

# LAWS RELATING TO CHILD TRAFFICKING IN INDIA-ISSUES & CHALLENGES

Priyanshu Singh Gusain\*

Sukhwinder Singh\*\*

\* Student of BBA.LL.B(H) 10<sup>th</sup> semester, Law College Dehradun, Uttarakhand University, Dehradun.  
\*\* Assistant Professor, Law College Dehradun, Uttarakhand University, Dehradun.

## Abstract

*A main or it should be said as the root cause of commercial child trafficking and sexual exploitation in India is due to increase in crime, poverty, lack of education, and the need to support their family. When children are offered work they are likely to be taken advantage of, or children in poverty have to trade sex for a place to live or food and some people are taking it as a business or profit earning illegal trade.*

*This paper deals with the issue and challenges faced in the name of child trafficking which is a crime. It consists of the issues that why the children are being trafficked are poverty, lack of education or to support their family are the main reason or the increase in crime and people involved in this illegal act are just into this business to ensure their increasing profits and poverty and other reasons are just for them who wilfully want to earn by these ways of earning but there are many children who are been trafficked by kidnapping or against their will i.e. they are forced into this work for the purpose of sexual exploitation, slavery or forced removal of organs and amongst all the begging and inducing early sexual maturity are the aggravated form of trafficking.*

## Keywords

National Human Rights Commission(NHRC), Non-Governmental organisation(NGO), Common Wealth of Independent States(CIS).

## 1. Introduction

National Human Rights Commission (NHRC) did a study to check the disturbing trend posed by the alarming rise in human trafficking. Press, Police and Non-Governmental Organisation (NGO) reports on trafficking have given a clear and unequivocal indication that the buying and selling of women and children for sexual and non-sexual purposes is an expanding activity with involvement of gross human rights violation. The indication that India is fast becoming a source as well as the destinations for trafficker is a great cause for concern. A substantial body of newspapers reporting about the voluntary agencies suggest that apart from Nepal, Bangladesh and some poverty stricken district within India, trafficking from the

Commonwealth of Independent States (CIS) countries is also on the rise. This is a significant indication of the complex, organised nature of the crime.

The commonplace understanding of trafficking as akin to 'prostitution' was one of the major reasons why the human rights violations inherent in trafficking were never understood. This called for a demystification of the term. The commonplace association of trafficking with prostitution has hidden several human rights violation inherent in all the forms of trafficking. The complexity of the phenomenon. Its multidimensional nature, its rapid proliferation, continued persistence and the confusion surrounding the concept has made the need for a deeper comprehension of trafficking a top priority.

Most of the literature/history about trafficking consists of reports on studies, conferences and workshops conducted by international and domestic NGOs compared to the literature available at the state-level national and regional level studies are fewer in number. The recent importance accorded to trafficking on the international agenda is responsible for the rising numbers of research studies on trafficking in India.<sup>1</sup>

Though not exhaustive the current review explores different perspective debates, position conclusion on trafficking in women and children. The Indian Constitution prohibits all forms of trafficking under *Article 23*. The suppression of the Immoral traffic Act 1956 SITA amended to the Immoral traffic prevention act ITPA in 1986 was passed following the ratification of the international convention of supervision of Immoral traffic and exploitation of constitution of others in 1950 by India trafficking has been in area of concerns since the early 20<sup>th</sup> century.

## 2. Provisions Related to Human Trafficking in India

### 2.1 Indian Penal Code 1860

Indian Penal Code which came into existence in 1860 addresses the problem of human trafficking in human beings. It is addressed in *Section 370 and 370 A of the Indian Penal Code*. It prohibited trafficking of women and girls and prescribed ruthless punishments for the criminals. It lays down that anyone who buys or sells the person under the age of 18 years for the purpose of prostitution and for sexual exploitation and for other immoral purposes shall be liable to imprisonment for up to 10 years and also be liable to fine. It also recognizes cross border trafficking into prostitution and whoever imports into India from any country outside India any girl under the age of twenty one years with the intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

<sup>1</sup> P. M. Nair and Sankar Sen, *Trafficking in Women and Children in India* 6 (Orient Longman, New Delhi, 1<sup>st</sup> edn., 2005).

## 2.2 Constitution of India

The Indian Constitution of India prohibits trafficking in persons and guarantees many of the internationally acknowledged various human rights norms such as the right to life and personal liberty, the right to equality, right to freedom, the right to constitutional remedies. The right to be free from exploitation is also assured as one of the fundamental rights of any person living in India.

## 2.3 The Juvenile Justice (Care and Protection of Children) Act, 2000

According to this Act, there is no difference between a minor and a child. All the persons under the age of eighteen years are considered children. A child who is a child in need of care and protection.

## 2.4 The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

Many victims of trafficking belong to marginalized groups. Traffickers target only such area which is backward in social and literacy sense. This gives an additional tool to safeguard women and young girls belonging to scheduled Caste and scheduled Tribes and also to create a greater burden on the trafficker or offender to prove his lack of connivance in the matter. If the offender has the knowledge that victim belongs to these communities then this act can be effectively used to counter the offence of trafficking. *Section 3* of this Act deals with atrocities committed against people belonging to Scheduled Caste and Scheduled Tribes. It covers some forms of trafficking such as forced or bonded labours and sexual exploitation of women. A minimum punishment of nine months is provided which may extend to five years if the offence is covered under *Section 3*.

## 2.5 Immoral Traffic Prevention Act 1986

The government of India ratified the International Convention for the Suppression of Immoral Traffic in persons and the exploitation of the Prostitution of others in 1950. As an International Journal of Pure and Applied Mathematics Special Issue 47 consequence of this ratification of the convention the Government of India passed the *Suppression of Immoral Traffic in Women and Girls Act (SITA)* in the year 1956. In the year 1986 the act was further amended and changed which was known as the *Immoral Traffic Prevention Act, 1986 (PITA)*. This is an interesting law because according to its preamble the purpose of this Act is to give effect to the Trafficking Convention and to prohibit the immoral human trafficking. This act deals with trafficking and it has its objective as to abolish traffic in women and girls for the purpose of sexual exploitation. The offences included are taking persons for prostitution, detaining persons in premises where prostitution is carried on, seducing or soliciting for prostitution, making life on the earnings of prostitution, seduction of a person in custody, keeping a brothel or allowing premises to be used as a brothel, prohibits employment of children in certain conditions of work of children. The *Immoral Traffic (Prevention) Amendment Bill, 2006* also focuses on trafficking which is done for the purpose for sexual exploitation. So there is no proper domestic legislation in India which combats all forms of human trafficking:

- a. Provision of Child Marriage Act 2006;
- b. Bonded labour system abolition act 1976;
- c. Condition in Regulation Act 1986;
- d. Transplantation of human organs act 1994;
- e. Apart from specific sections in the IPC;
- f. State governments have also enacted specific legislations to deal with the issue example the Punjab prevention of human smuggling act 2012 and exploitation of prostitution comes under the *Immoral Traffic Prevention Act (ITPA)* human rights Act;
- g. Andhra Pradesh Devadasi (Prohibition of Dedication) Act, 1988 or state Devadasi (Prohibition of Dedication) Act, 1982;
- h. Bombay interference of mendicancy Act, 1959;
- i. Bonded Labour System (Abolition) Act, 1976;
- j. Child Labour Prohibition & Regulation Act, 1986;
- k. Child wedding Restraint Act, 1929;
- l. Guardian ship and Wards Act, 1890;
- m. Hindu Adoption and Maintenance Act, 1956;
- n. Immoral Traffic (Prevention) Act, 1986;
- o. Information Technology Act, 2000; and
- p. Prevention of Illicit Traffic in Narcotic medication and hallucinogenic Substances Act, 1988

### 3. International Definition of Child Trafficking

Child trafficking is defined as the “*recruitment, transportation, transfer, harbouring or receipt*” of a child for the purpose of exploitation. This definition comes from the United Nations Palermo Protocol, which the UK and the majority of countries around the world have adopted, making it the internationally accepted definition of human trafficking. A child is defined by the Palermo Protocol and the United Nations Convention on the Rights of the Child as any person under the age of 18. In the UK, trafficking is regarded as a form of modern slavery.<sup>2</sup>

United Nations launches global plan of action against human trafficking-1 September 2010 - The United Nations Global Plan of Action to Combat Trafficking in Persons was adopted by the General Assembly on 30 July to urge Governments worldwide to take coordinated and consistent measures to try to defeat the scourge. The Plan calls for integrating the fight against human trafficking into the United Nations' broader programmes to boost development and strengthen security around the world.

It also calls for the setting up of a United Nations voluntary trust fund for victims of trafficking, especially women and children.

<sup>2</sup> Available at: <https://hillingdonlscb.org.uk/professionals/useful-guidance/child-trafficking/> (last visited on March 5, 2019).

Secretary-General Ban Ki-moon said that the Plan of Action should serve as "a clarion call" to Member States, international organizations and civil society groups of the need to take immediate steps "to stop this terrible crime against human dignity, which shames us all".

The United Nations has estimated that more than 2.4 million people are currently being exploited as victims of human trafficking.

*"It is slavery in the modern age,"* Mr Ban said. "Every year thousands of people, mainly women and children, are exploited by criminals who use them for forced labour or the sex trade. No country is immune. Almost all play a part, either as a source of trafficked people, transit point or destination."<sup>3</sup>

The Secretary-General urged countries, philanthropists and others to contribute generously to the new trust fund for trafficking victims.

"The fund aims to help Governments, intergovernmental and non-governmental organizations provide these vulnerable people with protection and support for their physical, psychological and social recovery. After they have been exploited and abused, they should not be punished, too."

The Plan of Action - which focuses on preventing trafficking, prosecuting offenders and protecting victims - also stresses the importance of obtaining more research, data and analysis about the problem.

"We must improve our knowledge and understanding of this crime if we are to make good policy decisions and targeted interventions," Mr. Ban said.<sup>4</sup>

"Within the United Nations system, my appreciation goes to UN.GIFT, the Vienna Forum, the Blue Heart Campaign and our goodwill ambassadors. UNODC's Global Report on Human Trafficking, anti-trafficking toolkits and manuals, documentary films, public information and technical assistance have also played a part to build consensus. I thank all those involved for their commitment and hard work", he said.

He added that the only way to end human trafficking is by working together, between States and within regions, among United Nations entities and in public-private partnerships.

In his address, General Assembly President Ali Treki emphasized the human rights aspects of the fight against trafficking. "Abduction, coercion, trafficking across national and international borders, forcing women and children into sexual exploitation and servitude - this must not be accepted in today's world," he said.<sup>5</sup>

"As this heinous crime flourishes, thousands of men, women and children are robbed of their safety, their freedom and their dignity. Human trafficking devastates families and tears communities apart. When the history of this horror calls, we cannot let this period be remembered as one in which the global community knew but did not act."<sup>6</sup>

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<sup>3</sup> Available at: <https://acelebrationofwomen.org/2010/09/the-un-global-plan-of-action-to-combat-trafficking-in-persons/> (last visited on March 5, 2019).

<sup>4</sup> *Ibid.*

<sup>5</sup> Available at: <https://www.unodc.org/lpo-brazil/en/trafico-de-pessoas/ungift.html> (last visited on March 3, 2019).

<sup>6</sup> <https://www.unodc.org/unodc/en/frontpage/2010/September/un-launches-global-plan-of-action-against-human-trafficking.html> (United Nation office on Drugs and Crime)(last visited on March 3, 2019).

**3.1 America** - The *Trafficking Victims Protection Act of 2000*, as amended provides the tools to combat trafficking in persons both worldwide and domestically. The Act authorized the establishment of the State Department's Office to Monitor and Combat Trafficking in Persons and the President's Interagency Task Force to Monitor and Combat Trafficking in Persons to assist in the coordination of anti-trafficking efforts.

- a. Survivors of Human Trafficking Empowerment Act (Section 115 of the Justice for Victims of Trafficking Act of 2015)
- b. Trafficking Victims Protection Reauthorization Act of 2013 (Title XII of the Violence Against Women Reauthorization Act of 2013)
- c. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008
- d. Trafficking Victims Protection Reauthorization Act of 2005
- e. Prosecutorial Remedies and Other Tools To End the Exploitation of Children Today Act of 2003 (PROTECT Act)
- f. Trafficking Victims Protection Reauthorization Act of 2003
- g. U.S. Leadership on HIV/AIDS, Tuberculosis, and Malaria Act of 2003
- h. Victims of Trafficking and Violence Protection Act of 2000<sup>7</sup>

**3.2 China** - The Government of China increased its efforts to prevent trafficking in persons during the reporting period. The government in early 2013 released a new eight-year national plan of action, which includes measures to improve interagency and other internal coordination among anti-trafficking stakeholders and improve victim protection. The new plan reaffirms the importance of international cooperation in handling trafficking cases but also focuses on the importance of strengthening domestic anti-trafficking efforts. The plan also shifts its previous focus away from women and children as the only victims of trafficking. Chinese forces participating in peacekeeping initiatives abroad receive no anti-trafficking training from the Chinese government independent of the training provided by the UN prior to deployment. The government did not take any measures to reduce the demand for commercial sex acts. Despite reports that Chinese nationals engaged in child sex tourism, the government made no efforts to prevent Chinese citizens from engaging in child sex tourism while abroad during the reporting period.<sup>8</sup>

**3.3 Russia** - Efforts to crack down on human trafficking in Russia focus not only on the men, women, and children who are illegally shipped out of Russia to undergo forced labour and sexual exploitation in other countries, but also those who are illegally brought into Russia from abroad. The Government of the Russian Federation has made significant progress in this area over the past decade, but a report commissioned by the United States Department of State in 2010 concluded that much more needed to be done before Russia could be taken off its Tier 3 watch list. U.S. State Department's Office to Monitor and Combat Trafficking in Persons placed the country in "Tier 3" in 2017.<sup>9</sup>

<sup>7</sup> Available at: <https://www.state.gov/j/tip/laws/> (last visited on March 4, 2019).

<sup>8</sup> Available at: <https://2009-2017.state.gov/j/tip/rls/tiprpt/countries/2013/215439.htm>(last visited on March 4, 2019).

<sup>9</sup> Available at: <https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271269.htm> (last visited on March 4, 2019).

**3.4 Africa** -The legislation criminalizes various acts that constitute or relate to trafficking in persons and imposes harsh penalties for violations. Among the offenses enumerated in the legislation are:

- a. Trafficking in persons, punishable by a maximum of life imprisonment.
- b. Engaging in conduct that causes a person to enter into debt bondage, punishable by up to 15 years of imprisonment.
- c. Carrying a victim of trafficking in and/or out of South Africa knowing that he/she does not have the proper documentation, punishable by a fine or five years of imprisonment.
- d. Benefiting from services of a trafficking victim, be it financially or otherwise, punishable by up to 15 years of imprisonment.
- e. Facilitation of trafficking in persons (including through leasing of rooms, publishing of advertisements), punishable by up to ten years in prison.<sup>10</sup>

## 4. Judicial Approach

### 4.1 Safeguarding Constitutional and Legal Rights of the Children

#### *People's Union for Democratic Rights v. Union of India*<sup>11</sup>

While considering a PIL for the emancipation of Bonded Labour the Supreme Court defined the meaning of Forced Labour *Article 23 of the Constitution of India*. With increase in Labour trafficking across the country the judgement is very relevant in order. The Supreme Court stated “Now the next question that arises for consideration is whether there is any breach of *Article 23* when a person provides labour or service to the State or to any other person and is paid less than the minimum wage for it. It is obvious that ordinarily no one would willingly supply labour or service to another for less than the minimum wage, when he knows that under the law he is entitled to get minimum wage for the labour or service provided by him. It may therefore be legitimately presumed that when a person provides labour or service to another against receipt of remuneration which is less than the minimum wage, he is acting under the force of some compulsion which drives him to work though he is paid less than what he is entitled under law to receive. What *Article 23* prohibits is “forced labour” that is labour or service which a person is forced to provide and “force” which would make such labour or service “forced labour” may arise in several ways. It may be physical force which may compel a person to provide labour or service to another or it may be force exerted through a legal provision such as a provision for imprisonment or fine in case the employee fails to provide labour or service or it may even be compulsion arising from hunger and poverty, want and destitution. Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as “force” and if labour or service is compelled as a result of such “force”, it would be “forced labour”. Where a person is suffering from hunger or starvation, when he has no resources at all to fight disease or to feed his wife and children or even to hide their nakedness, where utter grinding

<sup>10</sup> Available at: <https://www.loc.gov/law/foreign-news/article/south-africa-anti-human-trafficking-legislation-signed-into-law/> (last visited on March 4, 2019).

<sup>11</sup> (1982) 3 SCC 235.

poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate the rigour of his poverty, he would have no choice but to accept any work that comes his way, even if the remuneration offered to him is less than the minimum wage. He would be in no position to bargain with the employer; he would have to accept what is offered to him. And in doing so he would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour or service provided by him would be clearly “forced labour”. There is no reason why the word “forced” should be read in a narrow and restricted manner so as to be confined only to physical or legal “force” particularly when the national charter, its fundamental document has promised to build a new socialist republic where there will be socio-economic justice for all and everyone shall have the right to work, to education and to adequate means of livelihood. The Constitution-makers have given us one of the most remarkable documents in history for ushering in a new socio-economic order and the Constitution which they have forged for us has a social purpose and an economic mission and therefore every word or phrase in the Constitution must be interpreted in a manner which would advance the socio-economic objective of the Constitution. It is not often that in a capitalist society economic circumstances exert much greater pressure on an individual in driving him to a particular course of action than physical compulsion or force of legislative provision. The word “force” must therefore be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage. Of course, if a person provides labour or service to another against receipt of the minimum wage, it would not be possible to say that the labour or service provided by him is “forced labour” because he gets what he is entitled under law to receive. No inference can reasonably be drawn in such a case that he is forced to provide labour or service for the simple reason that he would be providing labour or service against receipt of what is lawfully payable to him just like any other person who is not under the force of any compulsion. We are therefore of the view that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words “forced labour” under *Article 23*. Such a person would be entitled to come to the court for enforcement of his fundamental right under *Article 23* by asking the court to direct payment of the minimum wage to him so that the labour or service provided by him ceases to be “forced labour” and the breach of *Article 23* is remedied. It is therefore clear that when the petitioners alleged that minimum wage was not paid to the workmen employed by the contractors, the complaint was really in effect and substance a complaint against violation of the fundamental right of the workmen under *Article 23*. ”

#### 4.2 Release of Bonded Child Labour

*Bandhua Mukti Morcha v. Union of India and others*<sup>12</sup>

Whenever it is shown that a labourer is made to provide forced labour the Court would raise a presumption that he is required to do so in consideration of an advance or other economic consideration and

<sup>12</sup> AIR 1984 Supreme Court 802.



he is, therefore, a bonded labourer entitled to the benefits under the law. The State government, the Vigilance Committees and the District Magistrates will take the assistance of non-political social action groups and voluntary agencies for the purpose of ensuring implementation of the provisions of law. The State government should adopt a non-formal and unorthodox approach in implementation of the law which is an important instrument for ensuring human dignity. The Central and State governments will take all necessary steps for the purpose of ensuring that minimum wages are paid directly to the workmen employed in the stone quarries and stone crushers and not thorough middlemen.

#### *4.3 Promotion of Children's Welfare and their Right to Family Life*

*Laxmi Kant Pandey v. Union of India*<sup>13</sup>

The Supreme Court while supporting inter-country adoption stated it is necessary to bear in mind that the primary object of giving the child in adoption being the welfare of the child, great care has to be exercised in permitting the child to be given in adoption to foreign parents, lest the child may be neglected or abandoned by the adoptive parents in the foreign country or the adoptive parents may not be able to provide to the child a life of moral or material security or the child may be subjected to moral or sexual abuse or forced labour or experimentation for medical or other research and may be placed in a worse situation than that in his own country. The court has laid down procedures to check and monitors inter country adoptions so that the children don't end up trafficked.

#### *4.4 Directions for rehabilitating Bonded Child Labours*

*Public Union for Civil Liberties v. State of Tamil Nadu & Others*<sup>14</sup>

The Apex Court directed that the National Human Rights Commission (NHRC) should be involved in monitoring the pace and progress of implementation of the law, national policy and programme of action as also directions of the apex Court issued from time to time. The NHRC is monitoring the bonded labour situation in the country. In order to ensure compliance of the above directions, the Ministry of Labour constituted a Task Force, comprising officers of the Central Government and the Government of Haryana who are responsible for enforcement of various labour laws. The Task Force is required to undertake periodic visits and inspections of the stone quarries and crushers to ascertain facts about working and living condition of the workers. The task force is carrying out its assignment by meeting regularly and submitting reports to the Central as well as the State Government indicating therein status of compliance on the part of the concerned authorities with the statutory provisions and the directions of the Supreme Court.

<sup>13</sup> (1984) 2 SCC 244.

<sup>14</sup> (Writ Petition Civil No. 3922 of 1985).

#### 4.5 Rescue of Commercial Sexual Exploitation Child Victims

*Vishal Jeet v Union of India*<sup>15</sup>

This writ petition under *Article 32 of the Constitution of India* at the instance of an Advocate was filed by way of a Public Interest Litigation seeking issuance of certain directions, to look into issues of Red Light areas and forced prostitution from a law enforcement perspective; to rescue victims of commercial sexual 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 *Jogin*.

The petition brought out the fact that poor parents on account of acute poverty were selling their children and young girls hoping that their children would be engaged only in household duties or manual labour. However, pimps - brokers - keepers either purchase or kidnap them by deceitful means and unjustly and forcibly inveigle them into 'flesh trade'.

The Supreme Court (SC) held that this matter is one of great importance warranting a comprehensive and searching analysis and requiring a humanistic rather than a purely legalistic approach from different angles. The questions involved cause considerable anxiety to the Court in reaching a satisfactory solution in eradicating such sexual exploitation of children. The court stated that this malady is not only a social but also a socio-economic problem and, therefore, the measures to be taken in that regard should be more preventive rather than punitive.

The SC examined the Constitutional provisions pertaining to right against exploitation; traffic in human beings and rights of children; principles enumerated by the *Declaration of the Rights of the Child, 1959*.

Considering all aspects of the matter before it, the SC issued the following directions *inter alia* to the State Governments and Union Territories:

1. Direct concerned law enforcing authorities to take appropriate and speedy action under the existing laws in eradicating child prostitution.
2. Take steps in providing adequate and rehabilitative homes.
3. Set up separate Advisory Committee consisting of relevant government officials, sociologists, criminologists, members of the women/ child welfare/ voluntary social organizations to make suggestions for eradicating child prostitution and the *devdasi* and *jogin* tradition; and measures for care, protection, treatment, development and rehabilitation of victims.

<sup>15</sup> AIR 1990 SC 1412.

#### 4.6 Rehabilitation of Child Victim

*M C Mehta V. State Of Tamil Nadu*<sup>16</sup>

In this Public Interest Litigation the Supreme Court laid down various measures which needs to be taken in order provides support to the child labour and his family. The Court said from each offending persons employing child labour their premises needs to be sealed and they be asked to provide fine of Rs. 20,000 which will be used for the Rehabilitation of the Child victim. The Court also asked for a national level survey on Child labour. The Supreme Court stated that “We are of the view that the offending employer must be asked to pay compensation for every child employed in contravention of the provisions of the Act a sum of Rs 20,000; and the Inspectors, whose appointment is visualised by *Section 17* to secure compliance with the provisions of the Act, should do this job. The Inspectors appointed under *Section 17* would see that for each child employed in violation of the provisions of the Act, the employer concerned pays Rs. 20,000 which sum could be deposited in a fund to be known as Child Labour Rehabilitation-cum-Welfare Fund. The liability of the employer would not cease even if he would desire to disengage the child presently employed. It would perhaps be appropriate to have such a fund district wise or area wise. The fund so generated shall form corpus whose income shall be used only for the child concerned. The quantum could be the income earned on the corpus deposited qua the child. To generate greater income, fund can be deposited in high-yielding scheme of any nationalised bank or other public body.”

#### 4.7 Protection of Children and Minor Girls from Flesh Trade

*Prerna v. State of Maharashtra*<sup>17</sup>

The Division Bench of the Bombay High Court while examining the court process for child victims of trafficking gave following guidelines to ensure that the child in need of care and protection must be dealt with bearing in mind the possibility of their reformation and rehabilitation

(A) No Magistrate can exercise jurisdiction over any person under 18 years of age whether that person is a juvenile in conflict with law or a child in need of care and protection, as defined by *Sections 2(1) and 2(d) of the Juvenile Justice (Care and Protection of Children) Act, 2000*. At the first possible instance, the Magistrates must take steps to ascertain the age of a person who seems to be under 18 years of age. When such a person is found to be under 18 years of age, the Magistrate must transfer the case to the Juvenile Justice Board if such person is a juvenile in conflict with law, or to the Child Welfare Committee if such a person is a child in need of care and protection.

(B) A Magistrate before whom persons rescued under the *Immoral Traffic (Prevention) Act, 1956* or found soliciting in a public place are produced, should, under *Section 17(2) of the said Act*, have their ages ascertained the very first time they are produced before him. When such a person is found to be under 18 years of age, the Magistrate must transfer the case to the Juvenile Justice Board if such person is a Juvenile

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<sup>16</sup> 1996 6 (SCC) 756.

<sup>17</sup> 2003 (2) Mah.L. J. 105.

in conflict with law, or to the Child Welfare Committee if such person is a child in need of care and protection.

(C) Any juvenile rescued from a brothel under the *Immoral Traffic (Prevention) Act, 1956* or found soliciting in a public place should only be released after an inquiry has been completed by the Probation Officer.

(D) The said juvenile should be released only to the care and custody of a parent/guardian after such parent/guardian has been found fit by the Child Welfare Committee to have the care and custody of the rescued juvenile.

(E) If the parent/guardian is found unfit to have the care and custody of the rescued juvenile, the procedure laid down under the *Juvenile Justice (Care and Protection of Children) Act, 2000* should be followed for the rehabilitation of the rescued child.

(F) No advocate can appear before the Child Welfare Committee on behalf of a juvenile produced before the Child Welfare Committee after being rescued under the *Immoral Traffic (Prevention) Act, 1956* or found soliciting in a public place. Only the parents/guardian of such juvenile should be permitted to make representations before the Child Welfare Committee through themselves or through an advocate appointed for such purpose.

(G) An advocate appearing for a pimp or brothel keeper is barred from appearing in the same case for the victims rescued under the *Immoral Traffic (Prevention) Act, 1956*.”

## 5. Conclusion and Suggestions

Trafficking in child is a complex and multidimensional problem that has spread worldwide. Light Pollution trafficking has permitted our day to day lives. The present situation of trafficking in child is a clear manifestation of lopsided economic development, lack of political will and social integration, the failure of the state machinery including law enforcement, quotes vulnerable sections of the society at receiving end of this multidimensional problem.

The last few decades have seen significant development of the response in combating trafficking in child, being at the national, regional and international levels. However, critical and concern efforts have been lacking to cure the problem of child trafficking. The trans-National nature of this crime requires an integrated Global action with the involvement of different stakeholders. Much work has been done in terms of research on child trafficking, but reliable data both at National and international level is lacking. There is a lot of repetition in the work; it seems that the studies undertaken are a replica of one parent research which has created a lot of confusion about the existence and the conceptual dimension of human trafficking. However, testimonies of various stakeholders clearly confirm its existence worldwide. Consequently, child trafficking has been put at the top of international agenda and various efforts have been made to cut this problem. Most importantly, in this regard, the United Nations Convention against Transnational Crime has been a path-breaking achievement.

Most importantly with regard to children the convention on rights of child can to a large extent provide imputes to protection of rights of children and prevention of child trafficking other numerous International instruments which if consistently implemented can reduce if not eliminate any form of exploitation including the trafficking in human being.

### *Suggestions:*

Undoubtedly many active steps have been taken out of past few years at the National International and regional level for the protection of vulnerable section of the society and for the eradication of trafficking in human beings never the best much work still remains to be done to reach the final goal where by this mean of human trafficking will be ready catered forever from this planet there in this regard some specific suggestion and recommendation have been formulated which may contribute to a large extent in the eradication and acquisition of this an acceptable modern day slavery of trafficking in human beings.

#### A. Legislature -

- a. There is need to amend the existing law regarding child trafficking.
- b. The existing legal framework to combat trafficking result in re-trafficking result in re-trafficking of Victims. The present law must be reviewed to ensure that victim of human trafficking are not really victimised and all traffickers and exploiters are made liable.

#### B. Preventive -

- a. Prevention is better than cure, and therefore preventive efforts must be undertaken to minimise the vulnerability of the risks of child trafficking. These efforts can be achieved in many ways, like spreading of education, gender equality and by providing employment opportunities.
- b. Serious efforts are required to be made from the government as both Central and State level. Assistance can be sought by active Non-Governmental Organisation.

#### C. Rehabilitation

- a. In cases where victim of Child trafficking belongs to other State, every effort should be made for the proper shelter, travel, medical and psychological treatment of the victims.
- b. Women organisation should be involved in monitoring the remand and protective homes.