking In Assam*, Eastern Panorama, Aug 5, 2016.

Kokrajhar, Baksa, Udalguri and Chirang as well as Sonitpur , Dhemaji, Lakhimpur and Kamrup as the most vulnerable districts for trafficking. According to the report, 5023 girls and 27865 boys went missing from Assam, mostly from the BTAD between 2009 and 2015. Anti-trafficking activists said over the years, Assam has become a source area for trafficking of children who are forced to work as domestic help in metros like Delhi, Mumbai, Bangalore. They are often exploited, abused and even pushed into the flesh trade or simply remain untraced.³⁸

Nobel laureate and child rights crusader Kailash Satyarthi, during his visit to Assam last year, had acknowledge the fact that the state had emerged as one of the biggest source areas and transit routes for child trafficking. He had expressed concern over the low conviction rate in human trafficking cases in Assam and had underscored the need to clamp down on dubious placement agencies, which source children from the state to employ them as domestic workers.

INTERNATIONAL AND NATIONAL INSTRUMENTS IN THE AREA OF SEXUAL EXPLOITATION TRAFFICKING OF CHILDREN-

Globalization has opened up borders and this in turn has resulted in increased trafficking in human beings throughout the world in the recent years. The international community has recognized the growing threat posed by trafficking in human beings and its ramifications and there are a number of international conventions and protocols prohibiting trafficking. The Declaration of the Rights of the Child, 1924 which came to be known as the “Declaration of Geneva”, made it clear that care and protection of children was no longer the exclusive responsibilities of families or communities, the world as a whole had a legitimate interest in the welfare of all children. Child must be put in a position to earn a livelihood and must be protected against every form of exploitation.³⁹

³⁸ Preetam Brahma Choudhury, *Poll Campaigners Overlooked the Issue of Child Trafficking in Assam*,

The Telegraph, April 10, 2016.

³⁹ DR. SAVITA BHAKHRY, CHILDREN IN INDIA AND THEIR RIGHTS 18 (2006).

The Universal Declaration of Human Rights, 1948- Article 4 states that no one shall be held in slavery or servitude. Slavery and the slave trade shall be prohibited in all their terms.⁴⁰

International Covenant on Civil and Political Rights, 1966- Article 8 provided for freedom from slavery, servitude and forced labour.

Declaration of the Rights of the Child, 1959- There has been equally great concern for the welfare of children at the international level culminating in the Declaration of the Rights of the Child adopted by the General Assembly of the United Nations on November 20, 1959.⁴¹ Principle 8- states that the child shall in all circumstances are among the first to receive protection and relief. Principle 9- states that the child shall be protected against all forms of neglect, cruelty and exploitation. The child shall not be subject of traffic in any form. The child shall not be admitted to employment before any appropriate age.

Convention on the Rights of the Child, 1989- Article 3- states that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary considerations. Article 19- states that parties shall take all appropriate legislative, administrative, social and educational measures to protect from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, mal- treatment or exploitation including sexual abuse, while in the care or parents, legal guardians, or any other person who has the care of the child. Article 34- states that state parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, state parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent the inducement or coercion of a child to engage in any unlawful sexual activity. The exploitative use of children in prostitution or any other unlawful sexual practices, the exploitative use of children in pornographic performances and material.

⁴⁰ DR S K KAPOOR, HUMAN RIGHTS UNDER INTERNATIONAL LAW AND INDIAN LAW 32-35 (6th ed. 2014).

⁴¹ DR S.C. TRIPATHI & VIBHA ARORA, LAW RELATING TO WOMEN AND CHILDREN 429 (4th ed, 2010).

Protocol To Prevent, Suppress and Punish trafficking in persons, especially Women and Children (2000), supplementing the United Nations Convention against Transnational organized Crimes⁴²- Article 2-(a) to prevent and combat trafficking in persons, paying particular attention to women and children. (b) to protect and assist the victims of such trafficking with full respect for their human rights and (c) to promote cooperation among state parties in order to meet their objectives.

It also lays emphasis on the fact persons who have been trafficked are victims and should not be punished for any offences or activities that are related to their being trafficked, such as prostitution or immigration violations. The only situation in which non- coerced movement is regarded as trafficking is when the individual being exploited is a minor.

The Optional Protocol to the Convention on the Rights of the Child on the Sale of the Children, Child Prostitution and Child Pornography came into force on 18 January, 2002⁴³.

The Preamble to the Protocol expresses concern at the significant and increasing international trafficking and children for the purposes of the sale of children, child prostitution and child pornography.

South Asian Association for Regional Cooperation (SAARC), 2002-

The South Asian Association for Regional Cooperation consisting of seven South Asian Countries has adopted a Convention on Preventing and Combating Trafficking in Women and Children for Prostitution on its Eleventh Summit in Kathmandu in January, 2002. The purpose of this Convention is to promote cooperation amongst member states so that they may effectively deal with the various aspects of prevention, interdiction and suppression of trafficking in women and children, the repatriation and rehabilitation of victims of trafficking and prevent the use of women and children in international prostitution networks, particularly where the countries of the SAARC region are the countries of origin transit and destination. The State Parties to the Convention shall take effective measures to

⁴² Kapoor, *supra* note 10.

⁴³ Bajpai, *supra* note 4.

ensure that trafficking in any form is an offence under their respective criminal law and shall make such an offence punishable by appropriate penalties which take into account its grave nature.

NATIONAL INSTRUMENT DEALING WITH SEXUAL EXPLOITATION AND TRAFFICKING OF CHILD-

Article 23 of the Constitution of India, traffic in human beings, and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. A significant feature of this Article is that it protects the individual not only against the state but also against private citizens. The expression “traffic in human beings” used in this article commonly known as slavery, implies the buying and selling of human beings as if they are chattels, and such a practice is abolished by Article 23⁴⁴.

The Immoral Traffic (Prevention) Act, 1956-

Trafficking was first dealt with by the Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA), which was on 31 December 1956. The legislation was enacted in pursuance of the UN Convention for the Suppression of Traffic in Person and of Exploitation of the Prostitution of Others. In 1950, the Government of India ratified this Convention. The Suppression of Immoral Traffic in Women and Girls Act, 1956 proved to be inadequate to combat the increasing commercialization of trafficking. Parliament amended the law in 1970 and later in 1986. In 1986, the Act was renamed as the Immoral Traffic (Prevention) Act. This amended Act continues to prohibit prostitution in its commercialized form without making prostitution “per se” an offence. The purpose of the enactment is to abolish commercialised sexual abuse and exploitation and traffic in persons as an organized means of living. The object is attempted to be achieved by two major strategies, namely, by punishing those who are guilty of such conducts and by rescuing and rehabilitating the victims of such exploitation. Immoral Traffic Prevention Act, 1986 only discusses trafficking in relation to prostitution and in relation to other purposes of trafficking such as domestic, child labour etc.

⁴⁴ M P JAIN, INDIAN CONSTITUTIONAL LAW 1233 (7th ed. 2014).

The Act has been proposed to be amended recently and a Bill i.e. The Immoral Traffic (Prevention) Amendment Bill, 2006 has been prepared. But the amended bill itself has proved to be inadequate in solving the problem.

In conclusion, the amendment to the ITP Act does not change the character of the Act. The law still remains punitive instead of being protective. Even the amendment has increased the penalties but the legal status of the sex workers still remain under uncertainty. There should be a separate legislation to comprehensively deal with all forms of trafficking in human beings.

Under Indian Penal Code, 1860- Section 370 states whoever commits the offences of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.

Goa Children's Act, 2003- This is legislation against child sexual abuse, especially those related to sex tourism. The legislation has specifically made all cases of abuse of such nature, a non-bailable offence. The setting up of a Children's Court to try all the offences against is a bold step prescribed this law. Sale of children is prohibited under this Act (Sec 16). Any person who exploits the child for commercial sexual exploitation shall to pay a penalty which may extend to one lakh rupees and simple imprisonment of one year (Sec 9(4)). Any person who employs, aids or abets in the trafficking, including by employment of such trafficked children shall be penalized with a fine of fifty thousand rupees and/or imprisonment of either description of not less than 3 months (Sec 7(9))¹⁵.

The Protection of Children from Sexual Offence Act, 2012

An Act to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial such offences and for matters connected therewith or incidental thereto.

Child Marriage Restraint Act, 1929- In the cases, where the trafficking takes place for the purpose of marriage and the person getting married is a child, and then it is punishable under the Child Marriage Restraint Act, 1929. Section 5 of the Act punishes the person who

performs, conducts or directs any child marriage. Such person shall be liable to punishment under this section.⁴⁵

Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2016

Section 3(1)- The appropriate government shall, by notification, constitute for every district, a District Anti Trafficking Committee, for exercising the powers and performing such functions and duties in relation to prevention, rescue, protection, medical care, psychological assistance, skill development, need based rehabilitation of victims as may be prescribed.

Section 6- Central Anti- Trafficking Advisory Board – The Central Government shall constitute a Central Anti- Trafficking Advisory Board headed by the Secretary, Ministry of Women and Child Development and representatives from the concerned Ministers, States and members from civil society organisations as may be prescribed.

Section 16- Using narcotic drugs, psychotropic or alcoholic substance for trafficking- Notwithstanding anything contained in any other law for the time being in force, whoever uses any narcotic drugs or psychotropic substance, or alcohol, for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine which shall not be less than one lakh rupees.

Section 29- Anti- Trafficking Fund- The appropriate government, as the case may be, shall create a fund for the effective implementation of this Act and also for the welfare and rehabilitation of the victims.

The first ever comprehensive Anti- Human Trafficking Law Bill was accepted on 30th May, 2016.

The Ministers of Women and Child Development stated that this bill makes a distinction between traffickers and trafficked. It is a victim oriented law that covers variety of issues not covered in earlier laws.

⁴⁵ Bajpai, *supra* note 4.

The loopholes of this Bill are-

1. Trafficking itself is not defined.
2. It provides for the establishment of special agency to conduct investigation of offences under the Act. However the procedure of investing and the officers appointed under the agency is not mentioned.
3. It aims to treat survivors as victims in need of assistance and protection rather than as criminal.
4. It establishes Special Court but the role of Special Court need further elaborates as implementation of Special Court until now has largely been a failure.

Transplantation of Human Organs Act, 1994- Trafficking often takes place for the collection of human organs. In India, any form of commercial transfer of organs prohibited by the Transportation of Human Organs Act, 1994. Section 19 of the Act provide for the punishment of offenders who carry out dealing for profits in human organs.

JUDICIAL RESPONSE ON CHILD TRAFFICKING AND SEXUAL EXPLOITATION OF CHILDREN-

Courts can play a very important role in promoting the rights of children. Public Interest Litigation has been used beneficially to realize the protection of rights of children. This judicial activism is evident in various landmark judgements that have changed the direction in which the issues are addressed.

In the case of Smt. Shama Bai v. State of Uttar Pradesh, Lucknow and others⁴⁶, the Constitutional validity of the SITA Act, 1956 was challenged. It was held that the Act was not ultra vires the Constitution.

⁴⁶ Smt. Shama Bai V. State of Uttar Pradesh, A.I.R 1959 A.L.L 57(India).

In the case of *Dr. Upendra Baxi v. State of Uttar Pradesh*⁴⁷, the Supreme Court held that women and girls rescued should be sent to protective homes and housed under proper conditions. They should be medically examined and treated with care.

Gaurav Jain v. Union of India- It was held that the child prostitutions and children of prostitutes are required to be removed from red light area and they are to be kept in juvenile homes as place of safety. The Court observed that the juvenile homes should be used only for a short stay to relieve child prostitutes and neglected juveniles from the trauma they suffered.

In *Vinod Kumar v. State of Punjab*⁴⁸, the Court stated that it is now settled that while in the case of evidence of an accomplice, no conviction can be based on his evidence unless it is corroborated in material particulars but as regard the evidence of a partisan witness it is open for a court to convict an accused person solely on the basis of that evidence, if it is satisfied that evidence is reliable.

In the leading case of *Sakshi v. Union of India*⁴⁹, it has drawn the attention of the Supreme Court to the fact that the laws relating to rape are not adequate to cover various sexual atrocities against women, or child sexual abuse. Sakshi, a voluntary organization for the welfare and children, proposed a draft amendment to the provisions in the Indian Penal Code and the same came up for examination by the Law Commission at the instance of the apex court. The Supreme Court directed that the victims and witnesses be kept away from the accused during trial by means of a screen or similar arrangement separating them. Questions directly relating to the incident put in cross- examination on behalf of the accused should be given in writing to the trial judge, who may put them to the victim or witnesses in a clear language, and sufficient breaks should be allowed while giving testimony. Till this judgement was passed, it was only mandatory to hold in camera proceedings in cases relating to rape. This judgement held that proceedings should be in camera even in cases which do not have penile penetration.

⁴⁷ *Dr Upendra Baxi V. State of Uttar Pradesh* (1983)2 S.C.C. 308(India).

⁴⁸ *Vinod Kumar V. State of Punjab*, A.I.R. 2015 S.C.1206(India).

⁴⁹ *Sakshi v.Union of India* A.I.R. 2004 S.C. 3566(India).

CONCLUSION-

In recent years, India has become a major transit point as well as a source and destination point for the trafficking of women and children. Globally human trafficking has become the third largest source of revenue, after trafficking of drugs. There is no doubt that the gravity of the issue of trafficking is intensifying every passing day. India too has recognized the need for urgent action to fight the growing problem of trafficking. However it has proved to be an uphill task for the Indian government. There has been a growing concern at different levels for a more holistic and victim centric perspective. The challenge for government is to live up to their obligation and make protection of all human rights a reality for trafficked persons who escape their situation.⁵⁰ There are several government documents, campaigns and schemes that re-affirm the government's commitment to the cause of children.

INITIATIVES UNDERTAKEN BY THE GOVERNMENT OF INDIA IN THE AREA OF CHILD TRAFFICKING-

(a) National Plan of Action for Children 1992. (b) National Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children 1998. (c) The Children Code Bill 2000. (d) A Comprehensive Scheme for prevention of Trafficking, Rescue, Rehabilitation and Re-integration of Victims of Trafficking for Commercial Sexual Exploitation (2007). (e) The National Plan of Children 2013. (f) Childline India Foundation (CIF) (g) South Asia Initiative To End Violence Against Children (SAIEVAC).

Specialized Support Services for Child Victims Of Trafficking In India---

(1) CHILDLINE 1098 Service - In 1996, CHILDLINE India Foundation (CIF) launched CHILDLINE, the country's first toll-free tele helpline for street children in distress. CHILDLINE was founded by Ms Jeroo Billimoria, who was then a professor at the Tata Institute of Social Science Mumbai, initiated as an experimental project of the department of Family and Child Welfare of TISS. Its service is for vulnerable children 24 hours a day, 365 days of the year. Its special focus is on all children in need of care and protection, especially

⁵⁰ P.M.NAIR & SANKAR SEN, TRAFFICKING IN WOMEN AND CHILDREN IN INDIA 89 (1st ed. 2005).

the more vulnerable sections, which include- street children and youth living on the street, child labourers working in organized and unorganized sectors, children affected by physical/sexual/emotional abuse in family, schools, or institutions, child victims of the flesh trade, children of commercial sex workers, victims of child trafficking, missing children.

(2) National Portal- the Track Child- The Government have set up the National Portal- the Track Child which not only has data on ‘missing’ children but also has live database to monitor the progress of the ‘found’ children who are availing various services in different Child Care Institutions. The government is trying to ensure a protective environment for children by bringing all citizens, including children under the purview of social security by linking them with AADHAAR – Unique Identification number which will empower them to access to their entitlements directly without any hindrance.⁵¹

(3) Operation Smile- It’s a special initiative pioneered by Police, Ministry of Women and Child Development, District administration, civil society organizations and community. In recent past a large number of children were rescued and restored them to their families or provided a protective environment to them through this initiative.⁵²

(4) e-box- “e-box” is a new initiative which has been launched on 26 August, 2016 to help, protect children against abuse and to release a “ national list” of sexual offenders to aid prevention of crimes against women and children. Under this plan “any child who has been touched inappropriately can open the e-box on computer and file a complaint. It will be fully confidential and proper actions will be taken on the complaints⁵³

It can be stated that the Government has taken several initiatives to address the various issues related to the trafficking of women and child. Sensitisation of the officials and

⁵¹ *Protection of Children is Everyone’s Duty: Rajnath*, The Assam Tribune, May 11, 2016, at 3.

⁵² *Id.*

⁵³ *Maneka Gandhi Confident About Passage Of Anti- Trafficking Bill In Dec*, The Assam Tribune, Aug 16, 2016, at 12.

ensuring their accountability, while simultaneously providing them with adequate infrastructure, human resources, technical expertise, skills and knowledge support-base, can make the desired changes in the response scenario.

The President of India Pranab Mukherjee recently on his 81st birthday at the Rashtrapati Bhavan launched a campaign “100 Million for 100 Million” campaign to end child labour, child slavery and violence against children. It aims to mobilize 100 million youth and children for 100 underprivileged children across the world.⁵⁴

The National Commission for Protection of Child Rights (NCPCR) was set up in March 2007 under the Commission for Protection of Child Rights Act, 2005. The Commission’s Mandate is to ensure that all laws, policies, programmes and administrative mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India. The Commission visualizes a rights- based perspective flowing into National Policies and Programmes, along with nuanced responses at the State, Districts and Block levels, taking care of specificities and strengths of each region. It was set up to protect, promote and defend child rights in the country.⁵⁵

NGO’s have significant role and crucial tasks in the struggle for the realization of the rights of children and in elaboration and further development of the standards and the rights affirmed by the national and international laws, developing more effective implementation by monitoring resource allocation, child development programmes and projects and undertaking evaluation thereof. NGOs have played important roles in the achievement of successful policy and implementation of programs run by the Government to combat trafficking of children and women into all intolerable forms of business. The NGO’s

⁵⁴ *President Pranab Mukherjee Launches 100 Million for 100 Million Campaign* (Jan 17, 2017, 12:00 P.M), <https://www.google.co.in/amp/currentaffairs.gktoday.in/president-pranab-mukherjee-launches-100-million-100-million-campaign-12201637838.html/amp>.

⁵⁵ DR. S.C.TRIPATHI & VIBHA ARORA, LAW RELATING TO WOMEN AND CHILDREN 402-403 (4th ed. 2010).

plays important roles to ensure effective assertion of the rights of the child. At the regional level NGO's will also need to explore ways of using regional human rights machinery and instruments to address regional specificities and disparities and developing regional positions and strategies regarding issues relating to children.⁵⁶

SUGGESTIONS TO CURB THE MENACE OF CHILD TRAFFICKING-

(1) Comprehensive Code on Trafficking- The Constitution of India, under Article 23, prohibits trafficking in human beings. This includes trafficking for all purposes. The United Nation's Convention on trans-national organised crime, to which India is a signatory, also speaks about trafficking for all types of exploitation. Therefore, it would be appropriate that the existing law is replaced by a comprehensive legislation, covering all forms of trafficking. The bottom line of the proposed legislation should be on the process of trafficking, and not the purpose of trafficking.

(2) Regional Initiatives- The problems of trans-border trafficking, proper law enforcement are common to most of the countries in the region, and so, it would be better to have regional initiatives in this direction for better results. A regional Childlines could be set up to link all Childlines in the countries concerned so that trans-border issues of missing and trafficked children could be effectively attended to.

(3) Participation of Children- Human rights instruments on Children's rights stress 'participation' as a core value along with survival, protection, and development. Article 12 of the United Nations Convention on the Rights of the Child 1989, establishes that the children have a right to be involved in decisions which affect them. Children who participate effectively will be aware of the societal processes, their rights and responsibilities, will be sensitive towards rights violations of others in the society, will develop capacity to think, question, judge and accordingly be prepared to take action for bringing about changes in the society.

⁵⁶Bajpai, *supra* note 3, at 272.

(4) Working Together Approach- The legislations relating to children have to be harmonized and interlinked. The judiciary, different ministries, bureaucrats, medical professionals, agencies and NGO's police, teachers, legal activists counselors, parents, and all those citizens who are concerned with the rights of the child need to have coordinated and a partnership approach.

(5) Registration of cases- The under-reporting or non-reporting of crimes related to trafficking leads to serious lapse in the existing system of law enforcement. Unless all crimes of trafficking are reported to the police, legal action cannot be initiated against traffickers and exploiters.

(6) Monitoring Bodies- Directions of the courts should not remain on paper so far as children are concerned. To constitute monitory bodies is one of the effective methods of implementing court orders.

(7) National database and data surveillance -There is a need for effective monitoring of the data on cases of trafficking. The supervisory officers should carry out regular and in-depth study of the data, and take appropriate steps to ensure that victims are not arrested or harassed. The data should provide the details of cases registered, charge sheeted and convicted. The data should also show the number of rescued persons (with sex and age disaggregation) and the details of persons repatriated/rehabilitated. Data surveillance with such details will expose the violation of rights that take place in law enforcement and, therefore, will facilitate in reorienting law enforcement, keeping in mind the best interests of the victims.

Children can no longer be considered as passive recipients of services. Giving Children a voice, a forum empowering their opinion may accelerate the progress towards realizing the rights of the child. It is also essential that issues relating to the rights of the child have to be viewed not in isolation but within the context of development. And it is essential that children are placed high on the political agenda of development. The core value of the universal legal principle that policies be made, structures be established, and actions be taken

that are always and invariably in the best interests of the child should be followed. The struggle for the realization of the rights of the child is indeed going to be a long journey.