

**IMMORAL TRAFFICKING OF WOMEN FROM  
NORTH EAST INDIA: A STUDY FROM HUMAN  
RIGHTS PERSPECTIVE**

A Thesis Submitted

To

**Sikkim University**



In Partial Fulfilment of the Requirement for the  
**Degree of Doctor of Philosophy**

By

**Priyanka Shukla**

Department of Law  
School of Social Sciences

**May 2022**

Date:

## DECLARATION

I, **Priyanka Shukla**, hereby declare that the subject matter of this thesis titled **“IMMORAL TRAFFICKING OF WOMEN FROM NORTH EAST INDIA: A STUDY FROM HUMAN RIGHTS PERSPECTIVE”** is the research work done by me, that the contents of the thesis did not form the basis of award of any previous degree to me, or to the best of my knowledge, to anybody else. The thesis has not been submitted by me for any research degree in any other university/institute. This has been submitted in partial fulfilment of the requirement of the Degree of Doctor of Philosophy in Law, School of Social Sciences, Sikkim University.

*Priyanka Shukla*

(Priyanka Shukla)

Roll No.: 17MPDWW03

Registration No.: 17/Ph.D./LAW/02

Department of Law,

Sikkim University

माइल, सामदुर, तादोंग - 737102  
गंगटोक, सिक्किम, भारत  
फोन-03592-251212, 251415, 251656  
टेलीफैक्स - 251067  
वेबसाइट - [www.cus.ac.in](http://www.cus.ac.in)



6th Mile, Samdur, Tadong-737102  
Gangtok, Sikkim, India  
Ph. 03592-251212, 251415, 251656  
Telefax : 251067  
Website : [www.cus.ac.in](http://www.cus.ac.in)

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(भारत के संसद के अधिनियम द्वारा वर्ष 2007 में स्थापित और नैक (एनएएसी) द्वारा वर्ष 2015 में प्रत्यायित केंद्रीय विश्वविद्यालय)  
(A central university established by an Act of Parliament of India in 2007 and accredited by NAAC in 2015)

Date:

## CERTIFICATE

This is to certify that the thesis titled "**IMMORAL TRAFFICKING OF WOMEN FROM NORTH EAST INDIA: A STUDY FROM HUMAN RIGHTS PERSPECTIVE**" submitted to Sikkim University in partial fulfilment of the degree of **Doctor of Philosophy in Law**, embodies the result of *bonafide* research work carried out by **Priyanka Shukla** under my guidance and supervision. No part of the thesis has been submitted for any other Degree, Diploma or Fellowship. All the assistance and help received during the course of investigation have been acknowledged by her.

We recommend this thesis to be placed before the examiners for evaluation.

Dr. Praveen Mishra  
Associate Professor  
Department of Law  
(Supervisor)

Dr. Denkila Bhutia  
In-Charge  
Department of Law

6 माइल, सामदुर, तादोंग -737102  
गंगटोक, सिक्किम, भारत  
फोन-03592-251212, 251415, 251656  
टेलीफैक्स -251067  
वेबसाइट - [www.cus.ac.in](http://www.cus.ac.in)



6<sup>th</sup> Mile, Samdur, Tadong -737102  
Gangtok, Sikkim, India  
Ph. 03592-251212, 251415, 251656  
Telefax: 251067  
Website: [www.cus.ac.in](http://www.cus.ac.in)

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“IMMORAL TRAFFICKING OF WOMEN FROM NORTH EAST INDIA: A STUDY  
FROM HUMAN RIGHTS PERSPECTIVE”

Submitted by **Priyanka Shukla** under the supervision of **Dr. Praveen Mishra**, Associate  
Professor, Department of Law, School of Social Sciences, Sikkim University.

*Priyanka Shukla*

(Signature of Scholar)  
**Priyanka Shukla**

Countersigned by Supervisor  
**Dr. Praveen Mishra**

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# Contents

<b>Subject</b>	<b>Page No.</b>
Acknowledgements	i-ii
Acronyms	iii-iv
List of Maps	v
List of Figures	vi
List of Tables	vii
<b>CHAPTER-I INTRODUCTION</b>	<b>1-11</b>
1.1. Statement of the Problem	1-3
1.2. Objectives of Research	3-4
1.3. Research Hypothesis	4
1.4. Research Questions	4-5
1.5. Research Methodology	5-7
1.6. Significance of study	7
1.7. Limitations of the Study	7-8
1.8. Chapterisation of thesis	8-11
<b>CHAPTER-2 TRAFFICKING OF WOMEN: AN OVERVIEW</b>	<b>12-38</b>
2.1. Introduction	12-13
2.2. Human Trafficking: A Conceptual Enigma	13-18
2.2.1. <i>Slavery</i>	
2.2.2. <i>Prostitution</i>	
2.2.3. <i>Organized Crime</i>	
2.2.4. <i>Migration</i>	
2.2.5. <i>Human rights</i>	
2.3. Defining Trafficking in persons	18-21
2.3.1. <i>Important features of Palermo protocol definition:</i>	
2.4. Theoretical framework to Understand Immoral Trafficking	21-25
2.4.1. <i>Neo-abolitionists and Neo-regulationists</i>	
2.4.2. <i>The Feminist theory of Human Trafficking</i>	
2.4.3. <i>The Absolutist theory of Human Trafficking</i>	
2.4.4. <i>Conflict Theory to Understand Human Trafficking</i>	

<b>2.5. Processes Involved in Combating Human Trafficking</b>	<b>25-30</b>
2.5.1. <i>Prevention from trafficking</i>	
2.5.2. <i>Protection of Victims</i>	
2.5.3. <i>Prosecution of Traffickers</i>	
<b>2.6. Failure to Combat Trafficking: Gaps in Law Enforcement</b>	<b>30-37</b>
2.6.1. <i>Lack of conceptual clarity</i>	
2.6.2. <i>Police-to-population ratio</i>	
2.6.3. <i>Lack of clarity in legal provisions and Anomie of Poly-normativism</i>	
<b>2.7. Summing Up</b>	<b>38</b>
<b>CHAPTER III: SOCIO-LEGAL ANALYSIS OF TRAFFICKING OF WOMEN: CONTEXTUAL UNDERSTANDING OF NORTHEAST INDIA</b>	<b>39-81</b>
<b>3.1. Introduction</b>	<b>39-40</b>
<b>3.2. North East India: An Overview</b>	<b>40-41</b>
<b>3.3. The Causes of Immoral Trafficking in North East India</b>	<b>41-62</b>
3.3.1. <i>Trafficking of women and the gendered norms of society</i>	
3.3.2. <i>Cultural practices</i>	
3.3.3. <i>Poverty</i>	
3.3.4. <i>Demographic Factors</i>	
3.3.5. <i>Migration and trafficking</i>	
3.3.6. <i>Terrorism, Insurgency, Ethnic Violence and Human Trafficking</i>	
3.3.7. <i>Globalization and Trafficking</i>	
<b>3.4. The Consequences of Immoral Trafficking</b>	<b>62-68</b>
3.4.1. <b>Social Consequences-</b>	
3.4.1.1. <i>Impact on the Individual and the Community</i>	
3.4.1.2. <i>Demographic Consequences</i>	
3.4.2. <b>Political Consequences</b>	
3.4.3. <b>Physiological and Psychological Consequences</b>	
<b>3.5. Socio-legal Initiatives to Combat Human Trafficking in India</b>	<b>68-76</b>
<b>3.6. Existential and Experiential account of Trafficking Victims</b>	<b>76-81</b>
3.6.1. <i>Social Profile of victims of commercial sexual exploitation</i>	
3.6.2. <i>Trafficking Victim's experience with law</i>	
<b>3.7. Summing Up</b>	<b>81</b>

<b>CHAPTER IV: IMMORAL TRAFFICKING IN NORTHEAST INDIA: MAPPING THE MAGNITUDE AND ANALYSING THE MEASURES UNDERTAKEN TO COMBAT TRAFFICKING</b>	<b>82-112</b>
<b>4.1. Introduction</b>	<b>82-83</b>
<b>4.2. Magnitude of the Problem of Human Trafficking</b>	<b>83-97</b>
4.2. 1. <i>Overall Scenario</i>	
4.2. 2. <i>Mapping the magnitude of Human Trafficking in North East India</i>	
<b>4.3. Evaluation of North Eastern States in terms of Immoral Human Trafficking</b>	<b>97-112</b>
4.3.1. <i>Assam</i>	
4.3.2. <i>Meghalaya</i>	
4.3.3. <i>Mizoram</i>	
4.3.4. <i>Manipur</i>	
4.3.5. <i>Nagaland</i>	
4.3.6. <i>Sikkim</i>	
4.3.7. <i>Arunachal Pradesh</i>	
4.3.8. <i>Tripura</i>	
<b>4.4. Summing Up</b>	<b>112</b>
<b>CHAPTER V: PENAL POLICY ON COMBATING TRAFFICKING OF WOMEN</b>	<b>113-168</b>
<b>5.1 Introduction</b>	<b>113</b>
<b>5.2 Penal Policy: An Overview</b>	<b>113-115</b>
<b>5.3 Administration of Criminal Justice</b>	<b>115-126</b>
<b>5.4 Penal Policy of India</b>	<b>126-141</b>
5.4.1 Policy of General Deterrence	
5.4.2 Theory of Incapacitation	
5.4.3 Theory of reformation	
5.4.4 Public Prosecution	
5.4.5 Standard of Proof	
5.4.6 Release of Offenders on Probation of Good Conduct:	
5.4.7 Juvenile Offenders: Sentencing Policy	
5.4.8 Executive Clemency	

<b>5.5 Penal Policy of India on combating human trafficking</b>	<b>141-158</b>
<b>5.5.1 India Penal Code, 1860</b>	
<b>5.5.2 Criminal Procedure Code, 1973</b>	
<b>5.5.3 Immoral Traffic (Prevention) Act, 1956</b>	
<b>5.5.4 Protection of Children from Sexual Offences Act, 2012</b>	
<b>5.5.5 The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018</b>	
<b>5.6. Police and Judicial Response</b>	<b>158-167</b>
<b>5.7. Summing Up</b>	<b>167-168</b>
<b>CHAPTER VI: HUMAN RIGHT PERSPECTIVE OF ANTI-HUMAN TRAFFICKING LAWS</b>	<b>169-198</b>
<b>6.1. Introduction</b>	<b>169</b>
<b>6.2. Human rights and Human trafficking: Tracing the Linkages</b>	<b>169-172</b>
<b>6.2. 1. <i>Human Rights approach to human trafficking</i></b>	
<b>6.2. 2. <i>Trafficking as a violation of human rights</i></b>	
<b>6.3. Human Dignity and Human Rights of Trafficked Person</b>	<b>172-177</b>
<b>6.4. Obligations of States</b>	<b>177-182</b>
<b>6.5. Legal Assistance and Involvement</b>	<b>182-184</b>
<b>6.6. International Legal Instruments</b>	<b>184-197</b>
<b>6.6. 1. <i>The Abolition of Slavery and Slave Trade, 1815</i></b>	
<b>6.6. 2. <i>International Agreement for the Suppression of the White Slave Traffic, 1904</i></b>	
<b>6.6. 3. <i>International Convention for the Suppression of the White Slave Traffic, 1910</i></b>	
<b>6.6.4. <i>International Convention for the Suppression of Traffic in Women and Children, 1921</i></b>	
<b>6.6.5. <i>The Slavery Convention, 1926</i></b>	
<b>6.6.6. <i>The Forced Labour Convention, 1930</i></b>	
<b>6.6.7. <i>The International Convention for the Suppression of the Traffic in Women of Full Age, 1933</i></b>	



6.6.8. <i>Universal Declaration of Human Rights, 1948</i>	
6.6.9. <i>Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949</i>	
6.6. 10. <i>Convention on the Elimination of All Forms of Discrimination Against Women, 1979</i>	
6.6.11. <i>United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000</i>	
<b>6.7. Summing Up</b>	<b>197-198</b>
<b>CHAPTER VII: CONCLUSION AND SUGGESTIONS</b>	<b>199-212</b>
<b>REFERENCES</b>	<b>213-224</b>

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I hope this thesis adds in a small but sincere way to the body of literatures available on immoral trafficking in the context of Northeast India. Finally, I express my gratitude to all who contributed directly or indirectly in completion of this research work. The onus for the views expressed in this thesis lies with me. The errors and shortcomings of this thesis are, needless to say, my responsibility.

## **Acronyms**

AHTUs:	Anti-Human Trafficking Units
AIDS:	Acquired Immunodeficiency Syndrome
ATC:	Anti-Trafficking Cell
ATSEC:	Action against Trafficking and Sexual Exploitation of Children
BPR&D:	Bureau of Police Research & Development
CATW:	Coalition Against Trafficking in Women
CEDAW:	Convention on the Elimination of All Forms of Discrimination Against Women
CPUs:	Child Protection Units
CSE:	Commercial Sexual Exploitation
CrPC:	Criminal Procedure Code
CWPPC:	Child Welfare Committee for Protection and Prevention FIR First Information Report
GAATW:	Global Alliance against Trafficking in Women
HT:	Human Trafficking
IAHTU:	Integrated Anti-Human Trafficking Units
ILO:	International labour Organization
IDP:	Internally Displaced Person
ILO:	International Labour Organization
IPC:	Indian Penal Code ITPA Immoral Trafficking Prevention Act
ISS:	Institute of Social Sciences
ITPA:	Immoral Trafficking Prevention Act
ITPB:	Immoral Trafficking Prevention Bill
MWCD:	Ministry of Women and Child Development

MHA:	Ministry of Human Affairs
NCRB:	National Crime Records Bureau
NCW:	National Commission for Women
NGOs:	Non-governmental Organization
NHRC:	National Human Right Commission
SC:	Supreme Court
SCC:	Supreme Court Cases
SHRC:	State Human Rights Commission
SITA :	Suppression of Immoral Traffic in Woman and Girls Act
SOPs :	Standard Operating Procedures
SSP:	Senior Superintendent of Police
TIP:	Trafficking in Persons Report
U.N.:	United Nations
UDHR:	Universal Declaration of Human Rights
UNGA:	United Nation General Assembly
UNIFEM:	United Nations Development Fund for Women
UNODC:	United Nations Office on Drugs and Crime
UNTOC:	United Nations Transnational Organized Crime
UNCTOC:	United Nations Convention against Transnational Organized Crime
UNICEF:	United Nations International Children's Emergency Funds
USAID:	United States Agency for International Development
WDCW:	Women Development Child Welfare
WP:	Writ Petition

## List of Maps

<b>Sl.No.</b>	<b>Name of Map</b>	<b>Page No.</b>
1.	Police Officers Per 100,000 people in India	35
2.	Trafficking affected source, transit and destination states of the North-eastern region of India	86
3.	Major source and destination points in Assam	97
4.	Human Trafficking affected areas in Meghalaya	100
5.	Human Trafficking affected areas in Mizoram	103
6.	Human Trafficking affected areas in Manipur	105

## List of Figures

<b>Sl.No.</b>	<b>Name of Figure</b>	<b>Page No.</b>
1.	Processes involved in combating human trafficking	26
2.	Analytical model for preventive measures to reduce demand	27
3.	World-wide police to population ratio (Police Officers Per 100,000 people)	32
4.	Total number of human trafficking cases reported in Northeastern states	89
5.	Total number of human trafficking cases charge sheeted by police in Northeastern states	91
6.	Total number of human trafficking cases convicted by courts in Northeastern states	94

## **List of Tables**

<b>Sl.No.</b>	<b>Name of Table</b>	<b>Page No.</b>
1.	State or UTs wise police population ratio as on 01.01.2020	34
2.	Land Routes for Trafficking from Bangladesh	111
3.	Treaties and other Instruments particularly relevant to trafficking	177
4.	Some important non-treaty instruments relevant to trafficking	180



# CHAPTER-I

## INTRODUCTION

### 1.1. Statement of the Problem

Immoral trafficking of human beings is a heinous crime and it is also one of the most contemptible forms of violation of human rights. Reports suggest that it is the second largest organized crime after drugs in the world<sup>1</sup>. This research is particularly inclined to look into the immoral trafficking of women because sex trafficking is the main form of human trafficking and it predominantly affects women. Asia is the largest contributor of sex trafficking victims across the world to the tune of 30 million as per the estimates of United Nations (UN). In Asia, reports suggest that South Asia is particularly vulnerable to this menace of human trafficking which, it is needless to mention includes India as well<sup>2</sup>. In South Asia, India is a major source; destination and transit point for immoral trafficking of women and girl child for commercial sexual exploitation. Within India, North East India is a major source and transit point for sex trafficking. Within North East India, the source states are Assam, Nagaland, Manipur and to some extent Sikkim.

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<sup>1</sup> Sawmya Ray, "Of Vulnerability and Coercion: A Study of Sex Trafficking in Assam" 64(3) *Sociological Bulletin* 305 (2015) available at: <https://www.jstor.org/stable/26290744> (last visited on May 08, 2018). Similar mention is there in S. Sen & P. M. Nair, *A Report on Trafficking in Women and Children in India*, NHRC UNIFEM-ISS Project, Vol. I. (New Delhi, National Human Rights Commission, 2004).

<sup>2</sup> International Labour Organization, *Demand side of human trafficking in Asia: Empirical findings, Regional project on combating child trafficking for labor and sexual exploitation (TICSA-II)* (2006) available at: [https://www.ilo.org/asia/publications/WCMS\\_BK\\_PB\\_73\\_EN/lang--en/index.htm](https://www.ilo.org/asia/publications/WCMS_BK_PB_73_EN/lang--en/index.htm) (last visited on May 15, 2018).

Guwahati is the main transit point for women and girls to be trafficked into various cities of India from North-East, and from there, to abroad<sup>3</sup>.

As scholars point out that in our country we have broadly two main approaches to tackle human trafficking. 'Accused oriented' approach which treats the menace as a problem pertaining to law and order. The underlying assumption in this approach is that the prime focus should be on strict implementation of law to prosecute and punish the people who are involved in human trafficking. Second approach is 'Victim Oriented'. In this approach menace of human trafficking is viewed as a gross violation of human rights. Notwithstanding the importance of rigorous implementation of law, the prime focus of this approach is on protecting the human rights of victims of human trafficking.

This research has examined the current anti-trafficking framework with particular emphasis on the development of human rights protection. Researcher has opted for analyzing the problem in framework of human rights protection because studies reveal that the protocol to prevent, suppress, and punish trafficking in persons fails to adopt a comprehensive human rights approach. The core commitment of the protocol is rather to prevent and prosecute human trafficking than to protect and identify the victims of human trafficking. This considerably undermines the effectiveness of trafficking intervention at all levels.

This topic requires consideration of a range of issues. These are, for example, human trafficking as a problem of migration, as a problem of prostitution and as a problem of the law itself. In terms of anti -trafficking measures, a lack of

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<sup>3</sup> Sawmya Ray, "Of Vulnerability and Coercion: A Study of Sex Trafficking in Assam" 64(3) *Sociological Bulletin* 305 (2015) available at: <https://www.jstor.org/stable/26290744> (last visited on May 08, 2018).

conceptual clarity amongst the aforesaid issues is arguably, likely to cause state's reluctance to protect trafficked persons, whose legal status is yet unclear. It is pertinent to mention that the scale and extent of immoral trafficking in India in general and North East in particular has not been academically explored in sufficient detail.

## **1.2. Objectives of Research**

This research seeks to critically explore legal measures that seek to end human trafficking. In practice, prosecution and suppression alone are shown to be insufficient to reduce human trafficking. The existing anti-trafficking framework, whether at international or national levels, arguably fails to respond to the long term prevention of human trafficking and protection of human rights of trafficked persons. The objectives of the study among other things could be broadly classified under the following:

- a) To examine the push and pull factors which necessitate and facilitate trafficking of women from North East India.
- b) To identify the practical gaps in framing and implementation of social policies and legal acts aimed at combating trafficking of women in India.
- c) To analyze the basic legal principles regarding human trafficking in general and trafficking of women in particular formulated in various international conventions, treaties, recommendations and the resolutions by the United Nations.
- d) To critically examine whether the provisions of Immoral Traffic (Prevention) Act 1956 and other provisions of Indian legislation to combat trafficking of women are in consonance with international conventions/treaties.

- e) To examine the existing legal response to trafficking of women from a human rights perspective.

The research is a doctrinal one, more particularly a critical study and analysis of Anti Trafficking laws with that of the statutory obligations laid down under International Instruments.

### **1.3. Research Hypothesis**

The research has the following hypothesis:

- a) The provisions contained in the legislation (ITP Act 1956) fulfil the international obligations cast upon India, in terms of various international conventions, treaties, recommendations, regulations and laws.
- b) Meghalaya model in Northeast India is effective and comprehensive model in combating trafficking of women and rescuing and rehabilitating victims of human trafficking.

### **1.4. Research Questions**

- a. What are the main reasons for North East India's emergence as a prominent source and transit point of human trafficking?
- b. How the existing socio-cultural circumstances of the North East India necessitate and facilitate immoral trafficking of women?
- c. How has the issue of human trafficking been considered by the international community and to what extent have international instruments been developed as measures to tackle contemporary human trafficking of women?
- d. Whether domestic anti-trafficking measures are adequate and sufficient to tackle trafficking of women from Northeast India?

- e. Do the anti-trafficking measures/organisations focus on the human rights of the very women they advocate for?

### **1.5. Research Methodology**

The present research work is primarily doctrinal in nature. In order to supplement the object of the research, and to assist the researcher, methods such as Historical Method, Evaluation Method, Analytical Method, and Comparative Method would be used wherever required. Historical Method will be used to trace the origin, development and impact of Antihuman Trafficking jurisprudence of India. Analytical method will be adopted to compare and analyse the laws, regulations and procedures with those of international Conventions, treaties, judicial decisions, scholarly articles, etc. Evaluation Method would be adopted to elicit whether the standards laid down in the above instruments have been effectively implemented by the legislature. Comparative method shall be used to compare the legislative provisions, rules and regulations with international instruments and also the laws and regulations of select jurisdictions.

In this research, the doctrinal analysis will be significant to illustrate how the human rights principles, the anti-trafficking law, has been adopted in international and domestic laws. This research methodology adopts analytical techniques, enabling the researcher to deploy her interpretative and legal reasoning skills.

Since this approach is confined to the analysis of International Instruments, Statutes, Directions, judicial decisions. Identification of source materials is necessary. Concerning legal materials or sources, two types of legal materials are recognised. Firstly, primary sources are those authoritative records of law made by law-making

bodies such as parliaments, courts, government departments or other statutory authorities. Secondly, secondary sources of law are those publications, which refer and relate to the law, while not being themselves primary sources. In general, secondary data can be obtained from legal commentaries, legal textbooks, journal articles, case citations, case digests and legal dictionaries<sup>4</sup>.

Researching on a topic like this has never been easy, being a female while going through different primary and secondary accounts of countless tortures, savagery and abject slavery which the victims of immoral trafficking are subjected keep haunting and swirling in mind. Reading narratives of sex slave victims filled my heart with rage and sorrow.

Methodologically this work is influenced by new directions in sociological theory pertaining to trafficked prostitution. Interestingly it neither attributes the sole reason for trafficked prostitution to the individual needs and independently acting individuals nor does it attribute the sole reason to the social factors for trafficked prostitution. The structuration theory<sup>5</sup> making sense of trafficked prostitution is based on the premise that trafficked prostitution both structures and get structured by surrounding socio-cultural context.

Feminist theory highlights the unequal power relation in the patriarchal society and the ways in which it shapes the men- women relationship in the trafficked prostitution

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<sup>4</sup> R. Watt, *Concise Legal Research*, 5th ed., (Sydney, Federation Press, 2004).

<sup>5</sup> Structuration theory was proposed and elaborated by Anthony Giddens to reconcile conceptual differences in social research between those who focus solely on macro-processes, such as institutional power, and those who focus solely on micro-processes, such as situated interactions. For more details refer Mike Allen (Ed). *The SAGE Encyclopedia of Communication Research Methods*. (SAGE, New Delhi, 2017).

scenario. They argue that it is the urge for domination over women by male clients<sup>6</sup>. It also highlights how power exercise over a woman who is completely subjugated because she is paid<sup>7</sup>. This is further fueled by the commodification of sex promoted by culture industry which objectifies women and fuels male ego.

### **1.6. Significance of study**

This research would be a much needed contribution in providing a socio-legal understanding of immoral trafficking by looking through immoral trafficking from the human rights framework. Further, it provides an in depth analysis of immoral trafficking of women in North East India. Given the high prevalence of the immoral trafficking in North Eastern Region of India and at the same time paucity of academic understanding of the phenomena in terms of the contextual social, political, economic and cultural factors, this study will be highly relevant in bridging the gap. This research will have far reaching policy implication as it provides a region specific understanding of immoral trafficking in North East India which will help the policy makers in formulating a targeted response to this menace of immoral trafficking in the North East India.

### **1.7. Limitations of the Study**

Doctoral work is a time bound research endeavor. The current study is doctrinal research based on secondary sources. The findings of the study can be a prologue for conducting an empirical study. In a research of this kind, there is a limitation of secondary sources of

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<sup>6</sup> H. Ben-Israel and N. Levenkron, *The missing factor – Clients of trafficked women in Israel's sex industry* 22(Hotline for Migration Workers and The Hebrew University, Jerusalem, 2005). Similar argument can be found in N. McKeganey and M. Barnard, *Sex Work on the Streets: Prostitutes and their Clients*, (Open University Press, Buckingham, 1994).

<sup>7</sup> *Supra* note 3 at 16.

data to capture the existential and experiential reality of trafficking victims. Further, the research is also constrained due to paucity of literature and adequate information on some of the Northeast states like Arunachal Pradesh and Mizoram.

## **1.8. Chapterisation of thesis**

### **Chapter I: INTRODUCTION**

This chapter deals with the statement of problem, the implications of the proposed study, objectives, research questions, hypothesis, significance of study, limitations of the study.

### **Chapter II: TRAFFICKING OF WOMEN: AN OVERVIEW**

This chapter aims to unravel the conceptual enigma around human trafficking, its definitions in the context of Palermo protocol and its historical background. It also outlines the theoretical frameworks: neo-abolitionists and neo-regulationists theory of human trafficking; feminist theory of human trafficking; the absolutist theory; conflict theory to understand human trafficking. Further, it also deliberates upon processes: protection, prosecution and prevention involved in combating human trafficking. This delves upon the gaps in law enforcement such lack of conceptual clarity among the personnel enforcing the anti-trafficking laws, inadequate police-population ratio etc. which hinders any effort to combat human trafficking.

### **Chapter III: SOCIO-LEGAL ANALYSIS OF TRAFFICKING OF WOMEN: CONTEXTUAL UNDERSTANDING OF NORTHEAST INDIA**

The context in which particular groups of women are placed also needs to be taken into account, given the rich diversity among various regions in India as well as within North East India. This chapter is a step in this direction as it intends to understand immoral



trafficking of women and girls in insurgency ridden North East India. This chapter aims to unravel the causes and consequences of immoral trafficking in North East India; the socio-legal initiatives to combat human trafficking in India; and the existential and experiential account of trafficking victims.

#### **Chapter IV: IMMORAL TRAFFICKING IN NORTHEAST INDIA: MAPPING THE MAGNITUDE AND ANALYSING THE MEASURES UNDERTAKEN TO COMBAT TRAFFICKING**

Within India, Northeast India forms a major source and transit point for sex trafficking. Within Northeast, the source states are Assam, Nagaland, Manipur and to some extent Sikkim. Guwahati is the chief transit point for women and girls to be trafficked into various cities of India from North East, and from there, to abroad. This chapter provides an overall scenario of immoral trafficking in Northeast India; deals with the magnitude of immoral trafficking in the Northeast; and evaluates the measures taken to combat trafficking performance of Northeastern states: Arunachal Pradesh, Assam, Manipur, Nagaland, Mizoram, Meghalaya, Tripura, and Sikkim.

#### **Chapter V: PENAL POLICY ON COMBATING TRAFFICKING OF WOMEN**

Penal policy is understood to mean a rational state response to crime.<sup>8</sup> The present chapter aims at understanding the penal policy to combat trafficking of women. In order

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<sup>8</sup> Nicola Lacey, David Soskice et al, Understanding the Determinants of Penal Policy: Crime, Culture, and Comparative Political Economy, 1 *Annual Review of Criminology* .p 195-217(2018).

to identify Penal Policy of India this chapter also deliberates upon the administration of criminal justice system of India. While deliberating upon the penal policy of India, this chapter deals with: policy of general deterrence; theory of incapacitation; theory of reformation; public prosecution; standard of proof; release of offenders on probation of good conduct;; juvenile offenders: sentencing policy; and executive clemency. Furthermore, penal policy of India on combating human trafficking is reflected in the legal framework against immoral trafficking. Some of the major provisions dealt in the subsequent section are following: India Penal Code,1860; Criminal Procedure Code, 1973; Immoral Traffic (Prevention) Act, 1956; Protection of Children from Sexual Offences Act, 2012; the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018.

## **Chapter VI: HUMAN RIGHT PERSPECTIVE OF ANTI-HUMAN TRAFFICKING LAWS**

Human rights and human trafficking are intricately inter twined. This chapter examines how far the anti-trafficking measures/organisations focus on the human rights of the very women they advocate for. It seeks to understand how far besides preventing and combating trafficking, efforts are also made to rehabilitate and support the victims. It also looks at the conditions of trafficked persons in general and women in particular from the perspective of human dignity and human rights.

This chapter also tends to look at how trafficking affect human dignity and human rights? How far has law enforcement and rehabilitation system helped in restoring the dignity of trafficked persons specially the rescued ones?. Further, this chapter delves into different international instruments that acts as the main source of obligation for the signatory states and provide basis for the laws on human trafficking.

## **Chapter VII: CONCLUSION AND SUGGESTIONS**

This chapter deals with the conclusions and lays out recommendations and suggestions for addressing the menace of immoral trafficking in general and Northeast India in particular.

## CHAPTER-II

### TRAFFICKING OF WOMEN: AN OVERVIEW

#### 2.1. Introduction

In order to understand human trafficking one has to understand its historical background as per the problem of modern era. Human trafficking is studied from many perspectives and in many ways. Human trafficking is very much connected with migrant worker, smuggling, prostitution, bonded labor are there other forms of exploitation which be a part of trafficking. When we think of human Trafficking issues, many debates and controversy arise as how to study it in social economic, Cultural and individual ways.

Moreover, state policies have lot of punitive reformative Ideas to control human trafficking but the most interesting part is that state have to reconsider the interconnection of anti trafficking laws with asylum, shelter homes and liberal cross border mechanism laws so that victims can be easily identified and rehabilitated and do not get grabbed into the hands of professional smugglers and traffickers again and again<sup>1</sup>. Therefore, in order to tackle human trafficking the approach matters and it is more of holistic, contemporary and humanistic approach so that victims can be reassured to be in safe hand and live a normal life in society.

It is in this context that this chapter aims to unravel the conceptual enigma around human trafficking, its definitions in the context of Palermo protocol and its historical background. It also outlines the theoretical frameworks: neo-abolitionists and neo-

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<sup>1</sup> Maggy Lee (ed) *Human Trafficking*, 1-26 (Willan Publishing, Devon, UK, 2007)

regulationists theory of human trafficking; feminist theory of human trafficking; the absolutist theory; conflict theory to understand human trafficking. Further, it also deliberates upon processes: protection, prosecution and prevention involved in combating human trafficking. This chapter also reflects upon the gaps in law enforcement such lack of conceptual clarity among the personnel enforcing the anti-trafficking laws, inadequate police-population ratio etc. which hinders any effort to combat human trafficking.

## **2.2. Human trafficking: A Conceptual Enigma**

The term human trafficking has been variedly conceived and interpreted. Some of the conceptions of trafficking victims are following: Slavery; Prostitution; Organized Crime; Migration; and Human rights.

**2.2.1. Slavery-** Some scholars have conceptualized human trafficking as a form of ‘slavery’<sup>2</sup>. Slavery is the worst form of exploitation in human trafficking .The difference between early and modern slave trade is pertinent to mention. Although the ancient form of slavery where slaves are chained and sold and exploited openly to the maximum extent may not be a feature of modern day slavery. But there is some similarity in ancient and modern day slavery as both tend to exploit human misery and vulnerabilities and both treat human beings as commodities to be traded. While deliberating upon human trafficking as a contemporary form of slavery, scholars argue that contemporary slavery, “is marked not by legal ownership of one human being by another or long-term enslavement, but by temporary ownership, debt bondage, forced labour and hyper-

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<sup>2</sup> K. Bales. *Understanding Global Slavery*. (Berkeley, University of California Press, 2005); and D. Ould. “Trafficking and International Law”, in C. van den Anker (ed.) *The Political Economy of New Slavery*. (Basingstoke, Palgrave Macmillan, 2004).

exploitative contractual arrangements in the global economy”<sup>3</sup>. However, scholars are divided on equating slavery with human trafficking. On the one hand we have aforementioned scholars who draw a parallel between slavery with human trafficking and distinguish between traditional and contemporary manifestations of slavery. This group of scholars believe that such a parallel would “guarantees a wider audience”<sup>4</sup> to fight against inhuman practice of human trafficking. On the other hand, we have scholars who caution us against drawing a parallel between slavery and human trafficking. These scholars cautions against the sensationalisation of human trafficking. They argue that we can at best use “slavery-like practices” to “signal the commonalities and distinctions between legal enslavement and forced, waged labour”<sup>5</sup>

**2.2.2. Prostitution-** the notion of trafficking is more similar to sexual exploitation leads to prostitution. There are different avenues of sexual exploitation which leads to prostitution. Sometimes it is abused in form child sex, slave trade, flesh trade, call girls etc. Off late various International and National treaties have recognized that people can be trafficked in other domains like domestic labour, agriculture, construction beside prostitution, however, it has also been acknowledged that immoral trafficking of women and children still remain the dominant reason for trafficking of human beings. Conceptual dealing with immoral trafficking of women for sexual exploitation is contested on the lines that some scholars view prostitution as “work” and “role of women agency in respect to prostitution” and the difference between “voluntary migrant sex work” and

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<sup>3</sup> Maggy Lee (ed) *Human Trafficking*, 3 (Willan Publishing, Devon, UK, 2007)

<sup>4</sup> C. van den Anker. *The Political Economy of New Slavery*. 19 (Basingstoke, Palgrave Macmillan, 2004).

<sup>5</sup> K. Kempadoo (2005) (ed.) *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights*. xx (Boulder, CO: Paradigm Publishers, 2005).

“Forced trafficking for sexual exploitation”<sup>6</sup>. The major legal aspect of prostitution is that it is not considered as work as these are not value added service in society. It is a bodily service; exchange value is not produced in this. In this profession, sexual/intimacy is involved. It is a personal activity. Some critics have also pointed to the “criminalization and moralizing tenancies of the abolitionist discourse about sexual slavery and argued that anti trafficking measures had been used not so much to protect women from exploitation but to police and punish female migrants and sex worker”<sup>7</sup>.

**2.2.3. Organized Crime-** Human trafficking has also been conceived as an organized crime because the role of Mafia, smugglers, gangsters and the other ways of cross border control is an integral aspect of the trafficking. But it is UN Convention Against Transnational Organised Crime 2000 that institutionalized the conception of “trafficking-as-organized crime”<sup>8</sup>. Scholars like Maggy Lee would argue that, “The UN Convention seeks to promote cooperation among the states parties to combat transnational organized crime more effectively through criminalizing a number of activities, improving information flows, enhancing cross-border coordination between relevant authorities, and eliminating 'safe havens' where organized criminal activities or the concealment of

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<sup>6</sup> J. Doezema. “Loose Women or Lost Women? The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women”,18 (1)*Gender Issues*, 23–50 (2000); J. Doezema, “Who gets to choose? Coercion, consent, and the UN trafficking protocol”, 10 (1) *Gender and Development*, 20- 27(2002); K. Kempadoo (2005) (ed.) *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights*. (Boulder, CO: Paradigm Publishers, 2005); A. Murray. “Debt-bondage and Trafficking: Don’t Believe the Hype”, in K. Kempadoo and J. Doezema (eds) *Global Sex Workers*. (London, Routledge, 1998); and B. Sullivan. “Trafficking in Women: Feminism and New International Law”,5 *International Feminist Journal of Politics*, 67–91 (2003).

<sup>7</sup> R. Kapur. “The Tragedy of Victimization Rhetoric: Resurrecting the “Native” Subject in International/Postcolonial Feminist Legal Politics”,15 *Harvard Law Review*, 1–37 (2002).; and W. Chapkis. ‘Trafficking, Migration and the Law: Protecting Innocents, Punishing Immigrants’, 17 *Gender and Society*, 923–37 (2003).

<sup>8</sup> Maggy Lee (ed) *Human Trafficking*, 19 (Willan Publishing, Devon, UK, 2007)

evidence or profits can take place by promoting the adoption of basic minimum measures”<sup>9</sup>.

The situation of the victims trafficked from one place to another through a very organized crime network in which high level bureaucrat and politician are also involve. It definitely points out a loop hole in the security system of a place. Trafficking is a greatest threat to the security of the nation as they give latently point out towards loophole in the cross-border security and safety mechanism. Therefore, “From this perspective, trafficking is seen as a serious and unambiguous threat to the peace and security of the developed world, and hence legitimises state response of increased surveillance and tighter immigration controls”<sup>10</sup>. It has also been noticed that many a times there is convenient relationship between agents of human trafficking promoting this transnational organized crime and state<sup>11</sup>. For example, in some of the Latin American countries one can notice a symbiotic relationship between state and trans-national organized crime. It is also because some view human trafficking as a “lucrative international business”. A scholar while analyzing the migrant trafficking writes that, it is a form of “an international business” which include, “a system of institutionalised networks with complex profit and loss accounts, including a set of institutions, agents and individuals, each of which stands to make a commercial gain”<sup>12</sup>. Therefore, we see that the ,

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<sup>9</sup> Ibid.

<sup>10</sup> Maggy Lee (ed) *Human Trafficking*, 6 (Willan Publishing, Devon, UK, 2007)

<sup>11</sup> P. Andreas. “Smuggling Wars: Law Enforcement and Law Evasion in a Changing World”, 4 *Transnational Organized Crime*, 75–90 (1998); P. Williams “Transnational Organized Crime and the State”, in R.B. Hall (ed.) *Emergence of Private Authority in Global Governance*. (West Nyack, NY, Cambridge University Press, 2002).

<sup>12</sup> J. Salt and J. Stein. “Migration as a Business: The Case of Trafficking”, 35 *International Migration*, 468 (1997).



“emergence of extensive sex markets, either as a state-sponsored strategy of economic development in South-east Asia”<sup>13</sup>; “a result of armed conflict and militarisation in areas such as Kosovo and the former Yugoslavia”<sup>14</sup>, all these are reflective of blooming markets in women.

**2.2.4. Migration-** Yet, another paradigm of conceptualizing trafficking is within the context of migration. Studies have also revealed a strong ‘migration-trafficking’ nexus. The reasons for these regular or irregular migrations can be: “economic crises, lack of sustainable livelihoods, political conflict, civil war, ethnic persecution, social inequalities, gender-blind macroeconomic policies, and wider processes of global social transformation”<sup>15</sup>. This can be tackled through putting in force legal channels for migration of labourers, restriction on the use and exploitation of cheap trafficked labour by the employers, protecting the rights of workers coming due to internal and cross border migration. It is with these steps in the context of migration that we will be able to effectively tackle human trafficking.

### **2.2.5. Human rights**

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<sup>13</sup> L. Lim. ‘The Sex Sector: The Economic and Social Bases of Prostitution in Southeast Asia’. (Geneva, ILO., 1998); and S. Sassen ‘Women’s Burden: Counter-geographies of Globalization and the Feminization of Survival’, 53 *Journal of International Affairs*, 503(2000).

<sup>14</sup> Amnesty International ‘So does that mean I have Rights?’ Protecting the Human Rights of Women and Girls Trafficked for Forced Prostitution in Kosovo’. Amnesty International. (2004)

<sup>15</sup> Scholarly works emphasizing on ‘migration-trafficking’ nexus are: M. Asis. “Borders, Globalization and Irregular Migration in Southeast Asia”, in A. Ananta and E.N. Arifin (eds) *International Migration in Southeast Asia*. (Singapore, Institute of Southeast Asian Studies, 2004); S. Castles. ‘Towards a Sociology of Forced Migration and Social Transformation’, 37 (1) *Sociology*, 13–34 (2003); L. Kelly. *Fertile Fields: Trafficking in Persons in Central Asia*. (Vienna, IOM, 2005); K. Koser. “Asylum Policies, Trafficking and Vulnerability”, 38(3) *International Migration*. 91–112 (2000); and N. Piper “Labour Migration, Trafficking and International Marriage: Female Cross-Border Movements into Japan”, 5(2) *Asian Journal of Women’s Studies*. 69–99 (1999).

Trafficking has also been conceived from a human rights perspective. Particularly in the second half of the twentieth century with the rise of human rights institution and issues pertaining to the human rights. Gradually human rights came to be recognized as a broad value to all people. Trafficking in this context posed a direct threat to the basic human rights of a person. Universal Declaration of Human Rights 1948 (UDHR), pointed out that trafficking violated “the right to be free from slavery or servitude; right to freedom of movement; right to life, liberty and security; right to health; and right to free choice of employment”<sup>16</sup>. Human rights framework of approaching human trafficking provides conceptual and normative tool for analyzing root cause and outcome of trafficking and devising strategy and policies for tackling human trafficking<sup>17</sup>.

### **2.3. Defining Trafficking in persons:**

Trafficking in persons denotes a criminal practice of exploitation of human beings where they are treated as commodities for monetary gain and after being trafficked are subjected to long-term abuse<sup>18</sup>. An attempt to define human trafficking differently from other forms of crime started in 1990s. However, the first standalone comprehensive definition for human trafficking has been coined in Palermo protocol 2000. The “United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, 2000” (also known as the Palermo Protocol) under Article 3 (a) defines “-

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<sup>16</sup> Maggy Lee (ed) *Human Trafficking*, 9 (Willan Publishing, Devon, UK, 2007)

<sup>17</sup> These ideas are reflected in: Experts Group on Trafficking in Human Beings. *Report of the Experts Group on Trafficking in Human Beings*.(Brussels, European Commission Directorate-General Justice, Freedom and Security, 2004); and M. Kaye, *The Migration-Trafficking Nexus: Combating Trafficking Through the Protection of Migrants Human Rights* (London, Anti-Slavery International, 2003).

<sup>18</sup> Siddhartha Sarkar, Rethinking Human Trafficking in India: Nature, Extent and Identification of Survivors” 103(5) *The Round Table*, 285 (2014)

Trafficking in persons” as: “The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”<sup>19</sup>.

The essential element of this definition- ‘exploitation’ is further defined as: “Exploitation should include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”<sup>20</sup>. Various scholars have emphasized the key actionable element ‘exploitation’ in Palermo protocol<sup>21</sup>. The current research has adhered to the international definition and used ‘exploitation’ as the key point of determining trafficking of women.

### **2.3.1. Important features of Palermo protocol definition:**

The Palermo protocol defined human trafficking in a comprehensive sense and as Sarkar 2014 would argue, that the definition propounded and adopted in this protocol, “covers not only the transportation of a person from one place to another, but also their recruitment and receipt so that anyone involved in the movement of another

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<sup>19</sup> United Nations, *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*. (New York, United Nations, 2000), available at: <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx> (last visited on November 3, 2018).

<sup>20</sup> *Ibid.*

<sup>21</sup> Jo. Doezema, “Who gets to choose? Coercion, consent, and the UN trafficking protocol”, 10 (1) *Gender and Development*, 20- 27(2002)

person for their exploitation is part of the trafficking process”<sup>22</sup>. Further, it didn’t limit trafficking to sexual exploitation only, taking a broader view, it also includes forced labour and other slavery practices. “This means that people who migrate for work in agriculture, construction or domestic work, but are deceived or coerced into working in conditions they do not agree to, must also be defined as trafficked people”<sup>23</sup>.

So the important features of Palermo protocol definition are: Firstly, the traditional definition of human trafficking is related more to girls trafficking but in the international definition adopted in Palermo protocol, trafficking has been conceived broadly both in terms of men and women, boys and girls.

Secondly, the international definition adopted in Palermo protocol does not restrict the definition of human trafficking to international or transborder trafficking but it also endeavours to include the trafficking which takes place within the boundaries of the nation, in other words, trafficking which takes place within the state or across the states in a country.

Thirdly, the concept of trafficking in persons is quite different from migrant smuggling. Trafficking involves mainly exploitation (sometimes done by consent, fraud or by transferring the victim from one place to another). Whereas, in migrant smuggling it is mainly the movement for profit (for illegal labour, manpower etc.).

Fourthly, it is important to look into the role of consent in the definition of trafficking adopted in Palermo protocol. The protocol construed ‘consent’ in a rational way and

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<sup>22</sup> Siddhartha Sarkar, Rethinking Human Trafficking in India: Nature, Extent and Identification of Survivors” 103(5) *The Round Table*, 485 (2014)

<sup>23</sup> *Ibid.*

asserted that it is irrelevant once it is established beyond doubt that coercion, deception or force has been used then ‘consent’ is of no value and it is nullified.

India signed this protocol on 12 December 2002 which required countries to criminalise the practice of human trafficking and to adopt legislation to translate the protocol’s obligations into national law. After a long delay India finally ratified the UN protocol on human trafficking on 5 May 2011. Ratification of this convention means that it is now binding on India to develop a law that conforms to the international convention and its provisions<sup>24</sup>.

In pursuance of this protocol, on 28 February 2018, the Union Cabinet approved the “Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018” for introducing in the Parliament. It addresses the issue of trafficking from the point of view of prevention, rescue and rehabilitation. It proposes to establish rehabilitation fund and anti-trafficking bureau. It emphasizes on ensuring measures for relief and rehabilitation of victims of trafficking.

#### **2.4. Theoretical framework to Understand Immoral Trafficking**

Feminist theory highlights the unequal power relation in the patriarchal society and the ways in which it shapes the men- women relationship in the trafficked prostitution scenario. They argue that it is the urge for domination over women by male clients<sup>25</sup>. It

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<sup>24</sup> *Ibid.*

<sup>25</sup> H. Ben-Israel and N. Levenkron, *The missing factor – Clients of trafficked women in Israel’s sex industry* 22(Hotline for Migration Workers and The Hebrew University, Jerusalem, 2005). Similar argument can be found in N. McKeganey and M. Barnard, *Sex Work on the Streets: Prostitutes and their Clients*, (Open University Press, Buckingham, 1994).

also highlights how power exercise over a woman who is completely subjugated because she is paid<sup>26</sup>. This is further fueled by the commodification of sex promoted by culture industry which objectifies women and fuels male ego.

#### **2.4.1. *Neo-abolitionists and Neo-regulationists:***

Literature on definitions and theoretical understanding of human trafficking, especially on trafficking of women, has two major ideological debates: neo-abolitionists and neo-regulationists. The neo-abolitionist group view trafficking and prostitution as the same – as forms of gender-based violence and as violation of women’s human rights. Prohibitionist approach, supported by the neo-abolitionists, seeks to use the criminalization of all acts and actors, including the sex worker herself, to abolish prostitution<sup>27</sup>.

The neo-regulationist group considers sex work as legitimate labour. Decriminalization supported by neo-regulationists is based on the view that sex work may be a personal choice and a private matter between consenting adults. Distinguishing between trafficking and sex work, this approach seeks to decriminalize voluntary sex work and all related activities. Forced sex work on the other hand is considered a separate issue for which existing laws related to trafficking are sought to be strengthened<sup>28</sup>. Literature further shows that despite intense disagreement between the two positions, some common

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<sup>26</sup> *Supra* note 3 at 16.

<sup>27</sup> Refer Jo. Doezema, ‘Who gets to choose? Coercion, consent, and the UN trafficking protocol’, 10 (1), *Gender and Development*, 20- 27. 2002.; and Anne Gallagher, ‘Human rights and the new UN protocols on trafficking and migrant smuggling: A preliminary analysis’, 23 (4), *Human rights quarterly*, 975-1004. 2001.

<sup>28</sup> Marie Segrave & Sanja Milivojevic. ‘Sex trafficking - A new agenda’, *Social alternatives*, Second quarter, 24 (2) 11-17. (2005).

ground seems to have emerged. Scholars point out that both basically agree on the need to address the exploitative condition inherent in the sex trade and to protect the rights of women involved in sex work<sup>29</sup>. Both camps agree that vulnerabilities and violations of rights characterise the conditions in which women work selling sex.

#### **2.4.2. The Feminist theory of Human Trafficking**

Further, the feminist theory, absolutist theory and conflict theory can also be invoked to understand the immoral trafficking of women. Feminist theories locate the root cause of immoral trafficking in the social structure of the patriarchal society, women are placed in a marginalised and subjugated position in the socio-economic, cultural and political sphere<sup>30</sup>. There are two broad orientations in the feminist approach while addressing the issue of trafficking: Firstly, “Coalition against Trafficking in Women” (CATW) advocated by Kathleen Barry<sup>31</sup> and it challenges the Marxist understanding which attributes primacy to the economic reason for the menace of immoral human trafficking. Kathleen Barry attributes primacy to the sexual domination and unequal power relation in the patriarchal society for the menace of human trafficking. Her theory is useful in understanding and explicating the prevalence and persistence of human trafficking in India as well.

Yet another ideology inspired by second wave of feminism is represented by the “Global Alliance against Trafficking in Women” (GAATW). In this ideology “the feminists view

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<sup>29</sup> Catrin Evans and Pankaja Bhattarai. *Trafficking in Nepal: Intervention Modes – A Comparative Analysis of Anti-trafficking Intervention Approaches in Nepal*, (Asia Foundation, Kathmandu, Horizons Project Population Council, New Delhi. 2000).

<sup>30</sup> Hilary Charlesworth and Christine Chinkin. *The Boundaries of International Law*. (Manchester University Press, Manchester, 2000).

<sup>31</sup> Kathleen Barry. *Female Sexual Slavery*. (New York University Press, New York, 1984).

prostitution as a legitimate form of labor and migration and also argued that means of escaping from poverty”<sup>32</sup>.

#### **2.4.3. *The Absolutist theory of Human Trafficking***

This theory takes a wider view of immoral trafficking of women. Hughes offers the following definition: “trafficking is a practice that involves moving people within and across local or national borders for the purpose of sexual exploitation. Trafficking may be the result of force, coercion, manipulation, deception, abuse of authority, initial consent, family pressure, past and present family and community violence, economic deprivation, or other conditions of inequality for women and children”<sup>33</sup>. Immoral trafficking of women has for long been a source of prostitution. These conditions are very much prevalent in India in general and North Eastern States in particular<sup>34</sup>.

#### **2.4.4. *Conflict Theory to Understand Human Trafficking***

The conflict theory pins down the differential and secondary status of women in the patriarchal society. Gender determines the life chances and control in life. “Conflict theory explains that the powerful or the ‘haves’ are able to take things from the powerless or the ‘haves-not’ with economic ways or with force”<sup>35</sup>. In a class society women are

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<sup>32</sup> Shatabdi Bagchi and Ambalika Sinha. “Human Trafficking in India: Theoretical Perspectives with special reference to the Human Trafficking scenarios in The North Eastern Part of India”. 6(9), *International Journal of Research in Economics and Social Sciences (IJRESS)*, 109-119, (2016).

<sup>33</sup> Hughes quoted in Shatabdi Bagchi and Ambalika Sinha. “Human Trafficking in India: Theoretical Perspectives with special reference to the Human Trafficking scenarios in The North Eastern Part of India”. 6(9), *International Journal of Research in Economics and Social Sciences (IJRESS)*, 109-119, (2016).

<sup>34</sup> Ibid.

<sup>35</sup> Ibid. 112



relatively less empowered in terms of their access to various resources like status, wealth, and power.

## **2.5. Processes Involved in Combating Human Trafficking**

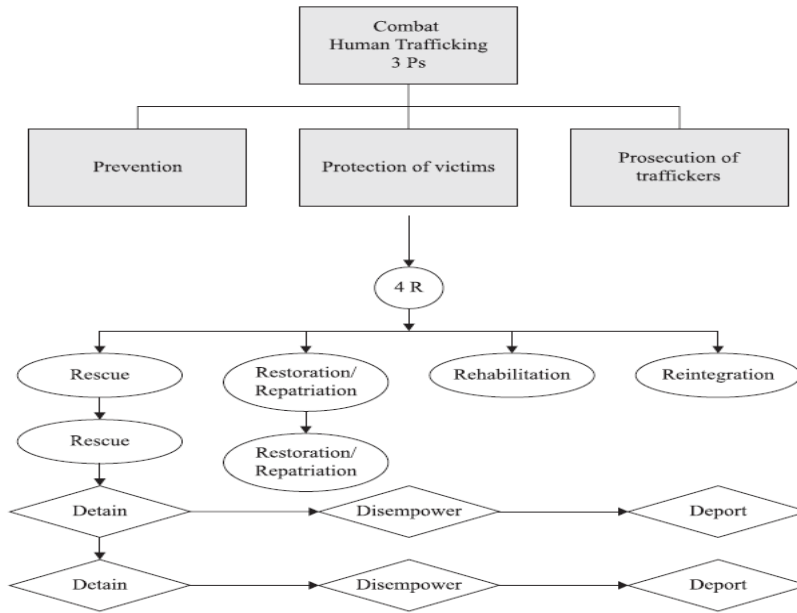
It is argued that the trafficking has mainly three aspects to be looked at – prevention, protection and prosecution. The people needs to be protected from falling prey to trafficking; in case if someone falls into the trap of trafficking they need to be protected; and finally for effective deterrence the perpetrators of the heinous crime of trafficking needs to be prosecuted.

### ***2.5.1. Prevention from trafficking***

Prevention from trafficking is the first priority of the law enforcement agencies. However, “The victims’ alienation toward law enforcement, the involvement of family members resulting in the absence of complainants, non-availability of proper proactive victim identification methods, lack of coordination, and understanding between different stakeholders and not having a set protocol of intervention and sharing with other agencies limit the prevention activities”<sup>36</sup>.

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<sup>36</sup> Veerendra Mishra (ed), *Human Trafficking: The Stakeholders’ Perspective*, (Sage, New Delhi, 2013),p.284



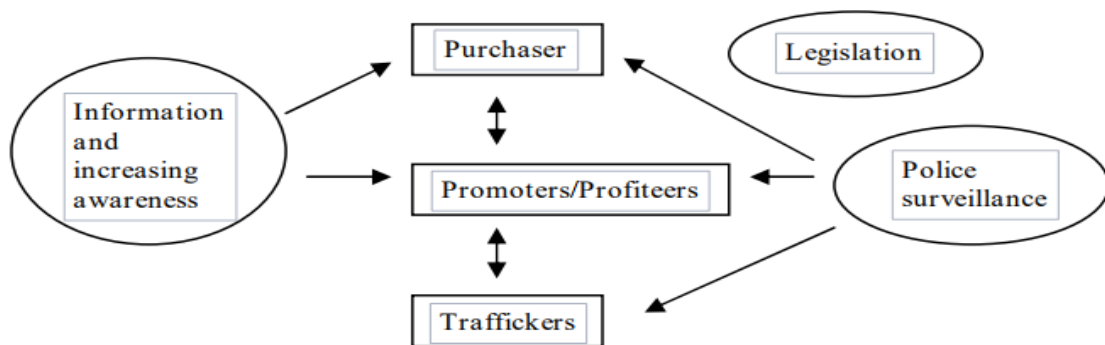
Source: Veerendra Mishra (2013)<sup>37</sup>

In order to plan effective preventive measures, the law enforcement agencies need to work towards both proactive and reactive intervention. “Proactive is to comprehend the vulnerability of the prospective victims and prevent them from being trafficked. It is important to understand that in most instances trafficking begins from home—the victims’ abode. The traffickers exploit the vulnerability of the victims and their parents or guardians”. Further, there are other forms of vulnerabilities which predispose a particular section of society towards falling prey to human trafficking. These factors are such as lack of awareness and “lack of access to rights, the wide gap between haves and have-nots, the scope for exploitation of the victim due to geographical, socio-cultural, economic, or political system of the community, poor law enforcement, ignorance of the

<sup>37</sup> Ibid.p.283

public on the subject and the “mute spectator” culture of the observant. Proactive identification of potential victims is an important preventive mechanism”<sup>38</sup>.

Reactive prevention as the name suggests deals with the trafficked victim who has been rescued from being re-trafficked. Scholars suggest that, “The biggest challenge, particularly in reactive prevention intervention of sex trafficked victim, is de-stigmatization and rehabilitation. To prevent re-trafficking of the victims, the effective rehabilitation method must follow the reintegration process, proper counseling and mentoring mechanism must be established to repair the psychological damage done, and redressal of grievances, and close monitoring is necessary”<sup>39</sup>.



Analytical model for preventive measures to reduce demand.

Nicola *et al.*<sup>40</sup>(2009: 200)

In the aforementioned model Nicola et al. suggests that a comprehensive approach is required to prevent human trafficking. Effective legislation and extensive police

<sup>38</sup> Ibid.p.284

<sup>39</sup> Ibid.p.284

<sup>40</sup> Andrea Di Nicola; Andrea Cauduro Marco Lombardi; Paolo Ruspini (ed), *Prostitution and Human Trafficking: Focus on Clients*, New York: Springer. (2009)

surveillance is required to control traffickers, promoters/profiteers and purchasers of trafficking victims. Further, information and increasing awareness among the purchasers of trafficking victims and profiteers from trafficking would also go a long way in curbing human trafficking.

### ***2.5.2. Protection of Victims***

Commonly raids and rescue are the dominant mechanisms used by the police force to protect a victim of human trafficking. Raids and rescue operation infringe upon rights of some people but as a result of “legal exceptionalism” legal rights of some are curtailed in name of greater common good. It also denotes certain ambiguity and anomaly in “Immoral Trafficking Prevention Act” (ITPA) which is an important legal source for “raids and rescues of victims of commercial sexual exploitation (CSE) . If a pimp takes his share from the customers before taking them to a sex worker, then the women after rescue are treated as victims under the CSE , but at the same time if the woman negotiates and takes the whole money without any middleman for sexual indulgence, then she becomes an accused of running a brothel, rather than being a victim. Hence, the act is subject to liberal interpretation of the limited knowledge-based law enforcement agency. The moralistic police of the conservative society quite obviously resorts to the sections which would prove the victim guilty of offence instead of treating them as victims of circumstances and exploitation”<sup>41</sup>.

It is pertinent to mention that even after the rescue of victims the system is not fair to the victims. “It varies for women and children. The child may be placed in juvenile homes

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<sup>41</sup> Veerendra Mishra (ed), *Human Trafficking: The Stakeholders' Perspective*, (Sage, New Delhi, 2013),p.285-286.

and the women in protection homes run either directly by the government or by any other agency under the government's patronage. One interesting fact is that there is no such protection provision for adult male trafficked victims. When an adult male victim is rescued, the law enforcement has no other option but to detain him in undeclared custody in police stations or leave him free to go to a place of his choice. Quite obviously, the victim will never want to stay detained in the police station, for known reasons. This leaves the victim in an extremely threatening condition. Since trafficking is an organized crime, involving a multiplicity of actors linked together in a chain, the mere apprehending of identified perpetrators does not imply full safety to the victim. This aspect of defenselessness of the male adult victim has been left unaddressed. All victims of trafficking must receive access to necessary services"<sup>42</sup>. Therefore, it is bounden duty on the part of state to properly rehabilitate the rescued victims of human trafficking so that their revictimization and re-trafficking is prevented. The rehabilitation program must aim at empowering the victims by providing them vocational training, counseling and capacity building.

### ***2.5.3. Prosecution of Traffickers***

Since human trafficking takes place across the borders- interdistrict, interstate and intercountry linkage. "Anti-trafficking activities cannot be fruitful unless there is a strengthening of central and state government law enforcement capacity to conduct intrastate and interstate law enforcement activities. Only effective networking of the law enforcement agencies with NGOs and other stakeholders can make an adequate dent in the given situation. Lack of priority, time, and sensitivity as well as ignorance of the

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<sup>42</sup> Ibid.p.285-286.

issues concerned are commonly seen as the factors responsible for the present day dismal picture in enforcement and prosecution. Law enforcement fails to comprehend the laws applicable in the given situation”<sup>43</sup>.

## **2.6. Failure to Combat Trafficking: Gaps in Law Enforcement**

It is pertinent to ask that if the human trafficking is so heinous and yet so rampant crime than why not the Law enforcement agencies armed with special acts and other laws accompanied by the mighty state machinery are able to combat it and tackle it effectively.

### ***2.6.1. Lack of conceptual clarity***

The personnel involved in police organizations like constable, head constable, assistant sub- inspectors, sub- inspectors etc. collectively or even in the visually hardly have much knowledge about human trafficking and the associated provisions of “Immoral Trafficking Prevention Act” (ITPA). As a result of this lack of conceptual clarity combating human trafficking becomes all the more challenging. Empirical studies have revealed about the ignorance of police personnel regarding the sensitive crime like human trafficking and when asked about human trafficking they misunderstood it as something pertaining to “traffic (vehicle) management on roads”<sup>44</sup>.

The study further revealed the narrative of policewomen, how “her calls always got transferred to the vehicular traffic department when she called her headquarters and asked

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<sup>43</sup>Ibid.p.286.

<sup>44</sup> Ibid. p.275-276.

for the anti-trafficking section”<sup>45</sup>. Even the miniscule strength of people who are aware about human trafficking, they tend to conceive it in the limited sense of Immoral Traffic (Prevention) Act (ITPA). “ITPA in itself is fully loaded in favor of punishing the crime of sexual exploitation and does not cover any other form of trafficking. Besides, it focuses on the issue of prostitution, per se, and not exclusively on trafficking, as per the Palermo definition... Due to a lack of conceptual literacy, the law enforcement agency is unable to perceive the problem in totality. HT starts at the place of origin from where the traffickers pick the victims, incorporates the transit period, transportation from place of origin, and the destination where the victim is actually exploited. Unless the law enforcers understand the crime properly, it will be difficult for them to work proactively.”<sup>46</sup> Further, police officers and other officials of law enforcement agencies lack technical competence to deal with the cases pertaining to human trafficking. It is partly due to lack of proper and comprehensive training police officers and other officials of law enforcement agencies.

Proper counseling and Rehabilitation measures for victims of human trafficking are not available. Such an approach for the defense becomes the bane of the victims as they become non cooperative or at times apprehensive. In such a situation the traffickers are the middle men involved in the heinous crime of trafficking gets an opportunity to re-traffic the victims. Human trafficking generally involves three phases- origin- transit- destination. But the police Officer's focus only on place from where the victims are trafficked. They do not follow the chain of incidents- transit and destination.

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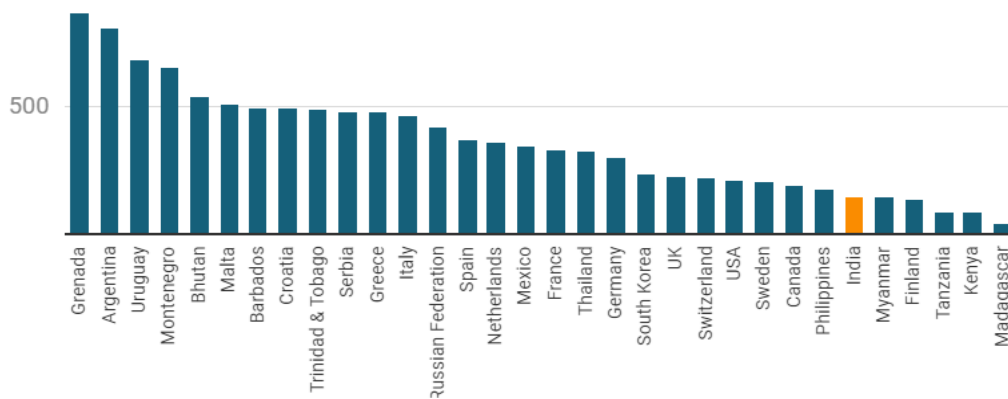
<sup>45</sup> Ibid.: p.276

<sup>46</sup> Ibid.: 276

### 2.6.2. Police-to-population ratio

The menace of human trafficking continues unabated because of poor law enforcement. One of the important reasons for such poor enforcement of law is inadequate police-to-population ratio in India. India’s police-to-population ratio lags behind the United Nations-recommended ratio.

#### Worldwide police-to-population ratio (Police officers per 1,00,000 people)



Police estimates from the years of 2015-2017 available for these countries. Population estimates for countries from the United Nations Population Division.

Source: United Nations Office on Drugs and Crime, Data on Police Organizations 2017, UN population Division<sup>47</sup>

The United Nations-recommended ratio is of 222 and is poorly equipped in comparison to other countries of the world. As per data on Police Organisations compiled by “Bureau of Police Research & Development” (BPR&D), the ratio as on 01.01.2020 of police personnel per lakh persons is 195.39 as per sanctioned strength and 155.78 as per actual strength. “Police” is a State subject falling in List-II (State List) of the Seventh Schedule of the Constitution of India. It is

<sup>47</sup> Mentioned in Sriharsha Devulapalli, Vishnu Padmanabhan. *India’s police force among the world’s weakest, available at <https://www.livemint.com/news/india/india-s-police-force-among-the-world-s-weakest-1560925355383.html>*. (last visited on 15.01.2022)



primarily the responsibility of the State Governments to fill up the vacancies in the police force in their respective States. The only states with police forces that meet the global standard are the police forces in the insurgency-affected states in the North-East and Punjab. Even filling the vacant police posts may not be enough to bring India's police force up to speed with global standards. The State-wise details of police-public ratio is mentioned below in the table and map of India.

An interesting paradox which has been noticed is that the only states with police forces that meet the global standard set by the United Nation for police-people ratio are the police forces in the insurgency-affected states in the North-East and Punjab. Unfortunately despite having much better police-people ratio than the United Nation recommended ratio of 222, the North East India still remain the flash point of human trafficking. As per data on Police Organisations compiled by "Bureau of Police Research & Development" (BPR&D), the ratio as on 01.01.2020 of police personnel per lakh persons is 195.39 as per sanctioned strength and 155.78 as per actual strength. Whereas, data reveals that Arunachal Pradesh has 1011 as per sanctioned strength and 830 as per actual strength; Assam has 251 as per sanctioned strength and 207 as per actual strength; Manipur has 1123 as per sanctioned strength and 942 as per actual strength; Meghalaya has 509 as per sanctioned strength and 455 as per actual strength; Mizoram has 942 as per sanctioned strength and 674 as per actual strength; Nagaland has 1237 as per sanctioned strength and 1300 as per actual strength ; Sikkim has 972 as per sanctioned strength and 851 as per actual strength; and Tripura has 740 as per sanctioned strength and 568 as per actual strength.

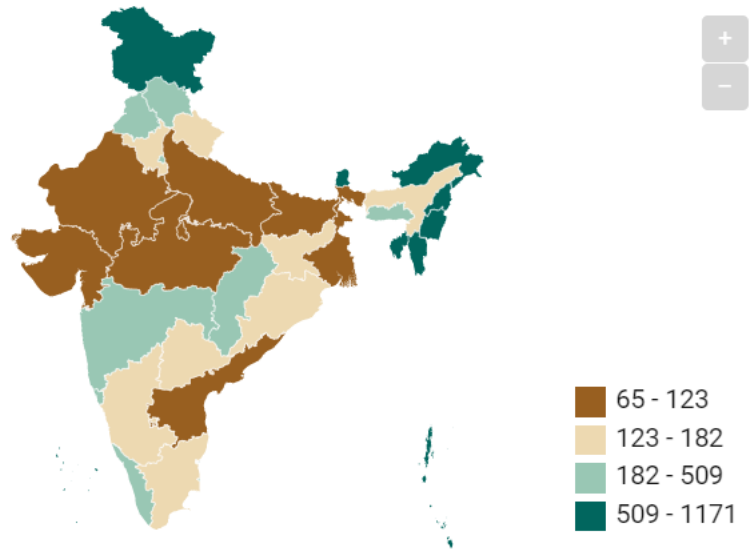
**States/UTs wise police- population ratio- as on 01.01.2020**

Sl.No.	States/UTs	Total Police per lakh of population	
		Sanctioned	Actual
1.	Andhra Pradesh	141.06	113.68
2.	Arunachal Pradesh	1011.45	830.31
3.	Assam	251.97	207.49
4.	Bihar	115.26	76.20
5.	Chhattisgarh	261.38	220.53
6.	Goa	659.16	511.78
7.	Gujarat	162.72	122.78
8.	Haryana	241.63	180.19
9.	Himachal Pradesh	257.25	240.52
10.	Jharkhand	218.15	172.18
11.	Karnataka	158.23	125.95
12.	Kerala	177.60	152.49
13.	Madhya Pradesh	158.01	120.02
14.	Maharashtra	198.12	174.87
15.	Manipur	1123.57	942.93
16.	Meghalaya	509.23	455.56
17.	Mizoram	942.07	674.54
18.	Nagaland	1237.30	1300.93
19.	Odisha	146.36	129.31
20.	Punjab	321.00	268.50
21.	Rajasthan	142.14	122.36
22.	Sikkim	972.71	851.27
23.	Tamil Nadu	164.62	148.54
24.	Telangana	209.85	130.88
25.	Tripura	740.68	568.06
26.	Uttar Pradesh	183.19	133.85
27.	Uttarakhand	196.87	188.16
28.	West Bengal	157.38	100.53
29.	A & N Islands	1253.27	1080.90
30.	Chandigarh	749.96	649.62
31.	Dadra and Nagar Haveli*	164.54	142.02
32.	Daman & Diu*	128.60	98.60
33.	Delhi	459.01	410.26
34.	Jammu & Kashmir	687.73	610.25
35.	Ladakh	813.95	569.05
36.	Lakshadweep	472.06	392.65
37.	Puducherry	292.97	225.28
	<b>All India Total</b>	<b>195.39</b>	<b>155.78</b>

Source: Bureau of Police Research & Development (BPR&D)<sup>48</sup>

<sup>48</sup> Mentioned in GOVERNMENT OF INDIA, MINISTRY OF HOME AFFAIRS, RAJYA SABHA, UNSTARRED QUESTION NO. 3266, available at <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2021-pdfs/rs-24032021/3266.pdf> (last visited on May 1<sup>st</sup>, 2020).

Police officers per 100,000 people



Source: The Mint Report<sup>49</sup>

Decreased spending on police in recent years is adding to the resource crunch. “Between fiscal 2011 and 2015, states spent 4.4% of their budgeted expenditure on policing on average but this has reduced to 4% over the last four years, according to PRS Legislative Research”<sup>50</sup>. Unfortunately Law enforcement agencies are under tremendous work load. An under-resourced, overburdened police force means that both core police activities (enforcing daily law and order) and more long-term criminal investigations are compromised.

Adding to the grave situation, there is a severe trust deficit among the citizens when it comes to trust police. “According to a 2018 survey of 15,562 respondents

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<sup>49</sup> Mentioned in Sriharsha Devulapalli, Vishnu Padmanabhan. *India’s police force among the world’s weakest*, available at <https://www.livemint.com/news/india/india-s-police-force-among-the-world-s-weakest-1560925355383.html>. (last visited on 15.01.2022)

<sup>50</sup> Sriharsha Devulapalli, Vishnu Padmanabhan. *India’s police force among the world’s weakest*, available at <https://www.livemint.com/news/india/india-s-police-force-among-the-world-s-weakest-1560925355383.html>. (last visited on 15.01.2022)

across 22 states on perceptions about policing, the Lokniti team at the Centre for the Study of Developing Societies (CSDS) found that less than 25% of Indians trust the police”<sup>51</sup>. Further, A report admits that only seven percent of police personnel have been trained, oriented on human trafficking issue by the “United Nations Office on Drugs and Crime” and “Bureau for Police Research and Development” (UNODC and BPR & D) and there too the “focus has been on sex trafficking”<sup>52</sup>. In such an atmosphere of distrust it is highly unlikely that the victims of human trafficking will report about their suffering to the police.

The problem is further intensified with a police force with limited knowledge on the human trafficking. Study has revealed that, “The majority of police force presumes trafficking to be prostitution (not even forced prostitution) and fails to comprehend domestic servitude, sex laboring, agricultural labor, forced labor through debt bondage, kidnapping for training into beggary, and other forms of forced exploitation as trafficking. Law enforcement has a crucial role to play in any HT case. The roles of all law enforcement in the investigation of trafficking cases are very important”<sup>53</sup>. Ignorance and lack of training on the part of police personnel breeds revictimization of the victims from those who were otherwise considered to be the savior- police force. Study has revealed that, “This approach

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<sup>51</sup> Sriharsha Devulapalli, Vishnu Padmanabhan. *India's police force among the world's weakest*, available at <https://www.livemint.com/news/india/india-s-police-force-among-the-world-s-weakest-1560925355383.html>. (last visited on 15.01.2022)

<sup>52</sup> Veerendra Mishra (ed), *Human Trafficking: The Stakeholders' Perspective*, (Sage, New Delhi, 2013) p.280.

<sup>53</sup> Ibid.

further alienates the victims and pushes them into a non sharing mode, which hampers the prosecution in favor of traffickers”<sup>54</sup>.

### ***2.6.3. Lack of clarity in legal provisions and Anomie of poly-normativism***

It is interesting and paradoxical to notice that once a social problem lingers, civil society and citizenry blames the existing law and often ask for legislating new laws. The critics fail to realize an important point that law *per se* is not a solution. Enactment of law is a necessary but not the sufficient condition for addressing a problem. Enactment of law is essential for addressing a problem but it must be accompanied by its awareness among various stakeholders and effective enforcement of the law.

An author gives an excellent example of poly normativism leading to confusion. For example, “if bonded child labor is rescued, a case will be registered under legal sections of bonded labor act, child labor act, Juvenile Justice Act, and specific relevant sections of IPC. In case the victim is a member of the scheduled caste or scheduled tribe, then even the SC/ ST act will apply and if the child is a victim of sexual exploitation ITPA too will be applied. Surprisingly, different laws define a “child” differently. Here the police officer gets confused in the application of all relevant laws. To the extent possible the major laws should be amended, incorporating various issues and different conditions rather than having new laws for each kind of situation”<sup>55</sup>.

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<sup>54</sup> Ibid.

<sup>55</sup> Ibid. p.280.

## **2.7. Summing Up**

Conceptualizing human trafficking has been an enigma. On the one hand, scholars have identified human trafficking as a form of slavery. On the other hand, we have scholars who caution us against drawing a parallel between slavery and human trafficking, they cautions us against the sensationalization of human trafficking. Even conceiving immoral trafficking in terms of 'prostitution' is also contested on the lines that some scholars view prostitution as “work” and “role of women agency in respect to prostitution” and the difference between “voluntary migrant sex work” and “Forced trafficking for sexual exploitation”. Similarly, the theorization of immoral trafficking is also marked by multiplicity of perspectives. Therefore, any effective measures to combat human trafficking needs to take these multiplicities into cognizance for yielding the desired result.

## CHAPTER III

### SOCIO-LEGAL ANALYSIS OF TRAFFICKING OF WOMEN: CONTEXTUAL UNDERSTANDING OF NORTHEAST INDIA

#### 3.1. Introduction

North-East India, over the years, has been the site of immoral trafficking of women. Despite being a hot zone in terms of trafficking, there is a dearth of studies on immoral trafficking of women in North East. Everyday struggles and experiences of women in North East have hardly been documented. Though numerous efforts to address trafficking have been made by the state and civil society organization in terms of policies and projects, the result has not been substantial. India is on the US Tier 2 List for its failure to provide evidence of increasing effort to combat human trafficking<sup>1</sup>. Any state or civil society interventions on addressing the issue of immoral trafficking of women can be successful only when a concerted effort has been made to understand women's lives in its entirety.

The context in which particular groups of women are placed also needs to be taken into account, given the rich diversity among various regions in India as well as within North East India. Policies and projects planned for addressing of immoral trafficking of women or helping trafficked women in other parts of India may not be effective in the context of North East given its different socio-cultural context. Therefore policies needs to be based on appropriate and thorough information and understanding of North East society and women within that society. This study is a step in this direction as it intends to understand

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<sup>1</sup> United States Department of State. *2019 Trafficking in Persons Report: India*, available at: <https://www.state.gov/reports/2019-trafficking-in-persons-report-2/india/> (last visited on November 3, 2018).

immoral trafficking of women and girls in insurgency ridden North East India. This chapter aims to unravel the causes and consequences of immoral trafficking in North East India; the socio-legal initiatives to combat human trafficking in India; and the existential and experiential account of trafficking victims.

### **3.2. North East India: An Overview**

Northeast India comprises of eight sister states: Arunachal Pradesh; Assam; Manipur; Meghalaya; Mizoram; Nagaland; Tripura; and Sikkim. Studies suggest that given the geopolitical positioning of north east region sharing 98 percent of Northeast India borders internationally with China on the northern side, Bhutan on northern and eastern side, Myanmar on southern and eastern side and Bangladesh on western side, places the region at high risk of cross-border trafficking<sup>2</sup>. In yet another study it has been noticed that, “Young people are transported through the Indo-Myanmar border to different gulf countries where they are forced to adopt prostitution. In May 2019 Manipur state police rescued a group of 180 Nepali women from the border who are supposed to deport to Dubai and many other gulf countries... Almost 1000-1500 children are smuggled to Arab countries for the sex trade every year. Moreover, young girls and brides are trafficked to Haryana and Rajasthan from the villages of North-East for producing mail heirs. India is the highest bidder of commercialization of sex trafficking wherefrom thousands of persons transmitted to all over the world. Similarly, sex trafficking is also rising in the North-east states but is overlooked by the center.”<sup>3</sup> Therefore, while deliberating upon

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<sup>2</sup> Kharbhih, Hasina. ‘Human Trafficking Scenario in Northeast India,’ in Veerendra Mishra (ed). *Human Trafficking: The Stakeholders’ Perspective*, 347-355, (Sage, New Delhi, 2013).

<sup>3</sup> Daisy Changmai and Jayanta Boruah. Emerging Trends Of Sex Trafficking In North-East India And Its Legal Challenges, available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3868396](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3868396) <http://dx.doi.org/10.2139/ssrn.3868396> (last visited on May 08, 2019).



the immoral trafficking it is pertinent to reflect on the causes and consequences of immoral trafficking in Northeast India.

### **3.3. The Causes of Immoral Trafficking in North East India**

The problem in the Northeast is quite distinct from the rest of India. We share many international borders, most of which are open and unmanned. These points provide an easy passage in and out of India for organized human trafficking syndicates to operate undetected. The region has experienced ethnic violence since independence, and although parts of the region are currently at peace, there are “still a sizeable number of insurgents particularly in Nagaland, Manipur, Assam, and Tripura where widespread ethnic conflict has kept the entire Northeast disturbed for decades”<sup>4</sup>.

Further, “Northeast India also has a high percentage of people below the poverty line which makes it a vulnerable area at risk of HT. Until 2001, little was known about the problem of HT in this region. Trafficking occurs both across borders and within India to many destinations including New Delhi, Mumbai, Pune, Goa, Kolkata, and extends as far as Thailand, Singapore, and Malaysia. There are equal numbers of cases for sexual exploitation and labor trafficking”<sup>5</sup>. It is indeed paradoxical to note that North East India on one hand is considered to be isolated but regrettably it could not isolate itself from the menace of human trafficking. It is also pertinent to mention that while dealing with the menace of human trafficking, one size fit all formula will not work. Any legislation at

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<sup>4</sup> Kharbhih, Hasina. ‘Human Trafficking Scenario in Northeast India,’ in Veerendra Mishra (ed). *Human Trafficking: The Stakeholders’ Perspective*, 347 (Sage, New Delhi, 2013).

<sup>5</sup> *Ibid.*347

pan India level without taking into consideration of local specificity would fail to yield desired result in tackling the menace of human trafficking.

It is conventional wisdom that times of crisis invite sagacious forces to join hand and deal with the challenge. Similarly it has been witnessed in case of one of the state of Northeast- Meghalaya in combatting human trafficking. Meghalaya model is a comprehensive network of stakeholders involved in rescuing and rehabilitating human trafficked victims has been worked out. “The stakeholders include all institutions in society that are capable of intervening: law enforcement, media, the judiciary/government, NGOs, CBOs, and faith-based organizations. The model enables government and citizen groups to jointly implement the “five Ps” prevention, protection, press, policing, and prosecution, and the “four Rs” rescue, repatriation, rehabilitation, and reintegration”<sup>6</sup>.

The vulnerability of victims of trafficking is governed by many factors, which needs a thorough analysis in the context of North East India. The causes, Ajailiu points out lies in poverty, ethnic violence, urban-rural migration, militarization under “Arms Forces Special (power) Act” (AFSPA” of 1958, and Globalization<sup>7</sup>. These factors can be classified as push and pull factors which increase vulnerability of the victim. Push factors are the factors existing at the point of origin, that is, predominantly origin-based factors. Pull factors are the factors at place of destination and have been perceived as the corollary vices of development with globalization. Therefore, it is pertinent to look into

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<sup>6</sup> *Id.* at 353.

<sup>7</sup> Ajailu Niumai, “The politics of Trafficking amongst Tribal Women in Manipur-North- East India”, SNTD Women's University, Mumbai, Winter June 18, 2012, available at <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.1005.488&rep=rep1&type=pdf#page=124> (last accessed on 06.03.2021)

the following causes of immoral trafficking of women in North East India in detail: Trafficking of women and the gendered norms of society; Cultural practices; Poverty; Demographic Factors; Migration and trafficking; Terrorism, Insurgency, Ethnic Violence and Human Trafficking; and Globalization and Trafficking.

### ***3.3.1. Trafficking of women and the gendered norms of society***

Studies have revealed that there is a strong correlation between gendered norms of society and trafficking of women. Scholars like Sawmya Ray while empirically analyzing Sex Trafficking in Assam would argue that, “gendered norms intersect with existing political economy factors to doubly disadvantage women vis-à-vis trafficking, both during times of normalcy and conflict”<sup>8</sup> Academic studies have pointed out an array of motives for clients to approach prostitutes but there are very few studies which focuses on the clients’ perspective on prostitution and human trafficking<sup>9</sup>. Is there any tangible difference between clients choosing common prostitutes and clients choosing trafficked ones? Is there a real choice, or is the sex market made up only of trafficked women? Andrea Cauduro’s work is unique in the sense that it looks beyond prostitutes, traffickers, routes, dynamics of the phenomenon and attempts to reflect on less researched area of demand for ‘trafficked prostitution’<sup>10</sup>. It is pertinent to look through these nuanced issues in order to tackle the menace of immoral trafficking effectively.

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<sup>8</sup> Sawmya Ray, “Of Vulnerability and Coercion: A Study of Sex Trafficking in Assam” 64(3) *Sociological Bulletin* 305(2015) available at: <https://www.jstor.org/stable/26290744> (last visited on May 08, 2020).

<sup>9</sup> Andrea Di. Nicola, Andrea Cauduro, *et.al. Prostitution and Human Trafficking: Focus on Clients* (Springer, New York, 2009)

<sup>10</sup> Andrea Cauduro, *Review of the Research Studies on the Demand for Prostitution in the European Union and Beyond*, 5-21, in Andrea Di. Nicola, Andrea Cauduro, *et.al.* (eds.), *Prostitution and Human Trafficking: Focus on Clients* (Springer, New York, 2009).

Women from these North Eastern states are particularly vulnerable because they belong to a marginalized and neglected region. Anjailu argues that, “Their mongoloid racial features also act as a disadvantaged in certain cases as many people acknowledged them mistakenly as ‘Nepali’ women. Nepal has been in the international limelight because of their women being trafficked across international borders. The contemporary discourse on social exclusion is relevant to understand the minority women such as the North East tribal women who have been labeled, stigmatized and excluded from the mainstream society”<sup>11</sup>.

Kara while comparing the economy of drug pedaling and sex trafficking is right in pointing out that, “These sex slaves are forced to service hundreds, often thousands of men before they are discarded, forming the backbone of one of the most profitable illicit enterprises in the world. Drug trafficking generate greater dollar revenues, but trafficked women are far more profitable. Unlike a drug, a human female does not have to be grown, cultivated, distilled, or packaged. Unlike a drug, a human female does not have to be grown, cultivated, distilled or packaged. Unlike a drug, a human female can be used by the customers again and again”<sup>12</sup>.

Further, trafficking most frequently occurs in societies where women lack property rights, cannot inherit land, and do not enjoy equal protection under the law<sup>13</sup>.

Discrimination in regard to land and property is very common. Further, during the

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<sup>11</sup> Ajailu Niumai, “The politics of Trafficking amongst Tribal Women in Manipur-North- East India”, SNTD Women's University, Mumbai, Winter June 18, 2012, available at <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.1005.488&rep=rep1&type=pdf#page=124> (last accessed on 06.03.2021) Pg.108

<sup>12</sup> Siddharth Kara, *Sex Trafficking: Inside the Business of Modern Slavery* x (Columbia University Press, New York, 2009).

<sup>13</sup> Louise Shelley. *Human Trafficking: A Global Perspective*. 54 (Cambridge, Cambridge University Press, 2010)

economic distress situation females are the first to be pulled out of schools and colleges. They are employed in activities which can generate money including activities like prostitution. In some countries, the route to prostitution is more direct as girls are viewed as a means for a family's economic advancement.

### **3.3.2. Cultural practices**

Certain cultural practices promote commercial sexual exploitation of women in India. For example the institution of dedicating young girls to temples is prevalent in different regions across India which is popularly known as *Devadasi system*. Such a religiously sanctioned ancient practice of dedicating young girl to the service of God has of late been misused for commercial sexual exploitation of girl child and women. Pointing out the subordination of women in a patriarchal society, Levi-Strauss very rightly pointed out the issue of hierarchization and subordination of groups within culture, "Men can co- exist on condition that they recognize each other as being all equally, though differently, human, but they can also co- exist by denying each other a comparable degree of humanity, and thus establishing a system of subordination"<sup>14</sup>. The archaic and inhuman practice violates the basic human rights of women.

Siddhartha Sarkar argues that, "*Devadasis* are dedicated to a goddess from as young as five years old. When they reach puberty, they are forced into a lifetime of ritual sex slavery. It is a form of prostitution sanctioned by religious practice—in effect, ritualised. It is sometimes known as temple prostitution, but this is misleading. Different names are used in different areas, including '*Jogini*' and '*Mathamma*'. All these practices are

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<sup>14</sup> Claude Levi-Strauss, *Tristes Tropiques*, Translated by John Weightman and Doren Weightman, 149 (Penguin, 1955 (2012)).

outlawed, but they still go on. As the goddess brings good fortune, many believe that becoming a *Devadasi* or *Jogini* will bring good luck not just to the girl, but to her family and village. Women will tell their husbands to use a *Devadasi* or *Jogini* to bring good luck to their own marriage and family”<sup>15</sup>. In such circumstances where an archaic and inhuman practice like *Devadasi* system is in operation, it abates and facilitates trafficking and commercial sexual exploitation.

Further, the forms of discriminations that northeast Indians face must be understood in its relation to the lack of cultural and historical knowledge of Northeast. For instance, in 2014, a 20 year old student from Arunachal Pradesh Nido Tania died following a fight that started with racial slurs towards the northeast student. Another instance led to thousands of people from northeast leaving Bangalore following attacks in Mumbai, Pune which further created fear among the northeast people. But the matter of concern doesn't seem to be why someone's appearance and cultural difference tend to create such a violence, rather the question is of numbers and the city as can be seen in one of the newspapers that reported that news. Firstpost reports “Even so, everyone who looks even vaguely northeastern—be it Nepalis, Assamese, Nagas or Mizos—were quick to head to the train station. As of now, up to 6,000 of the 2.5 lakh Northeast populace is reported to have left town. It's not an overwhelming number, but it raises the question "Why Bangalore?"<sup>16</sup>. Similar cases have been reported in other metropolitan cities like Delhi where northeast students are portrayed in “sexist’ ways. This imaginative geography of northeast is produced and reproduced through texts, images and discourses where an

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<sup>15</sup> Siddhartha Sarkar, Rethinking Human Trafficking in India: Nature, Extent and Identification of Survivors” 103(5) *The Round Table*, 486 (2014)

<sup>16</sup> L. Chaudhry (2012, August 16). Mystery of the NE exodus: Why Bangalore? *Firstpost*, Retrieved from <https://www.firstpost.com/india/mystery-of-the-ne-exodus-why-bangalore-419876.html>

imaginative perception of Northeast India in general and women of Northeast India in particular is created, that is, further circulated to create a knowledge that provides lens for everyone to look at Northeast. Such stereotyping creates a false image which prompts the anti-social elements to approach women from northeast.

### **3.3.3. Poverty**

In India, commercial sexual exploitation is mostly associated with poverty and a lack of education. Children and girls in particular are forced into prostitution in order to support their family income. Poverty is the root cause of many Dalit and Tribal being vulnerable to human trafficking and other forms of modern slavery. The pressure of making wealth to survive, the need to repay debts, illiteracy and the lack of education are the driving forces<sup>17</sup>.

Poor socio-economic conditions necessitate that a large number of women and children are vulnerable for trafficking from economically backward areas to big cities for work. So, it is heart wrenching to see the increasing trend of trafficking of children from the states of Jharkhand, Chhattisgarh, Odisha, Assam, West Bengal and Madhya Pradesh for the purpose of domestic labour<sup>18</sup>. Ajailu in her empirical work found that, “Poverty compelled the tribal women in Manipur to enter into flesh trade against their desires, culture and norms”<sup>19</sup>.

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<sup>17</sup> Siddhartha Sarkar, Rethinking Human Trafficking in India: Nature, Extent and Identification of Survivors” 103(5) *The Round Table*, 486 (2014)

<sup>18</sup> S. Sarkar, “Trafficking in women and children to India and Thailand: characteristics, trends and policy issues” 2(1) *International Journal of Afro-Asian Studies* 57–73 (2011).

<sup>19</sup> Ajailu Niumai, “The politics of Trafficking amongst Tribal Women in Manipur-North- East India”, SNTD Women's University, Mumbai, Winter June 18, 2012, available at <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.1005.488&rep=rep1&type=pdf#page=124> (last accessed on 06.03.2021). Pg.103

The public health issues contribute directly and indirectly to human trafficking. Affording descent medical facility in times of grave illness comes costly for the lower income group. A study revealed that, “Insufficient allocation for the health sector pushing 7% of Indians below the poverty line and about 23% of the sick can't afford healthcare”<sup>20</sup>. Further, “WHO's health financing profile for 2017 shows 67.78% of total expenditure on health in India was paid out of pocket”<sup>21</sup>. This out of pocket health expenditure ends up pulling middle class into lower income group and making poor more poorer. In such a scenario many fall into the vicious cycle of sexual exploitation.

Further, the women into prostitution contracts HIV AIDS from the clients or customers . “The proliferation of HIV-AIDS has contributed in diverse ways to trafficking. Ironically, although the scourge of AIDS should have led to a decline in trafficking and use of prostitutes, the reverse has occurred. The large numbers of untreated AIDS victims in the developing world has produced many orphans or children with ill or single parents. The social stigma attached to AIDS has made many of these children pariahs within their communities. Children with no healthy family members to support them are ostracized within their communities, increasing their vulnerability to traffickers”<sup>22</sup>.

#### ***3.3.4. Demographic Factors***

The population of youth has increased in recent decades and due to lack of capital and jobs most of these youths are migrating to urban areas whereby traditional values are

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<sup>20</sup> India's Health Crisis. available at [https://www.downtoearth.org.in/dte-infographics/india\\_s\\_health\\_crisis/index.html](https://www.downtoearth.org.in/dte-infographics/india_s_health_crisis/index.html) (last accessed on 05.09.2019)

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.



undermined and discrimination against women and girls have been amplified<sup>23</sup>. Academic studies have revealed that there are primarily two main demographic forces which have contributed to human trafficking: increasing population and declining sex ratio. “In the last forty years, the world’s population has nearly doubled with the growth confined almost entirely to the developing world”<sup>24</sup>. Due to rise in population there is also rise in unemployed youth vulnerable for sexual exploitation as the traffickers find them as an easy target.

Further one can notice declining sex ratio in developing societies. In some places there is one child policy. “The negative sex ratio can be attributed to excess mortality of women and girls resulting from both direct and indirect discrimination in the provision of food, care, medical treatment, education, and above all physical and sexual violence.”<sup>25</sup> In such a scenario, gender imbalance is both the cause and consequence of immoral trafficking of women.

### ***3.3.5. Migration and trafficking***

Migration is the conduit through which trafficking takes place. It can be argued that trafficking is subsumed under migration and traffickers exploit the migration process to realize their agenda. Migration influences and sustains trafficking by providing an easy supply of people. Therefore, in order to address the menace of trafficking it is imperative to understand the process of migration. It is pertinent to point out that migration is an outcome of social, economic and political factors.

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<sup>23</sup> Louise Shelley. *Human Trafficking: A Global Perspective*. (Cambridge, Cambridge University Press, 2010)

<sup>24</sup> Ibid.

<sup>25</sup> Asian Development Bank. *Combating Trafficking of Women and Children in South Asia* 49 (Manila, Philippines: Asian Development Bank, 2003).

When migration is accompanied by “means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”<sup>26</sup>, it is known as trafficking.

Further, the job opportunities in rural area are very less they are mainly dependent on agriculture, and agriculture is dependent on the vagaries of nature. Therefore, youth in desperate urge of getting more money to support their families migrate from rural to urban areas. As studies revealed how rapid urbanization in 19<sup>th</sup> century led to growth of crime and prostitution, similarly in late 20<sup>th</sup> century and early 21<sup>st</sup> century added to human trafficking significantly. Studies have revealed that urban life led to communal dislocation, normative ambiguity, and value confusion the urban people in general and migrants in particular long for emotional comfort. “Long-held social and cultural values can be weakened by exposure to mass media, promotion of materialism, and the daily travails of survival in overpopulated cities. Men often migrate alone to cities within their countries or move abroad. Far from their families or unable to afford marriage, they add to demand for the services of prostitutes”<sup>27</sup>. In such a scenario human trafficking survives and thrives.

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<sup>26</sup> United Nations, *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*. (New York, United Nations, 2000), available at: <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx> (last visited on November 3, 2018).

<sup>27</sup> Louise Shelley. *Human Trafficking: A Global Perspective*. 53 (Cambridge, Cambridge University Press, 2010)

Migrants are particularly vulnerable for commercial sexual exploitation because of their lack of support structures which deters them to report the abuse. They are pressed between a rock and a hard place. On the one hand they have the legal consequences to face for illegal immigration and on the other hand the traffickers offer them immunity at the cost of commercial sexual exploitation. Paradoxically, migrants are not only the victims of immoral trafficking but also promote the sex industry in one or the other way<sup>28</sup>. Migrants generally male are dislocated from their family back home in a distant place and long for fulfilling their sexual needs, such a demand facilitate traffickers to engage females and children from similar linguistic and ethnic backgrounds for commercial sexual exploitation.

Anjailu opines that, “The migration experts opine that trafficking of tribal girls is widespread within India but because of the great demand in South East Asian capitals, traffickers are beginning to traffic them outside India in the hope of making a fortune”<sup>29</sup>. Illegal migration places the migrants in a disadvantageous position and that put them in a risk of exploitation. This exploitation beside commercial sexual exploitation of women and children acquires multiple forms. Studies reveal that migrants and “internally displaced persons” (IDPs) in the North East region have been vulnerable for recruitment in gangs or insurgent groups. Criminalization of migration has led to trafficking and exploitation of women and children for commercial sexual exploitation. Restrictive

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<sup>28</sup> Salma Ali, *Surveys in the Areas of Child and Women Trafficking*, (Dhaka, Bangladesh National Woman Lawyers' Association, 1997)

<sup>29</sup> Ajailu Niumai, “The politics of Trafficking amongst Tribal Women in Manipur-North- East India”, SNTD Women's University, Mumbai, Winter June 18, 2012, available at <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.1005.488&rep=rep1&type=pdf#page=124> (last accessed on 06.03.2021). Pg.103

immigration policy leads to metering and encourages the practices of non-admission like immigrants from Mexico and South America facing stringent rules in USA.

But unlike Europe and USA, in India on the contrary it is generally considered that lax rules of immigration particularly from Nepal and Bangladesh encourages trafficking. The long and permeable border which India share with these countries facilitates traffickers and given the close social, cultural and morphological features between the adjoining regions of India sharing borders with these countries, it is challenging to contain illegal migration which in many cases actually fall under human trafficking<sup>30</sup>. Generally women and children suffer from multiple deprivations in countries like Nepal and Bangladesh and struggle to fulfill their basic needs, in such a scenario they are vulnerable for being trafficked. It is noticeable the way people in Tripura have historical relations with people across border in Bangladesh. Further, the Bengali community shares a great deal of language and culture irrespective of their nationality. Such familiarity at times is used as bait by traffickers to break the inertia of potential victims and to prepare them mentally for migrating.

### ***3.3.6. Terrorism, Insurgency, Ethnic Violence and Human Trafficking***

Studies have proved that the unstable situation emanating out of terrorism, insurgency, ethnic violence breeds insecurity and anxiety among the people of the region in general and “Internally displaced persons” (IDPs) in particular. Traffickers capitalize on the fear, insecurity and anxiety of population inhabiting in this region inflicted with insurgency

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<sup>30</sup> Sankar Sen and Jayashree Ahuja, *Trafficking in Women and Children: Myths and Realities*, 23 (New Delhi, Concept Publishing, 2009)

and ethnic violence. Traffickers offer these people in distress a better future and exploit their vulnerabilities.

Further, Natural disasters like flood, cyclone, earthquake etc. create a situation of turmoil which propels the marginal and deprived section of society into further distress. Given the matter of survival and search of livelihood, the vulnerable section of society is inclined to migrate and this inclination and vulnerability is capitalized by the traffickers. It is evident in case studies conducted by different researchers <sup>31</sup> that in these times of distress the women and children being the most vulnerable lot are easy target for the traffickers.

“Internally displaced persons” (IDPs) constitute one the most marginalized social groups. Hussain while distinguishing between IDPs and refugees clearly highlights that, “The IDPs’ status is very similar, to that of refugees except to become a refugee one must cross an international border whereas an IDP does not usually cross the border of her country. Technically, an IDP is a citizen but empirically s/he is a refugee in his own country. Both the groups lack a voice of their own, and many a times they remain invisible. By and large, they remain outside the public “consciousness” or “imagination”, experiencing a high degree of alienation, marginalization and exclusion from the larger society”<sup>32</sup>.

News report suggests that, “More than five million people were internally displaced in India due to natural disasters, conflict and violence in 2019, constituting the highest

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<sup>31</sup> Studies conducted in cyclone hit Orissa revealed that after the cyclone the immoral trafficking of women and children increased. Pandey, Balaji et al. 2002. *Trafficking in Women in Orissa: An Exploratory Study*. Bhubaneswar: Institute for Socio-Economic Development.

<sup>32</sup> Monirul Hussain. “Internally Displaced Persons in India’s North-East” 41(05) *Economic and Political Weekly* 391-396 (2006)

number of new internal displacements in the world”<sup>33</sup>. The report further added that “today, more children than ever before are displaced within their own countries. At the end of 2019, an estimated total of 46 million people were internally displaced by conflict and violence”<sup>34</sup>. North-east India is a very distinct civilizational, geographical, socio-economic, cultural and political entity in India. The citizen-IDP ratio in north-east India is indeed very high.

It is worth mentioning that there are basically three categories of IDPs in seven states of north-east India- environment, conflict and development-induced. It has been observed that flood, river-bank erosion and landslide have increased substantially over the years in terms of area and victims claimed. Further, state induced development has also lead to displacement of people in North East in general and tribals in particular.

North-east India has remained a politically sensitive and disturbed region since it entered the post-colonial phase of its history. Ethnic conflicts and the resultant violence have lead to mass scale displacement. Unfortunately states are in a state of denial when it comes to acknowledge the gravity of IDPs because it reflects the failure of state. Hussain observes that, “It is not only the flood that pushed the people of Assam into an uncertain future; the riverbank erosion too has affected millions of people. Over the years, environmental insecurity has increased substantially. According to an official report, the river Brahmaputra eroded 4,29,657 hectares of prime agricultural land. Roughly, 7 per cent of the land in the plains has been eroded between 1951 and 2000. This has definitely

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<sup>33</sup> Over 5 million people internally displaced in India in 2019: UN, *The Economic Times*, May 05, 2020, available at: [https://economictimes.indiatimes.com/news/politics-and-nation/over-5-million-people-internally-displaced-in-india-in-2019-un/articleshow/75548906.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/news/politics-and-nation/over-5-million-people-internally-displaced-in-india-in-2019-un/articleshow/75548906.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst) (last visited on: May 15, 2020)

<sup>34</sup> *Ibid.*

displaced at least three million peasants. Today, they constitute the most pauperised community in Assam's plains. In the absence of proper resettlement and rehabilitation policy, most of them have experienced multiple displacements"<sup>35</sup>.

Similarly, there are lakhs of people who are victims of development induced displacement. "The Dumber hydroelectric project in Tripura ejected 40,000 people occupying prime agricultural land displacing about 2,00,000 tribal people. The Pagladiya dam project in Assam, if implemented, will displace about 1,50,000 people from their land. Besides, the Kaptai hydroelectric project in East Pakistan, now Bangladesh displaced a large number of tribal chakmas. It too had a severe spillover effect in the north-east. About 40,000 of the Kaptai project affected people were shifted to erstwhile north-east frontier agency (NEFA), now Arunachal Pradesh. Till today, Chakmas now numbering about 80,000 have remained stateless in India, and still await the ever elusive Indian citizenship"<sup>36</sup>.

It is appalling to note that even insurgency and conflict has lead to internal displacement. Hussain while discussing the plight of IDPs notes that, "... the number of IDPs in Kokrajhar district in lower Assam. Till April 2005, 1,26,263 inmates were living in 38 state-sponsored relief camps in the district. Besides, there are also relief camps in Bongaigaon, Dhubri, Barpeta, Karbi-Anglong, North Cachar and Cachar districts in Assam. At one stage there were more than 2,00,000 IDPs living in the relief camps in Kokrajhar district alone. All these IDPs were victims of the Bodoland movement. Some of these conflict-induced IDPs have been living in the camps for more than a decade now.

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<sup>35</sup> Monirul Hussain. "Internally Displaced Persons in India's North-East" 41(05) *Economic and Political Weekly* 391-396 (2006)

<sup>36</sup> *Ibid.*

The government provides only rice to the inmates of the camps for 10 days a month. The IDPs live a dehumanised life in the camp. Besides, about 40,000 Reang/Bru IDPs are living in state-sponsored relief camps in Assam and Tripura. They were displaced from Mizoram as a result of ethnic conflict there. Besides, about 40,000 Chin refugees who were working in bottomlevel jobs in Mizoram for quite a long time were forced to go back to Myanmar from where they had fled to Mizoram earlier. On the other hand, there are a large number of conflict-induced IDPs in Manipur because of the Naga-Kuki conflict there. The Hmar and Dimasa conflict also has displaced several thousand people in the North Cachar Hill district in Assam. The Karbi and non-Karbi conflict also displaced thousands in the Karbi-Anglong Hill District. Movements against outsiders in Assam and Meghalaya have displaced a large number of people”<sup>37</sup>. It is noteworthy to mention that across the North East India the conditions of IDPs are deplorable. They suffer landless, jobless, homeless, and marginalized. The conditions of refugee camps or camps where IDPs are kept is deplorable. It lacks proper hygiene and sanitation, lack of clean water, vulnerabilities to illness, inadequate food, lack of proper education and livelihood. In short, more than a demographic challenge, the conditions of IDPs is a humanitarian crisis.

Studies have proved that the unstable situation emanating out of terrorism, insurgency, ethnic violence breeds insecurity and anxiety among the people of the region in general and IDPs in particular. Traffickers capitalize on the fear, insecurity and anxiety of population inhabiting in this region inflicted with insurgency and ethnic violence. Traffickers offer these people in distress a better future and exploit their vulnerabilities.

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<sup>37</sup> *Ibid.*



Natural disasters like flood, cyclone, earthquake etc. create a situation of turmoil which propels the marginal and deprived section of society into further distress. Given the matter of survival and search of livelihood, the vulnerable section of society is inclined to migrate and this inclination and vulnerability is capitalized by the traffickers. It is evident in case studies conducted by different researchers<sup>38</sup> that in these times of distress the women and children being the most vulnerable lot are easy target for the traffickers.

According to a UNI report, “the North- East is at high risk of trafficking due to displacement from armed conflict. Over 20,000 people are displaced in Assam, 70,000 in Manipur, 60,000 in Tripura and 3,000 in Arunachal Pradesh”<sup>39</sup> Norwegian Refugee Council (NRC) in a report observed that, “200,000 people were displaced in Assam and 15,000 people in Tripura in 2003”<sup>40</sup>. Ajailiu points out that, “Nedan Foundation (NGO) from Haryana conducted 7 months research in Kokrajhar district, a Bodoland Territorial Council of Assam, sponsored by the United Nations Development Programme (UNDP) in 2006. The staff of this NGO visited 25 relief camps of internally displaced persons [IDPs] in Kokrajhar and found nearly 200,000 people living in these camps without proper food. They also discovered that traffickers carry out recruitment drives in the relief camps by making false promises of jobs as domestic helpers in big cities. This study revealed that around 100 young women had gone missing from the camps during the years 2004-2006. Regional analysts fear that such "missing girls" may have been sold

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<sup>38</sup> Studies conducted in cyclone hit Orissa revealed that after the cyclone the immoral trafficking of women and children increased for example Pandey, Balaji et al. *Trafficking in Women in Orissa: An Exploratory Study* (Bhubaneswar, Institute for Socio-Economic Development, 2002)

<sup>39</sup> International Displacement Monitoring Centre report quoted in Ajailiu Niumai’s empirical work “The politics of Trafficking amongst Tribal Women in Manipur-North- East India” SNTD Women's University, Mumbai, Winter June 18, 2012, available at <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.1005.488&rep=rep1&type=pdf#page=124> (last accessed on 06.03.2021)

<sup>40</sup>Ibid.: 97

into flesh trade. Interviews by Nedan's field teams with 60 teenage flesh trade workers in Dimapur, Nagaland revealed that many girls had been trafficked with false promises of sales jobs in India's metropolises. Most of these girls were from broken and poor families in this ethnic ridden region"<sup>41</sup>.

In such challenging circumstances both push and pull factors increase the vulnerability of the victim towards falling prey to the immoral trafficking. Push factors are the factors existing at the point of origin, that is, the aforementioned deplorable conditions of camps and other stop go arrangements made for IDPs. Pull factors are the factors at place of destination supposedly offered by the traffickers.

### ***3.3.7. Globalization and Trafficking***

In the present era of globalisation, economy has been a conduit to propel the process of globalisation. Further, beside economy, Tomlinson argues that, "culture matters for globalisation"<sup>42</sup>. In the scholarly account of cultural globalisation, it is interesting to see two streams of analysis- "some theories argue that globalisation entails increasing homogeneity of institutions, worldviews and lifestyles, but others predict greater diversity"<sup>43</sup>. In case of immoral trafficking, divergent views regarding impact of globalisation complement each other. Globalisation through its multifarious tentacles intensifies the interconnectedness of the world leading to compression of the world in terms of inter-state and inter-country movement of trafficked human beings. Scholars have looked at this interconnectedness and compression of the world mainly in economic

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<sup>41</sup> Ibid.:97

<sup>42</sup> John Tomlinson. *Globalization and Culture*. (Chicago, University of Chicago Press, 1999).

<sup>43</sup> Frank J. Lechner. 'Globalisation', in George Ritzer (Ed.) *Encyclopedia of Social Theory, Volume-I* (330-333), (Sage, New Delhi, 2005).

terms. Further, by contributing to rapid social change, globalisation leads to communal dislocation, moral ambiguity and value confusion etc. which provides a fertile ground for deviance in society.

Globalization, Anjailu observes, involves an extraordinary commercialization of women at the transnational level<sup>44</sup>. Sex labor victims from North East can be sold for as much as 600 US dollars in the global market as pointed out by Impulse NGO Network based in Shillong, Meghalaya<sup>45</sup>. Anjailu argues that, “Globalization involves an extraordinary commercialization of women at the transnational level. Globalization involves an extraordinary commercialization of women at the transnational level. The fast growing flesh trade has been particularly industrialized. The process of flesh trade industrialization generates huge profits in which uncountable number of women has been transformed into human commodities. The contemporary consumers have access to "exotic," “rare” and very young bodies of girls and children. The flesh trade is expanding and becoming sophisticated which caters to all types of demands with the technological revolution. The rise of the new media has also seen many websites recruiting women for all sorts of jobs disguised under words like ‘escort agencies’”<sup>46</sup>.

Globalization has led to intensification of interconnectedness. With the compression of time and space the sex industry generates demand across the globe which in turn necessitates and facilitates the immoral trafficking of women and children. Manuel

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<sup>44</sup> Ajailu Niumai, “The politics of Trafficking amongst Tribal Women in Manipur-North- East India”, SNTD Women's University, Mumbai, Winter June 18, 2012, available at <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.1005.488&rep=rep1&type=pdf#page=124> (last accessed on 06.03.2021). Pg.XIII

<sup>45</sup> Ibid. 96

<sup>46</sup> Ibid.:101

Castells, emphasizes on the ways in which globalization leads to a network society where global criminal economy becomes an inalienable companion of globalization. A glimpse of it can be noticed in case of North East India and south East Asia coming closer through the conduit of globalization. As result we witness trans-national organized trafficking networks operating like multinational industries cutting across borders. Women are easy prey for traffickers as they bear the burden of multiple deprivations in terms of caste, class and gender. Traffickers exploit these vulnerabilities and lure them for a better future. Most of the times traffickers are successful in exploiting these vulnerabilities of gullible women and children are trafficked with a promise of better future, only to find in due course of time the hollowness of promises and dreams offered to them.

Some time trafficking is also a latent consequences of lop sided globalization which encourages free flow of goods and services but not free flow of people. In other words, it promotes 'globalisation of capital' but not necessarily free flow of human beings across borders. As a result many people especially in the developed nations end up being an illegal migrant exposed to face the consequences arising out of illegal migration. In such circumstances, traffickers fish in the troubled water and recruit these illegal migrants into sex industry. Another study has revealed that, “Number of people who inhabit remote areas, e.g., tribal people near borderlines who are still in the darkness of ignorance and deprived of basic facilities of life become vulnerable to sex trafficking”<sup>47</sup>.

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<sup>47</sup> Daisy Changmai and Jayanta Boruah. Emerging Trends Of Sex Trafficking In North-East India And Its Legal Challenges, available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3868396](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3868396) <http://dx.doi.org/10.2139/ssrn.3868396> (last visited on May 08, 2019).

Anjailu observes that, “The process of globalization and liberalization have facilitated tribal women especially from Manipur to be trafficked to other countries such as Malaysia and Singapore via Guwahati and Kolkata as "Spices of India" by recruitment agents on the pretext of getting these girls housemaid jobs...In January 2008, some of the poor tribal teenage girls from Manipur were flown to Singapore and Malaysia as housemaids by the job recruiting agents. After eight months, a Zeliangrong Naga tribal girl from Manipur managed to escape from a Kuala Lumpur night club, who ultimately alerted the Indian High Commission in Kuala Lumpur, which then sought the assistance of Malaysian Police to rescue the other tribal girls”<sup>48</sup>. In one of the investigations carried out by the India’s Ministry for Overseas Affairs found the role of fishy recruitment agents. “The rescued girls told the authorities that they were lured to Singapore with promises of jobs as maids for six months. But, they were later made to work as bar girls and prostitutes in nightclubs of Singapore and Malaysia. Manipur and Nagaland police have made some arrests in 2008 in connection with the case of agents luring girls to the neighboring countries”<sup>49</sup>.

Siddharth Kara has emphatically argued that, “the enormity and pervasiveness of sex trafficking is a direct result of the immense profit to be derived from selling inexpensive sex around the world. The structures of Western capitalism, as spread through the process of economic globalization, contribute greatly to the destruction of lives this profitability entails. Sex trafficking is one of the ugliest contemporary actualizations of global

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<sup>48</sup> Ajailu Niumai, “The politics of Trafficking amongst Tribal Women in Manipur-North- East India”, SNTD Women's University, Mumbai, Winter June 18, 2012, available at <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.1005.488&rep=rep1&type=pdf#page=124> (last accessed on 06.03.2021). Pg.104

<sup>49</sup> Ibid.:105

capitalism because it was directly produced by the harmful inequalities spread by the process of economic globalization: deepening of rural poverty, increased economic disenfranchisement of the poor, the net extraction of wealth and resources from poor economies into richer ones, and the broad-based erosion of real human freedoms across the developing world”<sup>50</sup>. Therefore, Kara asserts that, “Ending sex trafficking requires an attack on the industry’s immense profitability and a radical shift in the conduct of economic globalization”<sup>51</sup>.

### **3.4. The Consequences of Immoral Trafficking**

This section would focus on the varied socio-political consequences of immoral trafficking. Manifestly it reveals about the inhumane condition of trafficked beings but latently it reveals about the social structure of society, the condition of law and order and the state’s ability to control its borders.

#### **3.4.1. Social Consequences:**

##### **3.4.1.1. *Impact on the Individual and the Community***

The social impact of trafficking for victims, their families and their community are varied. Victim’s life after trafficking is never the same, even after being rescued the stigma, indignation and suffering remains. The psychological trauma is rarely completely healed and this at times prevents them from functioning in society with their optimum potential. Many times the label of ‘trafficked’, ‘prostitute/fallen’ etc sticks for life, even though one has been pushed into sexual exploitation and rescued later, the social stigma

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<sup>50</sup> Siddharth Kara, *Sex Trafficking: Inside the Business of Modern Slavery* 3-4 (Columbia University Press, New York, 2009).

<sup>51</sup> Ibid. 4

is hard to fade. In such situation teenager victims of immoral trafficking even after being rescued are hardly able to get married and live a normal life. The victim had a traumatic experience which leads to difficulty in marriage and a normal social life in society. Many of these victims as a result of commercial sexual exploitation suffer psychological and physiological trauma. Studies have revealed that the horrifying and inhuman experience which the trafficking victims undergo exposes them to “post-traumatic stress, painful flashbacks anxiety, fear, incapacitating insomnia, depression, sleep disorders, and panic attacks”<sup>52</sup>.

Further, “Unlike the women working in the regulated brothels of some Western European countries who can require their clients to use condoms, trafficked women are often denied the right to protect themselves. In certain regions of the world, such as India and Africa, where rates of HIV transmission are particularly high among sex workers, mortality often occurs at a very young age”<sup>53</sup>. Adding the woe further on many occasions the trafficked victims gives birth to children and these children fall into this vicious cycle. Such situation further incapacitates women and her child from coming out of this exploitative condition.

It has been noticed that beside sexual servitude women are also coerced into domestic servitude. The trafficked women are made to work as domestic labour and at times subjected to inhuman long working hours, deprived from proper nutrition, violent physical and sexual abuse. Further, there are women who have been trafficked to marry

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<sup>52</sup> Cathy Zimmerman et al. “Stolen Smiles: A Summary Report on the Physical Psychological Health Consequences of Women and Adolescents Trafficking in Europe,” London School of Hygiene and Tropical Medicine, 2006, available at [http://www.eaves4women.co.uk/POPPY\\_Project/Documents/Recent\\_Reports/Stolen%20smiles-OSCE%20version%20Final.pdf](http://www.eaves4women.co.uk/POPPY_Project/Documents/Recent_Reports/Stolen%20smiles-OSCE%20version%20Final.pdf) (accessed 19.05.2019).

<sup>53</sup> Kathryn Farr, *Sex Trafficking: The Global Market in Women and Children* 228–30 (New York: Worth Publishers, 2005).

men in the states where there is adverse sex ratio. These women hardly enjoy the status of a life partner except being subjected to sexual servitude and treated as an object of recreation and procreation.

Many times the trafficked women and children are put into factories where they are made to work for long without breaks. For example, the carpet industry is notoriously famous for its exploitative working conditions. Studies have revealed that trafficking for industry labour may be initial form of exploitation. In many cases these labourers are afterward trafficked for sexual exploitation<sup>54</sup>. Studies have also reported that some of these children are used for begging. They are often deprived of food for long hours so that their cry is real and would force people to dole out money to these begging children.

The news report mentions that according to police statistics, “44,000 children disappear in India each year. Many are eventually recovered, but one fourth remain untraceable, police say. The true number of abducted children is believed to be much higher, with some estimates putting it at up to one million a year...The beggar mafia is a huge industry and the perpetrators get away scot-free every time. There is always collusion between the lawmakers and lawbreakers”<sup>55</sup>. Further, the news report mentions that these stolen children are "working as cheap forced labour in illegal factories, establishments, homes, exploited as sex slaves or forced into the child porn industry, as camel jockeys in the Gulf countries, as child beggars in begging rackets, as victims of illegal adoptions or forced marriages, or perhaps, worse than any of these, as victims of organ trade and even

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<sup>54</sup> ILO/IPEC, “Helping Hands or Shackled Lives: Understanding Domestic Child Domestic Labour and Responses to It,” Geneva, June 2004, available at [http://www.ilo.org/public/libdoc/ilo/2004/104B09\\_138.engl.pdf](http://www.ilo.org/public/libdoc/ilo/2004/104B09_138.engl.pdf) (last accessed May 15, 2018).

<sup>55</sup> Jalees Andrabi, "Beggar mafia thrives on lost children Beggar mafia thrives on lost children", available at <https://www.thenationalnews.com/world/beggar-mafia-thrives-on-lost-children-1.547033>, Jan 18, 2009 (last accessed on May 11, 2018)



grotesque cannibalism"<sup>56</sup>. In order to arouse a sense of pity towards these children they are at times forcibly disabled with the help of medical practitioners<sup>57</sup>.

Furthermore, the family which loses its member to immoral trafficking is perpetually traumatized by a deep sense of loss. Further, such experience also causes a sense of alienation in the aggrieved family and bond between affected family and the community is weakened. Another latent consequence of sexual services available due to immoral trafficking is its effect on the family life of those resorting to commercial sexual exploitation. Further, studies have also revealed that, "Increased numbers of illegal migrants and trafficked peoples in an area may result in increased discrimination and hostility toward ethnic and racial minorities"<sup>58</sup>.

#### **3.4.1.2. Demographic Consequences**

Due to trafficking of women and children in their prime reproductive and productive period from their origin place to the trafficking destination highlights the demographic consequences. Many of these helpless victims do not return back to their place of origin and if they return by any chance they are physically and psychologically wrecked. They are hardly able to contribute meaningfully and they struggle to survive.

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<sup>56</sup> Ibid.

<sup>57</sup> "Doctors offer to maim beggars in TV sting", available at <https://www.dnaindia.com/india/report-doctors-offer-to-maim-beggars-in-tv-sting-1044871>. (last accessed on May 11, 2018). In this sting operation three Indian doctors caught on camera apparently agreeing to amputate the healthy limbs of beggars.

<sup>58</sup> Louise Shelley. *Human Trafficking: A Global Perspective*. 61 (Cambridge, Cambridge University Press, 2010)

### 3.4.2. Political Consequences

There are many manifest and latent political consequences of immoral trafficking. The existence and growth of immoral trafficking raises a question about the state of law and order the state hold the accountability of Government and ultimately undermines democracy. Studies have revealed that, “State officials such as border patrol members, customs officials, law enforcement officers, and members of the security apparatus are often trafficking facilitators... Defined as “others,” “prostitutes,” or “illegal migrants,” they are stigmatized and denied equal rights.”<sup>59</sup> From another vantage point the prevalence of immoral trafficking is a stain on democracy. Many times the illegal migrants even after being abused are outside the fold of the criminal justice system because of their illegal immigrant status. Further, the prevalence of this modern day slavery is antithetical to the core and fundamental principles on which democracy as a form of governance rests. All the state governments in North East India are duly elected democratic governments and continued prevalence of heinous crimes like human trafficking are blot on democracy.

We are aware about ways in which illegal money from drug trafficking is used to finance violent political agendas but hardly it is noticed and discussed in academia about how illegal money generated through immoral trafficking is used for furthering the violent political agendas. Studies reveal that hitherto there were trafficking rackets which were operating for trans-border immoral trafficking from Nepal to various parts of India but in

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<sup>59</sup> Louise Shelley. *Human Trafficking: A Global Perspective*. 66 (Cambridge, Cambridge University Press, 2010)

recent years it has been overtaken by Nepalese insurgents to wage insurgency against the state<sup>60</sup>.

### **3.4.3. Physiological and Psychological Consequences:**

Once engaged in prostitution there is no day off whether they are ill or have a menstruation cycle. Often clients they insist upon having sex without using condoms leading to high probability of contracting HIV. Further, drug abuse also increases the chances of contracting HIV and psychological damages. Many victims who are sexually trafficked if they survive are permanently psychologically damaged suffering post traumatic stress, flashbacks, in society fear incapacitating insomnia, depression, sleep disorders ,and panic attacks as the result of the conditions described above. The violent abuse, continuous threat, intimidation and absence of proper scientific rehabilitation measures make it impossible for the victims to return to normal life.

Beside the havoc which trafficked victims experience and which it has on their existence as being, an interesting and rare study though in a different context found that beside their state of mind their longevity is also very less in comparison to others. They are also more likely to commit suicide in comparison to the general population. Study has revealed that, “To our knowledge, no population of women studied previously has had a crude mortality rate, standardized mortality ratio, or percentage of deaths due to murder even

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<sup>60</sup> Bertil Lintner, *Burma in Revolt: Opium and Insurgency since 1948* (Boulder, CO: Westview Press, 1994);

US. Department of State, *Country Reports on Human Rights Practices – Nepal*, available at: <http://www.state.gov/g/drl/rls/hrrpt/2005/61709.htm> (last visited on November 3, 2018). ; “Human trafficking has some link with terrorism,” *The Hindu*, December 7, 2008, available at: <http://www.hindu.com/2008/12/07/stories/2008120760161000.htm> (last visited on November 3, 2016).; Francisco E. Thoumi, *Political Economy and Illegal Drugs in Colombia* (Boulder, CO: L. Rienner, 1995); Rensselaer W. Lee III, *White Labyrinth: Cocaine and Political Power* (New Brunswick, NJ: Transaction Publishers, 1989).

approximating those observed in our cohort. The workplace homicide rate for prostitutes (204 per 100,000) is many times higher than that for women and men in the standard occupations”<sup>61</sup>. So it is needless to point out that violent abuse like sexual abuse, forced abortion, physical torture etc, which trafficked victims suffer at hands of traffickers and clients takes a toll on the physiological and psychological health of victims.

### **3.5. Socio-legal Initiatives to Combat Human Trafficking in India**

“United Nations office on Drug and Crime” (UNODC) , Regional office for South Asia in active collaboration with the Ministry of Home Affairs, Government of India, is implementing Project IND/316 on “Strengthening Law Enforcement Response to Human Trafficking.”<sup>62</sup> Project IND/316 aimed at combating human trafficking through capacity building of law enforcement personnel in five states- Andhra Pradesh, Bihar, Goa, Maharashtra and West Bengal. A novel initiative in this project is to develop Integrated Anti Human Trafficking Units (AHTU) at the state level.

Ministry of Women and Child Development in December 2007 as a means of tackling human trafficking launched ‘UJJAWALA’ scheme for trafficked women and children . ‘UJJAWALA’ scheme focuses on the female victims of human trafficking who have been subjected to commercial sexual exploitation. It aims for the following: “Prevention, including the formation of community vigilance groups/adolescent groups, as well as awareness generation and sensitization of police, community leaders and other

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<sup>61</sup> John J. Potterat, Devon D. Brewer , Stephen Q. Muth, Richard B. Rothenberg, Donald E. Woodhouse, John B. Muth, Heather K. Stites, and Stuart Brody, “Mortality in a Long-term Open Cohort of Prostitute Women,” 159 (8) *American Journal of Epidemiology* (2004), 778–785, available at <http://aje.oxfordjournals.org/cgi/content/full/159/8/778> (last accessed on July 11, 2019).

<sup>62</sup> Shatabdi Bagchi and Ambalika Sinha. “Human Trafficking in India: Theoretical Perspectives with special reference to the Human Trafficking scenarios in The North Eastern Part of India”. 6(9), *International Journal of Research in Economics and Social Sciences (IJRESS)*, 117, (2016).

relevant actors; Rescue and safe withdrawal of victims; Rehabilitation including the provision of safe shelter, food, clothing, counseling, medical care, legal aid, vocational training and income generation activities; Reintegration, involving the restoration of victims into families/communities (where they so desire) and payment of accompanying costs; Repatriation, including the provision of cross border victim for their safe return to their countries of origin”<sup>63</sup>. Further, the Ministry of Women and Child Development through the ‘Swadhar Scheme’ seeks to address the needs of females in difficult circumstances, including victims of sex trafficking.

Further, this section also deals with the practical gaps in framing and implementation and execution of social policies and legal acts aimed at combating trafficking of women from Northeast. Some authors have addressed trafficking of women as a criminal problem and approach it from penal viewpoint. For example, as Nair (2007) would highlight that under the Indian Penal Code, a trafficked girl child, when victims is allowed and counseled to speak, she may have been subjected to a multitude of violations- “Displaced from her community, which tantamount to kidnapping/abduction (Sections 361, 362, 365, 366 IPC may apply); procured illegally (S.366 A IPC); sold by somebody (S.372 IPC); bought by somebody (S.373 IPC); imported from a foreign country (if she hails from a foreign country, or even from J & K State, and is under 21 years of age – S.366 B IPC); wrongfully restrained (S.339 IPC); wrongfully confined (S 340 IPC); physically tortured/injured (S.327, 329 IPC); subjected to criminal force (S. 350 IPC); mentally tortured/harassed/assaulted (S. 351 IPC); criminally intimidated (S.506 IPC); outraged of

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<sup>63</sup> Ibid.

her modesty (S 354 IPC); raped/gang raped/repeatedly raped (S 375 IPC); subjected to perverse sexual exploitation ('unnatural offences') (S.377 IPC); defamed (S 499 IPC); subjected to unlawful compulsory labor (S.374 IPC); victim of criminal conspiracy (S 120 B IPC)"<sup>64</sup> (Nair 2007: 6). These provisions are illustrative and not exhaustive. Possibly, there may be cases where trafficked person has suffered one or more violations from the sections mentioned here.

The problem of trafficking in human being was addressed in the Indian Penal Code, which extensively prohibited trafficking of women and girls into coercive prostitution in India and prescribed ruthless punishment for offenders. The IPC specifically lays down that anyone who buys or sells the person under the age of 18 years for the purpose of prostitution or sexual exploitation and for other immoral purposes shall be liable to imprisonment for up to 10 years and shall also be liable to fine. The IPC recognizes cross-border trafficking into prostitution and provides that whoever imports into India from any country outside India any girl under the age of twenty-one years with 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. The IPC prohibits a prostitute from public places and forces her to work only in certain areas. This causes the women in prostitution to be confined to a 'ghetto'- like, area. By penalizing her, the Act subjects her to further exploitation and forces her to live like a criminal in constant fear of police harassment. When trafficking of women is approached as a criminal problem, unknowingly there is insensitivity towards the victims of trafficking.

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<sup>64</sup> P.M. Nair. Investigating Sex Trafficking: A Handbook. 7-8 (Bureau of Police Research & Development, Ministry of Home Affairs, New Delhi, 2020)

The Immoral Traffic (Prevention) Act, 1956 (ITPA) is a special law to deal with the immoral trafficking. “The Indian Constitution prohibits all forms of trafficking under Article 23. The Suppression of the Immoral Traffic Act, 1956 (amended to the Immoral Traffic Prevention Act) was in response to the ratification of the International Convention on Suppression of Immoral Traffic and Exploitation of Prostitution of Others in 1950 by India”<sup>65</sup>. The ITPA focuses on punishing those who traffic the victims and compel their labor to give prostitution services<sup>66</sup>. Under Section 4 of ITPA, “living on the earnings of prostitution is a crime”<sup>67</sup>. Under Section 5 of ITPA, “inducing, procuring of person for prostitution is a crime”<sup>68</sup>. Under Section 6 of ITPA, “detaining a person in a brothel for prostitution, with or without consent, is also a crime”<sup>69</sup>. Under Section 7 of ITPA, “prostitution at public place is prohibited”<sup>70</sup>. Under Section 8 of ITPA, “seduction or soliciting for the purpose of prostitution”<sup>71</sup>. ITPA Under section 2(a) defines “brothel“ as “any house, room, conveyance or place, or any portion of any house, room, conveyance or place, which is used for purposes of sexual exploitation or abuse for the gain of another person or for the mutual gain of two or more prostitutes”<sup>72</sup>.

The study have revealed that a large number of cases are registered under Section 8 of ITPA, 'seduction or soliciting for the purpose of prostitution' and penalize for the same.

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<sup>65</sup> S. Sen & P. M. Nair, *A Report on Trafficking in Women and Children in India*, NHRC UNIFEM-ISS Project, Vol. I. 7 (New Delhi, National Human Rights Commission, 2004).

<sup>66</sup> Swati A. Chauhan, Immoral Traffic (Prevention) Act, 1956: A Concise Review, 252-259, in Veerendra Mishra (ed), *Human Trafficking: The Stakeholders' Perspective*, (Sage, New Delhi, 2013).

<sup>67</sup> Ibid. : 254

<sup>68</sup> Ibid. : 254

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

<sup>72</sup>The Immoral Traffic (Prevention) Act, 1956. available at [https://tcw.nic.in/Acts/Immoral Traffic Prevention Act \(ITPA\) 1956.pdf](https://tcw.nic.in/Acts/Immoral_Traffic_Prevention_Act_(ITPA)_1956.pdf) (last visited on October 5, 2019).

Sen and Ahuja argue that, “there are two distinct approaches adopted by law enforcement agencies while dealing with offences related to ITPA. One approach treats the female as a soliciting prostitute and charges are leveled against her mainly under Section 8 of ITPA and sometimes, other add on sections. The other approach considers females as victims and concentrates on registering cases against the exploiters, traffickers, pimps and brothel owners”<sup>73</sup> . Looking through the human rights perspective it is evident that the former approach taken by the law enforcement agencies is detrimental to the victims of commercial sexual exploitation.

Further, contrary to its objective of the ITPA, the law enforcement agencies operates against a woman by targeting her family. If a child is found with a woman in prostitution, he or she is presumed to have been used for the purposes of prostitution. Her child can be arbitrarily removed from her custody during ‘rescue’ operations. If her partner, parent or adult child is dependent on her income for survival, then they will be deemed to be living off the earnings of a prostitute and liable to prosecution. Perhaps the most pernicious provision of the Act is Section 20 under which any woman can be forced to prove that she is not a prostitute or risk being removed from the jurisdiction. Nor is there any restriction on the number of times a woman can be removed from one jurisdiction to the next.

Given these limitations, Chauhan asks a question- “whether the Immoral Traffic (Prevention) Act is an anti-trafficking law”. Chauhan writes, “To a great extent the

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<sup>73</sup> Sankar Sen and Jayashree Ahuja, *Trafficking in Women and Children: Myths and Realities*, 32-47 (New Delhi, Concept Publishing, 2009)



answer may be “No.”<sup>74</sup> The Act does not recognize trafficking in persons as a specific or separate crime. Instead, trafficking under the Act is addressed merely as a prostitution-related activity including procuring, inducing, or taking a person for the purpose of prostitution. The Act does not define for us trafficking in persons. The Act defines prostitution under section 2(F) as “the sexual exploitation or abuse of persons for commercial purposes.”<sup>75</sup> Exporting and importing of girls for prostitution is part of the Penal Code, and not the Immoral Traffic (Prevention) Act. The Act focuses on criminalization and punishment and does not say anything about preventing trafficking, so falls short of combating trafficking. The Act is basically an anti-commercialization of prostitution law and not an anti-trafficking law, per se<sup>76</sup>. In such scenario and also in wake of India being a signatory to the Palermo Protocol 2000 which subsequently India ratified in 2011, there is a need for new anti-trafficking act to provide a more comprehensive approach to human trafficking, to recognize the trafficked person as a victim of crime who is entitled to fundamental human rights. In pursuance of this protocol, on 28 February 2018, the Union Cabinet approved the "The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018" for introducing in the Parliament. It addresses the issue of trafficking from the point of view of prevention, rescue and rehabilitation. It proposes to establish rehabilitation fund and ant-trafficking bureau. It emphasizes on ensuring measures for relief and rehabilitation of victims of trafficking.

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<sup>74</sup> Swati A. Chauhan, Immoral Traffic (Prevention) Act, 1956: A Concise Review, 252-259, in Veerendra Mishra (ed), *Human Trafficking: The Stakeholders' Perspective*, (Sage, New Delhi, 2013).

<sup>75</sup> Ibid.

<sup>76</sup> Ibid. 259.

In the aforesaid approach which addresses trafficking of women as a criminal problem and approach it from penal viewpoint., prosecution and trial gains priority over the victim's protection and rehabilitation. In such an approach, victims of trafficking are seen foremost as witnesses or informants, rather than as victims of a serious crime. Paradoxically in such a worldview, victims of trafficking might themselves be proven guilty of offences, e.g. migration offences, drug crimes, or prostitution. At times, in such a scenario, trafficked women concurrently may be a victim, an illegal migrant and a witness. Therefore, as a researcher one is inclined to look at the issue of trafficking of women as an issue of human rights violation. In such an approach beside preventing and combating trafficking, efforts are also made to rehabilitate and support the victims. It ensures that all efforts to prevent and combat trafficking must ensure the basic human rights of the victims of trafficking.

As per the crime record bureau 2018<sup>77</sup> statistics: Assam reported 262 cases of human trafficking, Arunachal Pradesh: 3 cases, Manipur:3 cases, Meghalaya: 24 cases, Mizoram: 2 cases, Sikkim: 1 case, Tripura: 2 cases. As per the crime record bureau 2018 statistics, Victims Trafficked had following age profile. Arunachal Pradesh: 4 cases out of which 3 were minor below 18 years; Assam: 314 cases out of which 187 were minor below 18 years; Manipur:5 cases out of which 2 were minor below 18 years; Meghalaya: 7 cases out of which 5 were minor below 18 years; Mizoram: 3 cases out of which 2 were minor below 18 years; Sikkim: 4 case out of which 2 were minor below 18 years; and Tripura: 2 cases out of which 1 were minor below 18 years.

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<sup>77</sup> National Crime Records Bureau, *available at* <https://ncrb.gov.in/en/crime-india-2018> (last accessed on May 15, 2019).

The crime record bureau enlisted following purpose for which trafficking is conducted: Forced Labour, Sexual Exploitation for Prostitution, Other forms of Sexual Exploitation, Domestic Servitude, Forced Marriage, Petty Crimes, Child Pornography, Begging, Drug Peddling, and Removal of Organs.

As far as Police and Court Disposal of Cases of Human Trafficking as Crime Records Bureau, 2018 report is concerned the performance of law agencies is dismal. The litmus test of any legal system is the rate of conviction. It reveals the robustness of law machinery including investigation and prosecution. In case of Arunachal Pradesh out of 3 case reported, two have been charge sheeted but conviction rate is zero. In case of Assam out of 262 cases reported, 137 have been charge sheeted out of which conviction rate is practically zero. In case of Manipur out of 3 cases reported, two have been charge sheeted but conviction rate is zero. In case of Meghalaya out of 24 cases reported, 14 have been charge sheeted but conviction rate is zero. In case of Mizoram out of 2 cases reported, none have been charge sheeted and also conviction rate is zero. In case of Sikkim out of 1 case reported, none have been charge sheeted and also conviction rate is zero. In case of Tripura out of 2 cases reported, one has been charge sheeted and also conviction rate is zero<sup>78</sup>.

Agreed that there is variation in these figures from one year to another but the conviction rate of Assam happens to be persistently dismal. For example, in a review of conviction rate over five years from 1997-2002, Sen and Ahuja<sup>79</sup> found that while on one hand states like Tamil Nadu has 99.1 percent conviction rate, Assam being the most vulnerable in the

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<sup>78</sup> Ibid.

<sup>79</sup> Sankar Sen and Jayashree Ahuja, *Trafficking in Women and Children: Myths and Realities*, (New Delhi, Concept Publishing, 2009)

North East region in terms of trafficking happened to have barely 16.5 percent average conviction rate during 1997-2002. The low conviction rate itself speaks in volume about the lackluster legal enforcement system in the country in general and North East India in particular.

The reasons for ineffective law enforcement are: lack of proper training to the police personnel specially the lower rank officials in dealing with the sensitive crime like human trafficking. The study about the perception, knowledge and attitude of police personnel towards human trafficking reveals that police place low priority to cases pertaining to commercial sexual exploitation and human trafficking. Unfortunately most of the police personnel before going to the merit of each case have a general perception that women involved in commercial sex are immoral and anti-social.

### **3.6. Existential and Experiential account of Trafficking Victims**

One of the first hand primary sources of data emerging out of rigorous field work with the victims of commercial sexual exploitation is that of National Human Rights Commission (NHRC) and Institute of Social Sciences (ISS) which has been documented by Sen and Ahuja<sup>80</sup>. The study interviewed 1500 victims of commercial sexual exploitation which included the victims who survived commercial sexual exploitation. The study interviewed victims from 12 states of India including North Eastern states like Assam and Meghalaya. The total number of victims (thirty eight in number) and survivors (03 three in number) of commercial sexual exploitation from the state of Assam and Meghalaya were interviewed.

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<sup>80</sup> Sankar Sen and Jayashree Ahuja, *Trafficking in Women and Children: Myths and Realities*, (New Delhi, Concept Publishing, 2009)

### **3.6.1. Social Profile of victims of commercial sexual exploitation**

The age profile of survivor revealed that two out of the three survivors interviewed in the North East were from the age group of 18-20 years and rest in the age 16-17 years. Whereas, the age profile of victims stranded in the commercial sexual exploitation revealed that twenty seven out of thirty eight victims from the state of Assam and Meghalaya were in the age group of 22-35 years, nearly ten in the age 18-20 years and one in the age group of 16-17 years.

Majority of the victims were illiterate which makes them easier target and also reason for their lack of ignorance of their rights and remedies. As far as the off springs is concerned, the study revealed that nearly one fourth of survivors and half of the victims of commercial sexual of were having one or more children. In case of victims their children stay with them in brothels which put them in vulnerable position from early childhood itself. Sankar Sen and Jayashree Ahuja's empirical study found that, "Forces, lure, and deceit seems to be the major factors that lead to the respondents being trafficked. Other influencing factors being domestic violence or marriage related disputes, child sexual abuse, culturally sanctioned practices and migration etc"<sup>81</sup>. Further, out of 1500 victims of commercial sexual exploitation who were interviewed, 62.4 percent of survivors, and 51.8 of victims have been trafficked falling prey to deceit, force or lure of traffickers. 18 percent of survivors and 22 percent of victims have been trafficked due to domestic and marriage related violence. 6.4 percent of survivors and 5.4 percent of victims were subjected to sexual abuse as children. 1.8 percent among

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<sup>81</sup> *Ibid.*

survivors and 7.3 percent among victims cited family tradition as the factor lead to trafficking. Very negligible percent from survivors and victims' gave migration as the leading factors for being trafficked. Around 11 percent of survivors and 13 percent of victims cited poverty as the factors and 13 percent of victims cited poverty as the factor for their trafficking<sup>82</sup>.

### ***3.6.2. Trafficking Victim's experience with law***

Unfortunately, the qualitative study revealed that when asked about the experience about various facets of law enforcement almost all the victims had challenging experience to share. There were victims who were arrested by police officials at one or other occasions, almost majority of them were arrested told that they were arrested on the charges of 'soliciting' and some of them told that they were not aware of the reason of arrest. The brothel owners were the one to bail out the victims. Others got out by bribing police or with the help of NGOs. This speaks in volume the vicious trap in which the victims of commercial sexual exploitation are trapped.

The most disturbing aspect of the study is that awareness about the laws related to trafficking is almost negligible among the victims of commercial sexual exploitation. The study reveals that, "Almost 85 percent of respondents under survivor category, and 80 percent of respondent belonging to victim category said that they were not aware of the existence of ITPA. Similarly around 80 percent of the survivors and 63 percent of the victims do not know anything about laws related to child sexual abuse. Even those respondents who have little awareness of these laws, are ignorant about various

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<sup>82</sup> *Ibid.*42.

provisions dealing with prevention of trafficking and protection of rights of victims”<sup>83</sup> . The common perception among the victims, the study reveals is that law is to punish the women who are subjected to commercial sexual exploitation. Given such a scenario, it is not surprising that the reception of law for whom it is actually meant is far from the mandate. Such a negative impression about the legal process among the victims escalate risk factor of trafficking and re-trafficking further. Those victims who would have otherwise dared to take a legal course to address their commercial sexual exploitation are deterred from doing so because of fear of the same law which is meant to protect them.

Biswajit Ghosh rightly points out that human trafficking, “being a highly secretive and clandestine trade, remains mostly under-reported and untraced in spite of the fact that several international initiatives have been taken to impel governments into action”<sup>84</sup> . Further, “the increasing volume of human trafficking is also a reflection of the lack of political will on the part of the states as evident in the plethora of instances to allocate inadequate resources to combat the problem”<sup>85</sup> . Therefore, the menace of human trafficking is not merely limited to reporting the police, rather its much more complex and deep. These findings and observation of Ghosh are relevant for human trafficking in the context of North East India as well.

In one of the heart wrenching accounts of victims of sex trafficking, Kara<sup>86</sup> notes the pain and agony of women and children trafficked and forced into prostitution. Most of the

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<sup>83</sup> Sankar Sen and Jayashree Ahuja, *Trafficking in Women and Children: Myths and Realities*, (New Delhi, Concept Publishing, 2009)

<sup>84</sup> Biswajit Ghosh “Trafficking in Women and Children in India: Nature, Dimension and Strategies for Prevention”, 13(5) *The International Journal of Human Rights*, 716-738 (2009).

<sup>85</sup> *Ibid.*

<sup>86</sup> Siddharth Kara, *Sex Trafficking: Inside the Business of Modern Slavery* 1-44 (Columbia University Press, New York, 2009).

victims were vulnerable to deceit due to economic desperation. While most of the victims' journey to the trafficking destination was direct, other victims endure multiple stops at several places, where they are exploited, resold, and tortured. At each destination, victims are told they must work off the "debt" of trafficking them by forcing them to have sex with maximum number on a daily basis.

Sometimes even the accounting of these debts goes to the extent of deductions for food, clothing, rent, alcohol, and exorbitant interest rates. The false promise of attaining freedom is a powerful tool that brothel owners utilize to control their victims. With the passage of time, some trafficked women forced into prostitution accept their fates, and in a transformation akin to Stockholm Syndrome<sup>87</sup> they are "freed" to serve as working prostitutes who mentor newly trafficked women upon arrival.

The irony is that most of the trafficked women used for commercial sexual exploitation are confused with prostitutes. In the case of later the general perception is that they are engaged in prostitution for the sake of earning. Unfortunately a detailed study of NHRC-

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<sup>87</sup> Stockholm syndrome is a psychological response. It occurs when hostages or abuse victims bond with their captors or abusers. This psychological connection develops over the course of the days, weeks, months, or even years of captivity or abuse. With this syndrome, hostages or abuse victims may come to sympathize with their captors. This is the opposite of the fear, terror, and disdain that might be expected from the victims in these situations. Over the course of time, some victims do come to develop positive feelings toward their captors. They may even begin to feel as if they share common goals and causes. The victim may begin to develop negative feelings toward the police or authorities. They may resent anyone who may be trying to help them escape from the dangerous situation they're in. This paradox does not happen with every hostage or victim, and it's unclear why it occurs when it does. Many psychologists and medical professionals consider Stockholm syndrome a coping mechanism, or a way to help victims handle the trauma of a terrifying situation. Indeed, the history of the syndrome may help explain why that is. Individuals who are trafficked often rely on their abusers for necessities, like food and water. When the abusers provide that, the victim may begin to develop positive feelings toward their abuser. They may also resist cooperating with police for fear of retaliation or thinking they have to protect their abusers to protect themselves. (Excerpts from: *What is Stockholm Syndrome and Who Does it Affect?* available at <https://www.healthline.com/health/mental-health/stockholm-syndrome#treatment> (last visited on May 08, 2019).



ISS of over 1500 interviewed victims of commercial sexual exploitation reveals that majority of them never got money in their savings. The major share of money they earned was taken by “the brothel owners, agents, pimps, *goondas*, and sometimes law enforcement officials”<sup>88</sup>.

### **3.7. Summing Up**

Understanding the contextual factors is very important for the comprehensive analysis of immoral trafficking in Northeast India. The geopolitical positioning of north east region sharing extensive international border places the region at high risk of cross-border trafficking. It also emerged from the aforementioned discussion that the problem in the Northeast is quite distinct from the rest of India, therefore, the immoral trafficking has been analyzed in the context of women and the gendered norms of society; cultural practices; poverty; demographic factors; migration and trafficking; terrorism, Insurgency, ethnic violence and human trafficking.

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<sup>88</sup> Sankar Sen and Jayashree Ahuja, *Trafficking in Women and Children: Myths and Realities*, 36 (New Delhi, Concept Publishing, 2009)

## CHAPTER IV

### IMMORAL TRAFFICKING IN NORTHEAST INDIA: MAPPING THE MAGNITUDE AND ANALYSING THE MEASURES UNDERTAKEN TO COMBAT TRAFFICKING

#### 4.1. Introduction

India is a major source; destination and transit point for sex trafficked women and girls. “Ministry of Women and Child Development, India” (MWCD) estimates the number of persons trafficked for commercial sexual exploitation in India to be around 2.8 million, majority of whom are young women or children who have been forced into sex work as a result of conflict, poverty, and displacement<sup>1</sup>. “UN Office of Drugs and Crime” (UNODC) in its report emphatically asserts that data suggest that India is one of the rapidly emerging regions of human trafficking<sup>2</sup>. Increasingly it is being noticed that India has emerged source, destination and transit nation for human trafficking in general and trafficking of women in particular. Looking into the scale of trafficking, studies suggest that majority of trafficking (90 percent) takes place within the nation and some (10 percent) takes place across the border<sup>3</sup>.

Within India, Northeast India forms a major source and transit point for sex trafficking. Within Northeast, the source states are Assam, Nagaland, Manipur and to

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<sup>1</sup> *India Country Report, to prevent and combat trafficking and commercial sexual exploitation of children and women. World Congress III against sexual exploitation of children and adolescents* (Rio de Janeiro, Brazil, November 2008).

<sup>2</sup> A. Aronowitz, *Human Trafficking, Human Misery: The Global Trade Human Beings* (London, Library of Congress, 2009).

<sup>3</sup> Sadika Hameed et al, *Human Trafficking in India: Dynamics, Current Efforts and Intervention Opportunities For The Asia Foundation* (2010), available at: <http://asiafoundation.org/resources/pdfs/StanfordHumanTraffickingIndiaFinalReport.pdf>. (last visited on June 12, 2019).

some extent Sikkim<sup>4</sup>. Guwahati is the chief transit point for women and girls to be trafficked into various cities of India from North East, and from there, to abroad. The above statistics makes a study on trafficking in North East India relevant. This chapter provides an overall scenario of immoral trafficking in Northeast India; deals with the magnitude of immoral trafficking in the Northeast; and evaluates the measures taken to combat trafficking performance of Northeastern states: Arunachal Pradesh, Assam, Manipur, Nagaland, Mizoram, Meghalaya, Tripura, and Sikkim.

## **4.2. Magnitude of the Problem of Human Trafficking**

Human trafficking is more of hidden and structural crime. Hidden in the sense because the process of trafficking is very complex and inter connected. Structural because it is a more organized crime as lot of money is involved in the form of flesh trade. Bureaucrats, syndicate and Politicians are very much involved in this organized crime.

### **4.2.1. Overall Scenario**

UN estimates that, “700,000 to 2 million girls and women are trafficked across national borders annually”<sup>5</sup>. Further, “The largest numbers of victims are from Asia, with over 2,25,000 victims each year from the South East and over 1, 50,000 from South Asia. The former Soviet Union is now believed to be the largest new source of trafficking for prostitution and sex industry with over 100,000 trafficked each year from that region. An additional 75,000 or more are trafficked from Eastern Europe. Over 1, 00,000 are from trafficked from Latin America and the Caribbean, & over 50,000 victims are trafficked

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<sup>4</sup> For further reference refer S. Sen & P. M. Nair, *A Report on Trafficking in Women and Children in India*, NHRC UNIFEM-ISS Project, Vol. I. (New Delhi, National Human Rights Commission, 2004); and Sanjoy Roy, Chandan Chaman. Human rights and trafficking in women and children in India., 1(5) *Journal of Historical Archaeology & Anthropological Sciences*. 162–170. (2017).

<sup>5</sup> Mary Crawford, *Sex Trafficking in South Asia*, Routledge, New York, (2010), p. 5

from Africa. Most of the victims are sent to Asia, the Middle East, Western Europe and North America”<sup>6</sup>.

Researcher have identified that, “Bonded and sex labour comprise the vast majority of human trafficking in India, though child soldiering, forced begging and organ harvesting have also been identified”<sup>7</sup>. UNICEF estimates reveal that every year around two million children are abused in the global commercial sex trade<sup>8</sup>. Further, it is more appalling to notice that selling young girls is increasingly becoming a lucrative criminal activity in the world<sup>9</sup>.

#### ***4.2.2. Mapping the magnitude of Human Trafficking in North East India***

North-East India, over the years, has been the site of various political and ethnic conflicts. While documentation of the conflicts as such and its implications have been attempted at, very little is documented in terms of women’s status and violence against women, especially trafficking, in this conflict situation. Further, despite being a hot zone in terms of trafficking, there is a dearth of studies on women in Northeast and their status in the prevalent socio-cultural and political context. Their everyday struggles and experiences have hardly been documented. Though numerous efforts to address trafficking have been made by the state and civil society organization in terms of policies and projects, the result has not been substantial. India is still on the US Tier 2 Watch List for a fifth consecutive year for its failure to provide evidence of

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<sup>6</sup> Apama Srivastava, *Human Trafficking with Special Reference to Delhi*, A William Carey Study and Research Centre and Joint Women’s Programme Publication, (2006), p. 3

<sup>7</sup> Siddhartha Sarkar, Rethinking Human Trafficking in India: Nature, Extent and Identification of Survivors” 103(5) *The Round Table*, 483 (2014)

<sup>8</sup> UNICEF, *Children Out of Sight, Out of Mind, Out of Reach; Abused and Neglected, Millions of Children Have Become Virtually Invisible* (London, UNICEF, 2005).

<sup>9</sup> L. Shelley, *Human Trafficking: A Global Perspective* (New York, Cambridge University Press, 2010).

increasing effort to combat human trafficking<sup>10</sup>. Interventions on trafficking can be successful only when a concerted effort has been made to understand women's lives in its entirety. The context in which particular groups of women are placed also needs to be taken into account, given the rich diversity among various regions in India as well as within Northeast India. Policies and projects planned for addressing trafficking or helping trafficked women in other parts of India may not be effective in the context of Northeast given its different socio-cultural context. Therefore policies needs to be based on appropriate and thorough information and understanding of Northeast society and women within that society. This study will be a step in this direction as it intends to understand trafficking of women and girls in insurgency ridden Northeast India.

It is estimated in a study conducted by Centre for Development and Population Activities that almost two million women and children are stranded in the red-light areas of India for commercial sex work. Out of these two millions around 500,000 children in the commercial sex industry are girls<sup>11</sup>. It is estimated that on an average 150,000 women and girls are trafficked from South Asia into India in order to cater the commercial sex industry<sup>12</sup>. Further, India is also a source and transit country for the sex trafficking of women and children from and for the Middle East<sup>13</sup>. Shamin (2001) in a study has found that nearly half of the commercial sex workers in India are from Nepal and Bangladesh

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<sup>10</sup> U.S. Department of States: *Trafficking in Persons (TIP) Report: Country narratives: India*. 2007, available at <http://www.state.gov/g/tip/rls/tiprpt/2007/82806.htm>, (last visited on November 3, 2018).

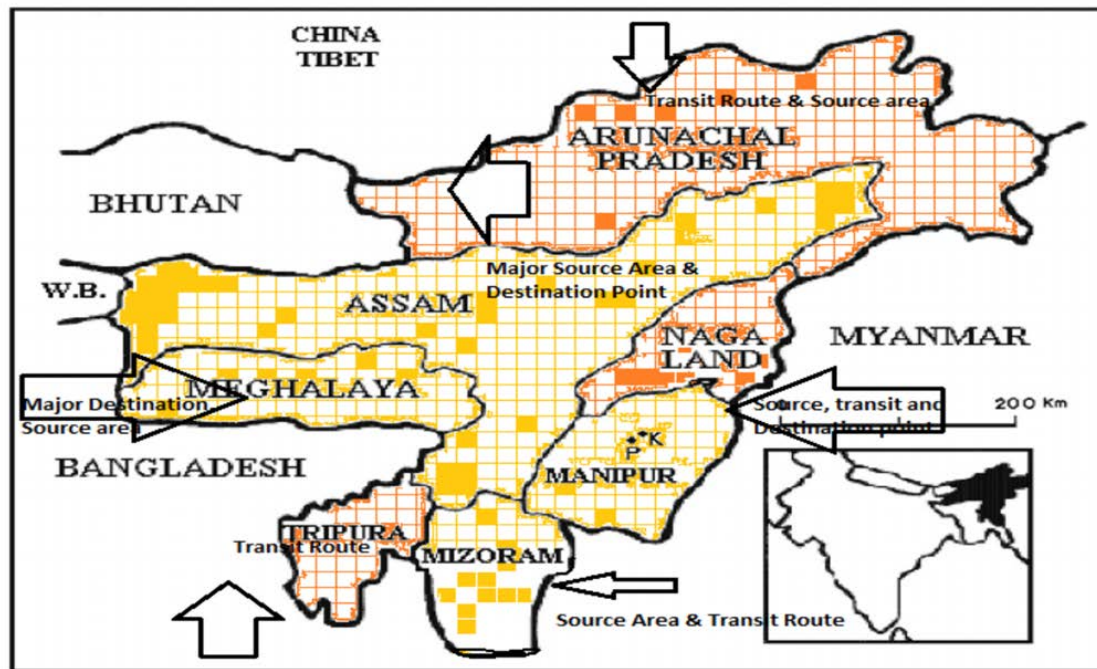
<sup>11</sup> Centre for Development and Population Activities, *Girls Right: Society's Responsibility, Taking Action against Sexual Exploitation and Trafficking, Facts on Asia and Country Profiles* (Washington, DC, Centre for Development and Population Activities, 1997).

<sup>12</sup> J. G. Silverman, M. R. Decker, J. Gupta, A. Maheshwari, B. M. Willis, and A. Raj, "HIV prevalence and predictors of infection in sex-trafficked Nepalese girls and women" 298(5) *Journal of the American Medical Association* 536–542 (2007).

<sup>13</sup> Consulate General of the United States, *India's country narrative for the trafficking in persons report 2008*, available at: <http://kolkata.usconsulate.gov/usgovtreportstipind.html> (last visited on July 29, 2018).

and they are termed as ‘cage sex workers’<sup>14</sup>. Immoral trafficking to and from South East Asia and South Asia has an umbilical relation with North East India.

### Trafficking-affected source, transit and destination states of the Northeastern Region of India



Source: Dolly Mishra (2019)<sup>15</sup>

As depicted in the aforementioned map, the North East India comprises of eight states: Manipur, Meghalaya, Sikkim, Tripura, Mizoram, Arunachal Pradesh, Nagaland, and Assam. The North East India has rich mineral and forest resources. It is surrounded in West by Bangladesh, on Eastern side by Myanmar, and on Northern side by Myanmar, China and Tibet. Sharing of international border by North Eastern states at such scale geographically poise these states for cross border movement. On the one hand, the

<sup>14</sup> I. Shamim, *Mapping of Missing, Kidnapped and Trafficked Children and Women: Bangladesh Perspective* (Bangladesh, International Organization in Migration, 2001).

<sup>15</sup> Dolly Mishra. *Impact of globalization on human trafficking in India A case study of the Northeastern region*, School of International Studies Central University of Gujarat (2019)(Unpublished Thesis), available at <http://hdl.handle.net/10603/331833> (last accessed January 15th 2020)

geopolitical positioning of north east region sharing 98 percent of Northeast India borders internationally with China, Bhutan, Myanmar and Bangladesh, places the region at high risk of cross-border trafficking<sup>16</sup>. Most of these borders are unmanned and makes it an easy transit point for cross border trafficking.

On the other hand, the internal situation of the states of North East region creates necessitating and facilitating conditions available for trafficking within the countries as well as across border human trafficking. Ajailiu while studying human trafficking in North East highlighted following factors for trafficking: poverty, ethnic violence, urban-rural migration, militarization under “Arms Forces Special (power) Act” (AFSPA) of 1958, etc<sup>17</sup>. Studies have proved that the unstable situation emanating out of terrorism, insurgency, ethnic violence breeds insecurity and anxiety among the people of the region in general and “Internally displaced persons” (IDPs) in particular. According to report, “the North- East is at high risk of trafficking due to displacement from armed conflict. Over 20,000 people are displaced in Assam, 70,000 in Manipur, 60,000 in Tripura and 3,000 in Arunachal Pradesh”<sup>18</sup>. Traffickers capitalize on the fear, insecurity and anxiety of population inhabiting in this region inflicted with insurgency and ethnic violence.

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<sup>16</sup> Kharbhih, Hasina. ‘Human Trafficking Scenario in Northeast India,’ in Veerendra Mishra (ed). *Human Trafficking: The Stakeholders’ Perspective*, 347-355, (Sage, New Delhi, 2013).

<sup>17</sup> Ajailiu Niumai, “The politics of Trafficking amongst Tribal Women in Manipur-North- East India”, SNTD Women's University, Mumbai, Winter June 18, 2012, available at <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.1005.488&rep=rep1&type=pdf#page=124> (last accessed on 06.03.2021)

<sup>18</sup> International Displacement Monitoring Centre report quoted in Ajailiu Niumai’s empirical work “The politics of Trafficking amongst Tribal Women in Manipur-North- East India” SNTD Women's University, Mumbai, Winter June 18, 2012, available at <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.1005.488&rep=rep1&type=pdf#page=124> (last accessed on 06.03.2021)

Meghalaya High Court Chief Justice Mohammad Yaqoob Mir while addressing the second Regional Consultation on Child Right in the Context of Human Trafficking (sex & bonded labour) in North East India in Meghalaya remarked that “North East has emerged as hub of human trafficking in India, where unemployment, poverty, migration for search of jobs are some of the reasons of human trafficking”<sup>19</sup>. While mapping the problem in North East context,

Further, Justice Mir also highlighted that due to protracted insurgency problem coupled with recurrent flood, peculiar geographical setting has made Assam vulnerable to infiltration. He noted that, “Assam has the highest number of trafficking cases in the country with 1494 cases, and accounts for 22 per cent of the total reported cases of trafficking as per report released by National Crime Records Bureau 2015”<sup>20</sup>. Meghalaya has the largest number of child trafficking after Assam, it is appalling to report that in the coal mines of Jaintia hills, Meghalaya thousands of children are working in hazardous conditions. Highlighting the condition of other states of North East, Justice Mir said that, “the state of Manipur has emerged as the new source of cross border human trafficking in India and also being used as an easy transit route”<sup>21</sup>. While on one hand the condition of states like Assam is grim in North East, on the other hand, states like Mizoram and Sikkim can be appreciated for their efforts. Mizoram is the first state in North East to formulate the Victim of Crime Compensation Scheme.

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<sup>19</sup> “North East has emerged as hub of human trafficking in India: Mir”, *Business Standard*, September 23, 2018, available at [https://www.business-standard.com/article/news-ians/north-east-has-emerged-as-hub-of-human-trafficking-in-india-mir-118092300605\\_1.html](https://www.business-standard.com/article/news-ians/north-east-has-emerged-as-hub-of-human-trafficking-in-india-mir-118092300605_1.html) (last visited on 11.06.2019)

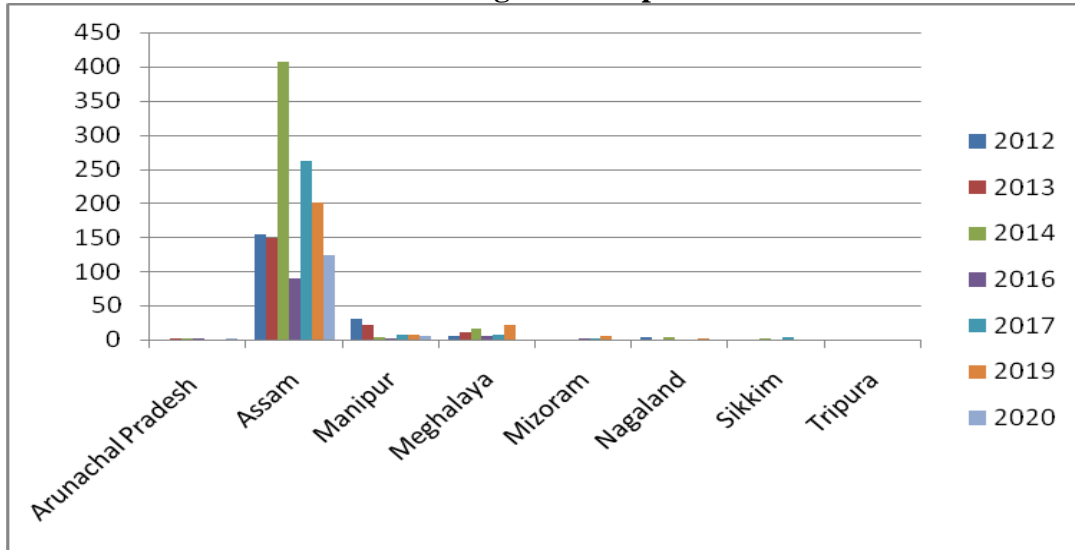
<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*



While going through the Ministry of Home Affairs Report and answer of Lok Sabha Unstarred Questions, the scale of the problem of human trafficking is clearly visible.

**Total Number of Human Trafficking Cases Reported in Northeastern States**



Source: Prepared by Research Scholar Collating Data from Ministry of Home Affairs, Government of India & Lok Sabha Unstarred Question

The aforementioned chart reveals the status of human trafficking in Northeastern states. In 2012 the total number of human trafficking cases reported at all India level was 3554. Whereas in the Northeast, Assam reported the maximum number of human trafficking cases-154. The second highest number of cases- 32 was reported from Manipur. Meghalaya reported 7 cases; Nagaland reported 4 cases; Arunachal Pradesh reported 1 case; Mizoram also reported 1 case; and officially Sikkim and Tripura reported nil case. In 2013, the total number of human trafficking cases reported at all India level was 3940. Whereas in the Northeast, Assam reported the maximum number of human trafficking cases-149. The second highest number of cases- 22 was reported from Manipur.

Meghalaya reported 12 cases; Nagaland reported 1 case; Arunachal Pradesh reported 2 case; and officially Mizoram, Sikkim and Tripura reported nil case. In 2014, the total number of human trafficking cases reported at all India level was 5446. Whereas in the Northeast, Assam reported the maximum number of human trafficking cases-407. The second highest number of cases- 17 was reported from Meghalaya. Nagaland reported 4 cases; Manipur reported 3 cases; Arunachal Pradesh reported 2 case; Sikkim reported 2 cases and officially Mizoram and Tripura reported nil case.

In 2016, the total number of human trafficking cases reported at all India level was 8132. Whereas in the Northeast, Assam reported the maximum number of human trafficking cases-91. The second highest number of cases- 7 was reported from Meghalaya. Manipur reported 3 cases; Mizoram reported 2 case; Arunachal Pradesh reported 2 case; Sikkim was reported 1 case; and officially Nagaland and Tripura reported nil case.

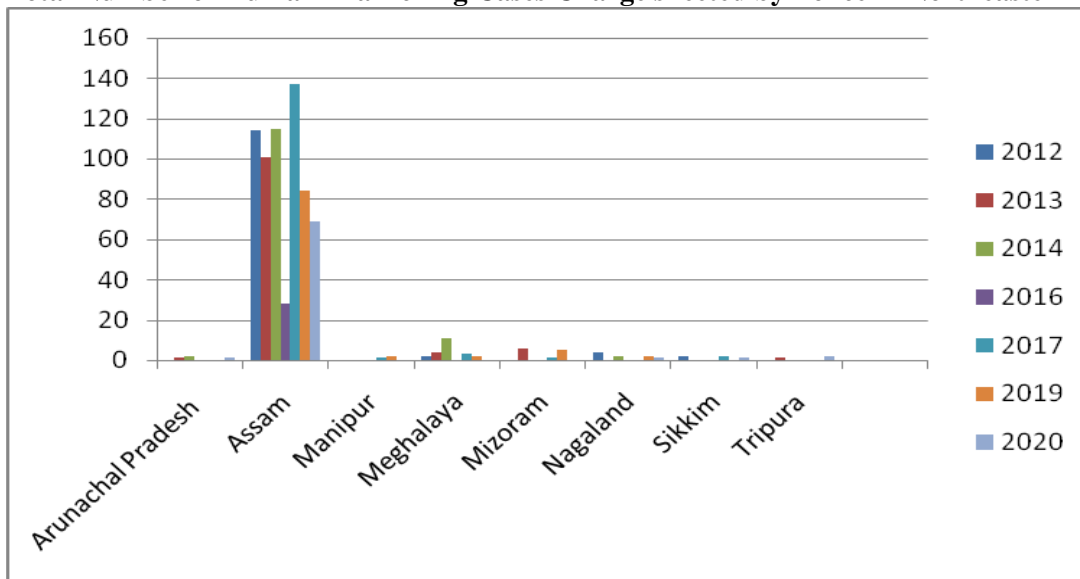
In 2017, the total number of human trafficking cases reported at all India level was 2854. Whereas in the Northeast, Assam reported the maximum number of human trafficking cases-262. The second highest number of cases- 8 cases each were reported from Manipur and Meghalaya. Sikkim reported 3 cases; Mizoram reported 2 case; and officially Arunachal Pradesh and Nagaland reported nil case.

In 2019, the total number of human trafficking cases reported at all India level was 2260. Whereas in the Northeast, Assam reported the maximum number of human trafficking cases-201. The second highest number of cases- 22 was reported from Meghalaya. Manipur reported 9 cases; Mizoram reported 7 cases; Nagaland reported 3 cases; Tripura 1 case; and Arunachal Pradesh and Sikkim reported nil case.

In 2020, the total number of human trafficking cases reported at all India level was 1714. Whereas in the Northeast, Assam reported the maximum number of human trafficking cases-124. The second highest number of cases- 6 was reported from Manipur. Arunachal Pradesh reported 2 cases; Meghalaya, Tripura and Sikkim reported 1 case each; and Mizoram and Nagaland reported nil case.

The total number of registered cases of human trafficking in the Northeastern states clearly reflect that Assam is reported to have the highest number of human trafficking cases. Whereas, Sikkim, Tripura and Arunachal Pradesh are reported to have least number of human trafficking cases. It is pertinent to mention that less number of cases being reported doesn't mean that the state is not having immoral trafficking. For example, Tripura being a land locked state surrounded by Bangladesh from three sides is poised for cross border human trafficking. The existential experience suggest that the problem persist but the record show otherwise.

**Total Number of Human Trafficking Cases Charge sheeted by Police in Northeastern States**



Source: Prepared by Research Scholar Collating Data from Ministry of Home Affairs, Government of India & Lok Sabha Unstarred Question

The aforementioned chart reveals the status of human trafficking in Northeastern states.

In 2012 the total number of human trafficking cases chargesheeted at all India level was 2860. Whereas in the Northeast, Assam chargesheeted the maximum number of human trafficking cases-114. The second highest number of cases- 4 was chargesheeted from Nagaland. Meghalaya chargesheeted 2 cases; Sikkim chargesheeted 2 cases; Arunachal Pradesh; Mizoram; Manipur and Tripura chargesheeted nil case.

In 2013, the total number of human trafficking cases chargesheeted at all India level was 3277. Whereas in the Northeast, Assam chargesheeted the maximum number of human trafficking cases-101. The second highest number of cases- 6 was chargesheeted from Mizoram. Meghalaya chargesheeted 4 cases; Arunachal Pradesh chargesheeted 1 case; Tripura chargesheeted 1 case; Mnaipur, Nagaland, and Sikkim chargesheeted nil case.

In 2014, the total number of human trafficking cases chargesheeted at all India level was 4489. Whereas in the Northeast, Assam chargesheeted the maximum number of human trafficking cases-115. The second highest number of cases- 11 was chargesheeted from Meghalaya. Nagalanad chargesheeted 2 cases; Arunachal Pradesh chargesheeted 2 case; Manipur; Sikkim, Mizoram and Tripura chargesheeted nil case.

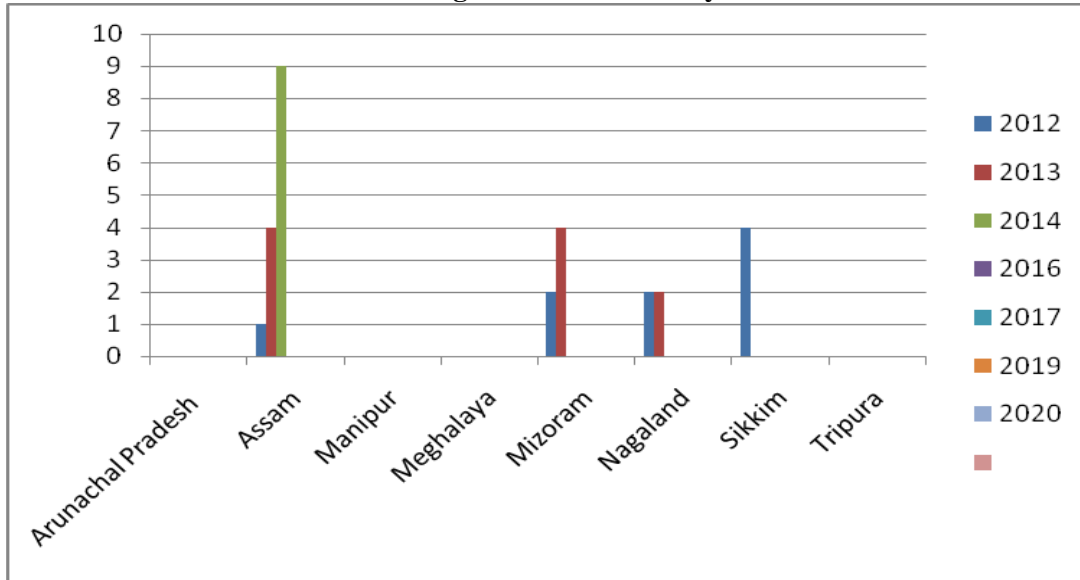
In 2016, the total number of human trafficking cases chargesheeted at all India level was 2403. Whereas in the Northeast, Assam chargesheeted the maximum number of human trafficking cases-28. Meghalaya, Manipur; Mizoram; Arunachal Pradesh; Sikkim ; Nagaland and Tripura chargesheeted nil case.

In 2017, the total number of human trafficking cases chargesheeted at all India level was 2060. Whereas in the Northeast, Assam chargesheeted the maximum number of human trafficking cases-137. The second highest number of cases- 3 cases each were chargesheeted from Meghalaya; Sikkim chargesheeted 2 cases; Mizoram chargesheeted 1 case; Manipur chargesheeted 1 case and Arunachal Pradesh chargesheeted nil case.

In 2019, the total number of human trafficking cases chargesheeted at all India level was 1606. Whereas in the Northeast, Assam chargesheeted the maximum number of human trafficking cases-84. The second highest number of cases- 5 was chargesheeted from Mizoram. Manipur, Meghalaya and Nagaland chargesheeted 2 cases; Arunachal Pradesh, Sikkim and Tripura chargesheeted nil case.

In 2020, the total number of human trafficking cases chargesheeted at all India level was 1402. Whereas in the Northeast, Assam chargesheeted the maximum number of human trafficking cases-69. The second highest number of cases- 2 was chargesheeted from Tripura. Arunachal Pradesh, Nagaland, and Sikkim chargesheeted 1 case each; and Manipur, Meghalaya and Mizoram chargesheeted nil case. The total number of cases chargesheeted for the offence of human trafficking in the Northeastern states clearly reflect that condition of law and order is challenging as the number of cases chargesheeted is abysmally low in comparison of cases reported.

**Total Number of Human Trafficking Cases Convicted by Court in Northeastern States**



Source: Prepared by Research Scholar Collating Data from Ministry of Home Affairs, Government of India & Lok Sabha Unstarred Question

The aforementioned chart reveals the status of human trafficking in Northeastern states.

In 2012 the total number of human trafficking cases convicted by court at all India level was 786. Whereas in the Northeast, Sikkim court’s convicted the maximum number of human trafficking cases-4. The second highest number of cases- 2 each were convicted by courts of Mizoram and Nagaland. Court in Assam convicted 1 case; Manipur, Meghalaya and Tripura courts convicted nil case.

In 2013, the total number of human trafficking cases convicted at all India level was 702. Whereas in the Northeast, Assam and Mizoram courts convicted the maximum number of human trafficking cases- 4 each. The second highest number- 2 cases convicted by Nagaland. Courts in Arunachal Pradesh, Meghalaya, Manipur, Sikkim and Tripura convicted nil case.

In 2014, the total number of human trafficking cases convicted at all India level was 1029. Whereas in the Northeast, Assam courts convicted the maximum number of human

trafficking cases-9. Courts in Meghalaya, Nagaland ; Manipur; Arunachal Pradesh; Sikkim Mizoram and Tripura convicted nil case.

In 2016, the total number of human trafficking cases convicted at all India level was 163. Unfortunately none of the courts in Northeastern states of Assam, Meghalaya, Manipur, Mizoram, Arunachal Pradesh, Sikkim , Nagaland and Tripura convicted in any case pertaining to human trafficking.

In 2017, the total number of human trafficking cases convicted at all India level was 164. Unfortunately in 2017 none of the courts in Northeastern states of Assam, Meghalaya, Manipur, Mizoram, Arunachal Pradesh, Sikkim , Nagaland and Tripura convicted in any case pertaining to human trafficking.

In 2019, the total number of human trafficking cases convicted at all India level was 172. Unfortunately in 2019 none of the courts in Northeastern states of Assam, Meghalaya, Manipur, Mizoram, Arunachal Pradesh, Sikkim , Nagaland and Tripura convicted in any case pertaining to human trafficking.

In 2020, the total number of human trafficking cases convicted at all India level was 49. Unfortunately in 2020 none of the courts in Northeastern states of Assam, Meghalaya, Manipur, Mizoram, Arunachal Pradesh, Sikkim , Nagaland and Tripura convicted in any case pertaining to human trafficking.

The total number of cases convicted by courts for the offence of human trafficking in the Northeastern states clearly reflect that taking the cases of human trafficking to a logical conclusion is challenging as the number of cases finally convicted by court of law is abysmally low in comparison of case reported and cases chargesheeted.

In a field study undertaken by Shakti Vahini<sup>22</sup>, data was gathered through grass root NGOs; reports from various national and international bodies; and reports filed by states in Supreme Court in Public Interest litigation Shakti Vahini vs. Union of India (Civil-190 of 2002.). This evaluative report came out with a report on the status of human trafficking in different states of India on the aforementioned parameters classified these states into four categories on the basis of following criterion: "Magnitude of trafficking"; "Existence of Legal/ Administrative frame work and Infrastructure in state"; and "Implementation level of the existing laws and policies". Category One states are those in which concerns for women and child rights are high; crime rate is low; immoral trafficking is negligible or absent; robust legal and administrative framework exists and effective implementation of legal provisions is ensured by the state. In the Northeast India the following states can be clubbed in this category: Meghalaya, Sikkim. Category two states are those in which concerns for women and child rights are high or moderate; crime rate is low or moderate; immoral trafficking is moderate; legal and administrative framework exists and state is seen to be implementing legal provisions. In the Northeast India the following states can be clubbed in this category: Mizoram. Category three states are those in which concerns for women and child rights are moderate or low; crime rate is high; immoral trafficking is moderate or high; legal and administrative framework does not exist properly and state is seen to be lacking in effective implementing legal provisions. In the Northeast India the following states can be clubbed in this category: Manipur, Assam. Category four states are those in which concerns for women and child rights are low; crime rate is very high;

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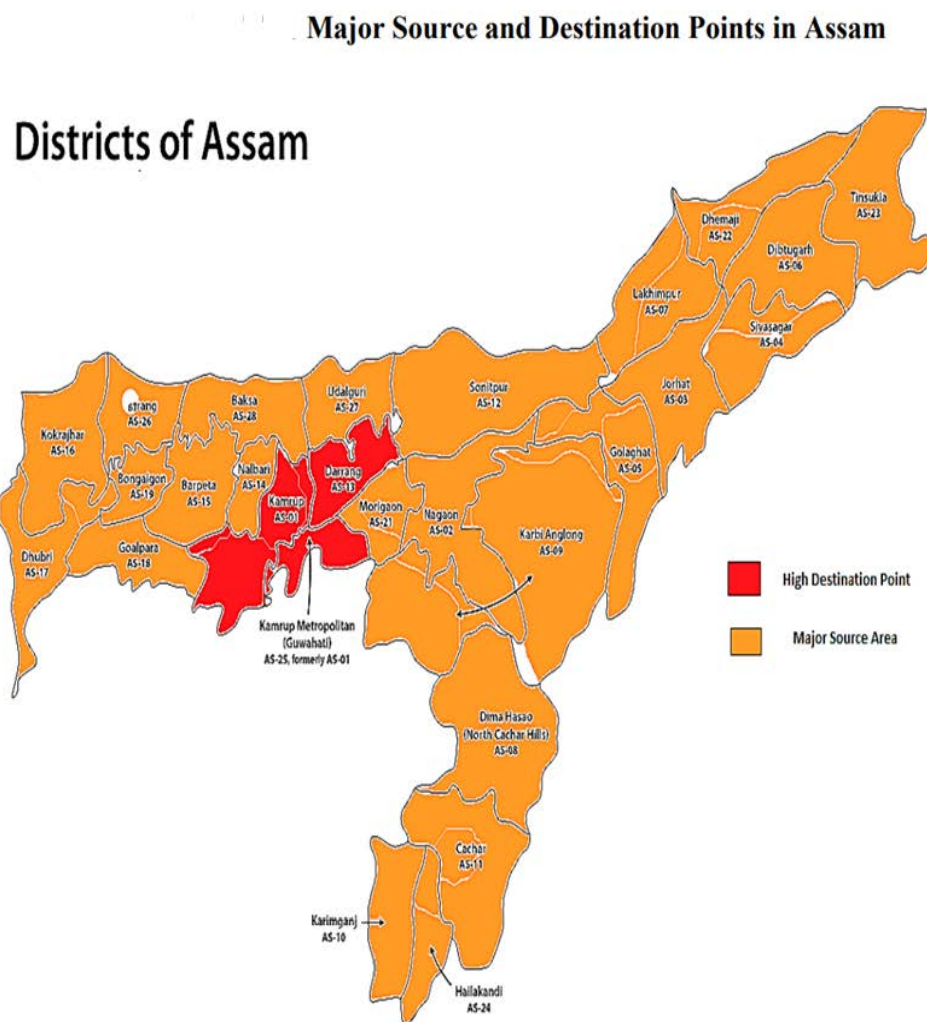
<sup>22</sup> Trafficking in India Report 2004, Shakti Vahini , Faridabad; available at <https://archive.crin.org/en/docs/traffickingreport.pdf> (last accessed on May 15<sup>th</sup> 2018)



magnitude of immoral trafficking is high; legal and administrative framework does not exist properly and state is not properly implementing legal provisions. In the Northeast India the following states can be clubbed in this category: Nagaland, Tripura.

### 4.3. Evaluation of North Eastern States in terms of Immoral Human Trafficking

#### 4.3.1. Assam



Source: Dolly Mishra (2019)<sup>23</sup>

<sup>23</sup> Dolly Mishra. *Impact of globalization on human trafficking in India A case study of the Northeastern region*, School of International Studies Central University of Gujarat (2019)(Unpublished Thesis), available at <http://hdl.handle.net/10603/331833> (last accessed January 15th 2020)

Assam shares borders with other countries and the internal turmoil within Assam resulting out of ethnic conflict, flood induced displacement, mass poverty and unemployment promotes the human traffickers to prey on the vulnerabilities of the state and its people. Among the North Eastern states the state of Assam witnesses' maximum cases of immoral trafficking. Women and girls from Assam are trafficked to the brothels of "Mumbai, Nagpur, Pune, Siliguri, Kolkata, Chappra and several other red light areas in Bihar and West Bengal"<sup>24</sup>. In Assam the districts affected are Dhubri, Kokhrajhar, Barpeta, Bonggaigoan, Nalbari, Kamrup, and Guwahati. In Assam economically poorer areas of the State in Barpeta, Darrang, Dhubri, Goalpara, slum areas of Guwahati like Hatigaon, Pandu and Barak Valley are the major places of trafficking. Jorhat, Lakhimpur, Sibsagar, Karim Nagar, Marigaon are some of the other districts which are affected by the Trafficking of women and violence and crime against women and girl child, such as rape, murder, forceful kidnapping and abduction are very high. Within the state women are increasingly taking up commercial sex in the districts of Guwahati, Nalbari, Silchar and in the regions along the Highways. Highways are also the main trafficking routes in Assam<sup>25</sup>. As per the aforementioned categorization of Northeastern states by Shakti Vahini, Assam is categorized as Category three states- in which concerns for women and child rights are moderate or low; crime rate is high; immoral trafficking is moderate or high; legal and administrative framework does not exist properly and state is seen to be lacking in effective implementing legal provisions.

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<sup>24</sup> Trafficking in India Report 2004, Shakti Vahini , Faridabad; available at <https://archive.crin.org/en/docs/traffickingreport.pdf> p.87. (last accessed on May 15<sup>th</sup> 2018)

<sup>25</sup> Ibid.

As far as trafficking from Assam is concerned, Delhi emerged as the most important destination, followed by Karnataka, and Maharashtra. It indicates to an important point that geographical distance is no longer a deterrent to human trafficking. Data collected from different sources by UNICEF between January 2011 to July 2013 (31 months). The two sets of data collected by CID on 'rescue' and 'missing children'. Both these set of data indicate a strong possibility of human trafficking. Out of 267 persons rescued by CID in the 31 months period, 56 % were girls, 24 % women and 20% boys. So it clearly indicates that females in general and girls in particular are more vulnerable to trafficking in Assam. UNICEF study based on the data collected from Child Welfare Committee over 31 months revealed that trafficked girls within Assam are engaged as child labour, especially domestic labour. Further, studies also revealed that majority of girls are also getting trafficked out of Assam for sexual exploitation<sup>26</sup>.

Looking into the high prevalence of immoral trafficking in some areas of Assam, on the directives of Ministry of Home Affairs “Investigative Unit for Crime Against Women” have been established in the District of Barpeta, Dhubri, Nagaon, Jorhat, Cachar and The Commissionrate of Guwahati City. Further, Thirty five (35) Numbers of Anti Human Trafficking Units (AHTU) have been established in the state of Assam. It is pertinent to mention that all districts of Assam have AHTU except Charaideo district. A dedicated task force has been created by Assam government comprising of Police, Home Department and Social Welfare Department to address the menace of human trafficking

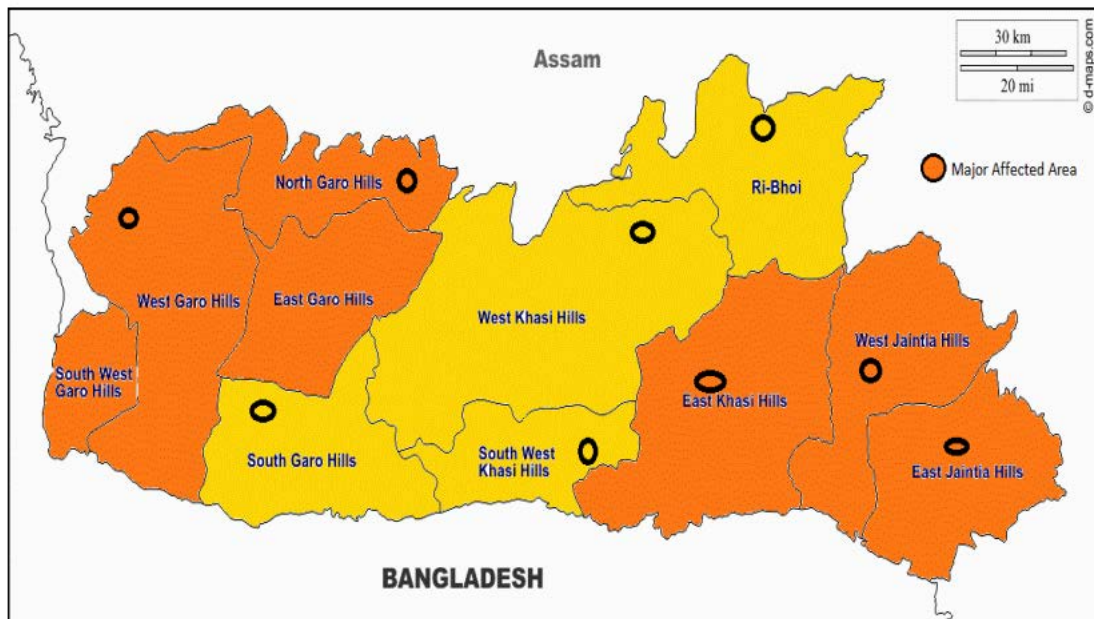
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<sup>26</sup> UNICEF Report: Secondary Data Analysis on Trafficking of Women and Children in Assam. 2014. available at <https://scpsassam.org/wp-content/uploads/2017/11/Assam-trafficking-report-March-2014.pdf> (last accessed on 15.09.2018)

and also suggest preventive measures. “Special Police Officers have been designated authorizing all the Dy. S.P (HQ), all Inspectors OC of PSs, all Circle Inspectors and all Inspectors of CID, to investigate crimes under ITP Act 1956 Act”<sup>27</sup>. Quick response teams have been formed to respond to the crime against women. Beside this, Women police commando: "Virangana" have been trained to quickly and efficiently respond to the cases pertaining to crime against women<sup>28</sup>.

#### 4.3.2. Meghalaya

**Human Trafficking affected areas in Meghalaya**



Source: Dolly Mishra (2019)<sup>29</sup>

Meghalaya shares international boundary with Bangladesh and Myanmar. Due to lack of proper fencing between Bangladesh and Meghalaya, the cross border migration of people

<sup>27</sup> Human Trafficking, Govt. of Assam, Assam Police. available at <https://police.assam.gov.in/portlets/human-trafficking>. (last accessed on 15.09.2018)

<sup>28</sup> Ibid.

<sup>29</sup> Dolly Mishra. *Impact of globalization on human trafficking in India A case study of the Northeastern region*, School of International Studies Central University of Gujarat (2019)(Unpublished Thesis), available at <http://hdl.handle.net/10603/331833> (last accessed January 15th 2020).

including children is rampant. It is also surrounded by state of West Bengal, Tripura, Manipur, and Mizoram. In the aforementioned diagram, the black spots: North Garo Hills, West Garo Hills, South Garo Hills, Ri-Bhoi, West Jaintia Hills, East Jaintia Hills, East Khasi Hills, and South West Khasi Hills are the prominent areas where victims are trafficked primarily from Assam, Bihar, Bhutan as well as Bangladesh<sup>30</sup>. Out of these trafficked victims a large number comprises of children. These children are trafficked mainly from West Bengal and Bangladesh and are conducive for coal mines of Meghalaya. It has been estimated that approximately 70,000 children were employed in the rat-hole mines of Meghalaya<sup>31</sup>. Meghalaya is not known for organised prostitution as no areas have been declared as Red light areas in any part of the state. But the phenomena of commercial sexual exploitation exists. “In the city of Shillong, a place called Police Bazaar is the main destination point for flesh trade of human beings for the purpose of commercial sexual exploitation”<sup>32</sup>.

On 15th September 2010, the Government of Meghalaya passed a notification for creation of Anti Human Trafficking Unit (AHTU) date 15th September 2010 in all districts of Meghalaya<sup>33</sup>. The notification appointing Special Police Officers under Section 13 (1) under ITPA was issued 1991. Special Police Officers for the purpose of the ITPA have been appointed. IGP, CID is appointed as NHRC State Nodal Officer on

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<sup>30</sup> Ibid.

<sup>31</sup> This mining technique resembles the scurrying of rats through narrow passages, and thus the name ‘rat-hole mining’. INGON’s Campaign Against Child Labour in Rat-Hole Mining of Meghalaya. Available at <https://impulsengonetwork.org/our-work/child-labour-rat-hole-mining/#:~:text=We%20have%20conducted%20several%20studies,in%20the%20rat%2Dhole%20mines.> (Last accessed on 15.04.2018)

<sup>32</sup> Dolly Mishra. *Impact of globalization on human trafficking in India A case study of the Northeastern region*, School of International Studies Central University of Gujarat (2019)(Unpublished Thesis), available at <http://hdl.handle.net/10603/331833> (last accessed January 15th 2020).

<sup>33</sup> ANTI HUMAN TRAFFICKING UNIT: WEST JAINTIA HILLS DISTRICT EXECUTIVE FORCE. Available at <http://jowaipolice.gov.in/ahtu.html>.(last visited on 15.09.2018)

Trafficking issues. A state level Coordination Committee under Commissioner & Secretary, Social Welfare was constituted in 2001<sup>34</sup>. In the light of these provisions made in the state of Meghalaya, it has been categorized as Best Performing in terms of tackling the menace of human trafficking.

#### **4.3.3. Mizoram**

Mizoram shares international borders with Myanmar and Bangladesh. It also shares border with neighboring states like Manipur, Assam and Tripura. In 2013, United Nations Office on Drugs and Crime (UNODC) revealed that “traffickers in Mizoram employ agents and have accomplices in the rural areas to lure girls from villages and from Myanmar with promises of lucrative jobs outside the state”. Further it also mentioned that, “many Mizo girls have been trafficked from Mizoram to Haryana and Mumbai for the purpose of commercial sexual exploitation and domestic servitude”<sup>35</sup>.

As per the Mizoram CID records, the perusal of cases between 2000 to 2008 reveal that, “at least 24 cases of human trafficking have been registered under the Immoral Traffic (Prevention) Act since 2000, of which 22 have been chargesheeted, one is pending and one was registered this year. The records say 38 people, some of them aged below 14, were victims of human trafficking while at least 46 people, including 16 non-tribals, were arrested in this connection during this period. Such cases were highest in 2004 and 2005 with four cases registered by the state police every year. However, no cases were

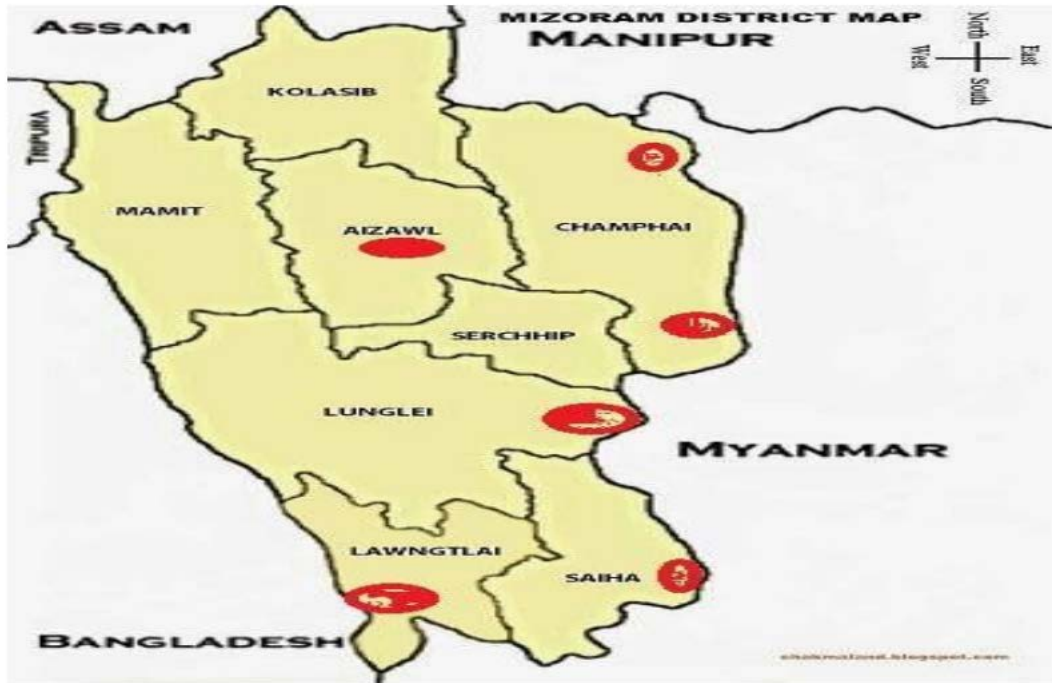
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<sup>34</sup> Trafficking in India Report 2004, Shakti Vahini, Faridabad; available at <https://archive.crin.org/en/docs/traffickingreport.pdf> p.89. (last accessed on May 15<sup>th</sup> 2018).

<sup>35</sup> UNODC. 2013. *India Country Assessment Report: Current Status of Victims Service Providers and Criminal Justice Actors on Anti-Human Trafficking*, Government of India: New Delhi.

registered in 2003, 2007, 2013, 2014 and 2015”<sup>36</sup>. The report mentions that the highest number of human trafficking cases in the state were of girls being forced into prostitution.

**Map 4.1.3: Human Trafficking affected areas in Mizoram**



Source: Dolly Mishra (2019)<sup>37</sup>

Officially speaking there are no red light Areas in Mizoram. 2 (two) Anti-Human Trafficking Units (AHTU) have been established in Mizoram at Aizawl District and Lunglei District. The Superintendent of Police CID (Crime) was appointed as state Anti-

<sup>36</sup> Henry L. Khojol. Human traffickers active in Mizoram. The Telegraph Online. 29th July 2018. Available at <https://www.telegraphindia.com/north-east/human-traffickers-active-in-mizoram/cid/1456282>. (last accessed on 08.04.2022)

<sup>37</sup> Dolly Mishra. *Impact of globalization on human trafficking in India A case study of the Northeastern region*, School of International Studies Central University of Gujarat (2019)(Unpublished Thesis), available at <http://hdl.handle.net/10603/331833> (last accessed January 15th 2020).

Human Trafficking Nodal Officer<sup>38</sup>. All Sub Divisional Police officers are appointed special Police Officers under the ITPA 1956. A Protective Homes for rescued persons have been set up in the state. Based on the measures taken to tackle the menace of human trafficking, Mizoram has been classified as Category two state- in which concerns for women and child rights are high or moderate; crime rate is low or moderate; immoral trafficking is moderate; legal and administrative framework exists and state is seen to be implementing legal provisions<sup>39</sup>.

#### **4.3.4. Manipur**

Manipur shares international border with Myanmar and domestically it shares border with the states of Mizoram, Assam and Nagaland. Drug trafficking is rampant in Manipur border with Myanmar<sup>40</sup>. Further, the local economy is in flux and due to persistent economic distress many women resort to commercial sex. “There are thousands of women engaged in commercial sexual activities in Imphal East, Imphal West and Churachandpur”<sup>41</sup>. Ajailu in her empirical work found that, “Poverty compelled the tribal women in Manipur to enter into flesh trade against their desires, culture and norms”<sup>42</sup>. Further, there are a large number of conflict-induced IDPs in Manipur because of the

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<sup>38</sup> ANTI HUMAN TRAFFICKING UNIT IN MIZORAM. Available at <https://police.mizoram.gov.in/cid-crime/> (last visited on 15.09.2018)

<sup>39</sup> Trafficking in India Report 2004, Shakti Vahini, Faridabad; available at <https://archive.crin.org/en/docs/traffickingreport.pdf> p.89. (last accessed on May 15<sup>th</sup> 2018).

<sup>40</sup> Ibid.

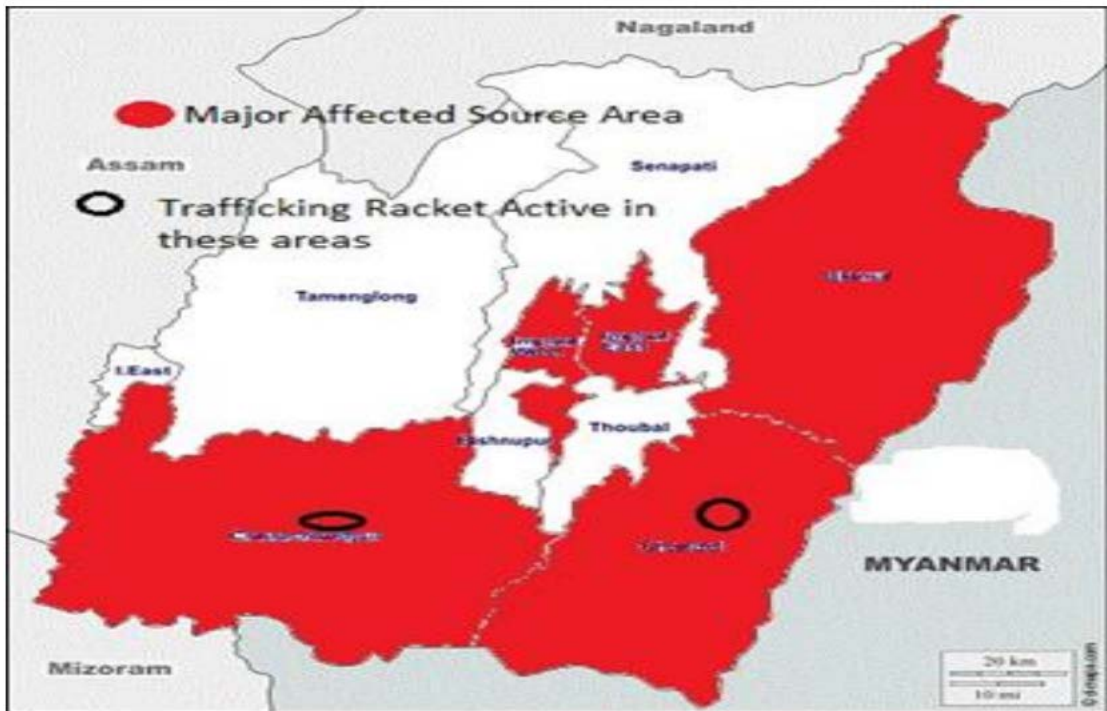
<sup>41</sup> Ibid. p. 91.

<sup>42</sup> Ajailu Niumai, “The politics of Trafficking amongst Tribal Women in Manipur-North- East India”, SNTD Women’s University, Mumbai, Winter June 18, 2012, available at <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.1005.488&rep=rep1&type=pdf#page=124> (last accessed on 06.03.2021). Pg.103



Naga-Kuki conflict there<sup>43</sup>. These socio-political factors further necessitate and facilitate human trafficking.

### Human Trafficking affected areas in Manipur



Source: Dolly Mishra (2019)<sup>44</sup>

Based on the measures taken by state of Manipur regarding human trafficking it has been placed in Category three: concerns for women and child rights are moderate or low; crime rate is high; immoral trafficking is moderate or high; legal and administrative framework does not exist properly and state is seen to be lacking in effective

<sup>43</sup> Ibid.

<sup>44</sup> Dolly Mishra. *Impact of globalization on human trafficking in India A case study of the Northeastern region*, School of International Studies Central University of Gujarat (2019)(Unpublished Thesis), available at <http://hdl.handle.net/10603/331833> (last accessed January 15th 2020).

implementing legal provisions<sup>45</sup>. Superintendents of Police of all districts in the State of Manipur have been appointed as Special Police Officers in 2003. State constituted an advisory body in each district of Manipur State in 2003, in pursuance of Sub- Section 3(b) of Section 13 of the “Immoral traffic Prevention Act” (ITPA) 1956<sup>46</sup>.

#### **4.3.5. Nagaland**

Nagaland shares international border with Myanmar and domestically it shares border with the states of Manipur, Assam and Arunachal Pradesh. “The region has experienced ethnic violence since independence, and although parts of the region are currently at peace, there are still a sizeable number of insurgents particularly in Nagaland, Manipur, Assam, and Tripura where widespread ethnic conflict has kept the entire Northeast disturbed for decades”<sup>47</sup>. Further, Northeast India also has a high percentage of people below the poverty line which makes it a vulnerable area at risk of human trafficking. Until 2001, little was known about the problem of human trafficking in this region but now its been debated and discussed to find a way out<sup>48</sup>.

Studies have also suggested that rapid urbanization has lead to rural-urban migration towards urban centers like Dimapur and Kohima. As result, men, women and children

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<sup>45</sup> Trafficking in India Report 2004, Shakti Vahini, Faridabad; available at <https://archive.crin.org/en/docs/traffickingreport.pdf> p.89. (last accessed on May 15<sup>th</sup> 2018).

<sup>46</sup> Ibid.

<sup>47</sup> Kharbhih, Hasina. ‘Human Trafficking Scenario in Northeast India,’ in Veerendra Mishra (ed). *Human Trafficking: The Stakeholders’ Perspective*, 347 (Sage, New Delhi, 2013).

<sup>48</sup> Ibid.

migrate rural areas of Nagaland to these urban centers of Nagaland. Due to poor economic conditions, many of them are vulnerable to sexual exploitation<sup>49</sup>.

A Senior Police Officer of Nagaland, Toshitsungba Aier, DIG (range) in a seminar on human trafficking in Nagaland commented that, Naga society is not free from prostitution, and he argued that, "nearly 1000 commercial sex workers" operate in Dimapur alone. These sex workers are operating underground because of social ostracism and harassment of police. Further, he said that, many Naga women and girls have been trafficked in the brothels of Bangalore, Pune, Chennai, Mumbai, Delhi, Kolkata. While deliberating upon the *modus operandi* of trafficking, Aier opined that the traffickers publish advertisements in local newspaper for employment with handsome package. Later after recruitment in the name of working outside state they force them into prostitution<sup>50</sup>.

Based on the measures taken by state of Nagaland regarding human trafficking it has been placed in Category four: concerns for women and child rights are low; crime rate is very high; magnitude of immoral trafficking is high; legal and administrative framework does not exist properly and state is not properly implementing legal provisions. However,

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<sup>49</sup> Neimenuo Kengurusie. 'Human Trafficking in North East India: Patterns and Emerging Trends', 7(1) Journal of North East India Studies, 115-124 (2017).

<sup>50</sup> Times of India. 2011. "Rising trafficking worries Naga Cops". Available at <http://timesofindia.indiatimes.com/city/guwahati/Rising-trafficking-worries-Naga-cops/articleshow/9498199.cms> (last accessed on May 18<sup>th</sup>, 2019).

Appointment of anti trafficking Police officer under ITPA has been done in all the Districts. All the districts of Nagaland have “anti-human trafficking units” (AHTUs)<sup>51</sup>.

#### **4.3.6. Sikkim**

Sikkim shares international borders in the West with Nepal, Tibet and China in north and east, and Bhutan in the Southeast. Domestically West Bengal borders Sikkim in the South. Sikkim is geographically poised in such a way that the international borders in the North and East are so tedious that cross border migration is difficult. It is in the West that the border with Nepal is porous from where there is an ease of migration.

Though Sikkim is a part of Northeast India but unlike other sister states of Northeast, Sikkim is not inflicted with ethnic conflict, acute poverty, internal displacement etc. In other states these were the factors which made the victims vulnerable and exposed them to the human traffickers. The per capita income in Sikkim is highest in the country. Therefore, in the state of Sikkim due its cultural ways and conflict less society, the crimes in general and human trafficking in particular is less. Only seven (7) cases were registered pertaining to human trafficking from 2001 to 2010<sup>52</sup>.

The Sikkim Police, “formally established the Anti Human trafficking Unit in the CID branch, on 18th May, 2011 under the overall supervision of the SP/CID...Currently the AHTU, Sikkim Police is manned by Staff from within the CID branch provided by the

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<sup>51</sup> Shiv Sahay Singh. Discrepancies bog down Anti Human Trafficking Units, study finds. *The Hindu*. August 8th, 2020. Available at <https://www.thehindu.com/news/national/discrepancies-bog-down-anti-human-trafficking-units-study-finds/article32305052.ece>, (last accessed on April 10th 2022).

<sup>52</sup> Anti Human Trafficking Unit, Sikkim Police, available at <http://sikkimpolice.nic.in/ahtu.html#:~:text=ANTI%20HUMAN%20TRAFFICKING%20UNIT,-The%20Sikkim%20Police&text=Currently%20the%20AHTU%2C%20Sikkim%20Police.inspector%20and%20one%20lady%20constable>. (last accessed on May 25th, 2019).

Sikkim Police, which includes an ASP in-charge of AHTU, one Police Inspector, one lady sub inspector and one lady constable”<sup>53</sup>.

Sikkim is one of the best performing state in terms of tackling the vice of human trafficking. SDPOs of four Districts have been appointed as the Special Police Officers under the mandate of ITPA. A Co-ordination Committee under the chairmanship of the Chief Secretary has also been constituted in 2001 in pursuance of Supreme Court Order in Gaurav Jain vs. Union of India & Ors. Based on the measures taken by state of Sikkim regarding human trafficking it has been placed in Category one: concerns for women and child rights are high; crime rate is low; immoral trafficking is negligible or absent; robust legal and administrative framework exists and effective implementation of legal provisions is ensured by the state.

#### **4.3.7. Arunachal Pradesh**

Arunachal Pradesh shares international borders with Bhutan, Tibet and Myanmar. Domestically it shares border with the state of Assam. Arunachal Pradesh is both the source and transit point for human trafficking. Scholars observe that, "A large number of tribal communities live around the international borders in Arunachal Pradesh. They face problems such as conflict, insurgency, and unemployment. Due to their economic vulnerabilities and the persistence of political conflict within state, the people of Arunachal Pradesh are easy targets for the agents of human trafficking. Traffickers target these people and convince them with promises of livelihoods and employments. The

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<sup>53</sup> Ibid.

victims are then sent to work under hazardous conditions”<sup>54</sup>. Certain points in Arunachal Pradesh like Raga and Deejo are source points for trafficking<sup>55</sup>. According to a UNI report, “the North- East is at high risk of trafficking due to displacement from armed conflict. Over 20,000 people are displaced in Assam, 70,000 in Manipur, 60,000 in Tripura and 3,000 in Arunachal Pradesh”<sup>56</sup>. As per National Crime Records Bureau’s annual publication “Crime in India 2020”, Arunachal Pradesh has eight (08) Anti Human Trafficking Units (AHTUs) to effectively tackle the menace of human trafficking.

#### **4.3.8. Tripura**

Tripura shares international border with Bangladesh on three sides. Domestically it is surrounded by Assam on the North and Mizoram on the Eastern side. The long porous international border with Bangladesh makes human trafficking feasible. Further, Tripura has witnessed insurgency for a long period of time, insurgency coupled with ethnic conflict and poverty predisposes the vulnerable masses to fall prey to human trafficking. Studies reveal that, "A large number of people are trafficked from the village area of

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<sup>54</sup> Dolly Mishra. *Impact of globalization on human trafficking in India A case study of the Northeastern region*, School of International Studies Central University of Gujarat (2019)(Unpublished Thesis), available at <http://hdl.handle.net/10603/331833> (last accessed January 15th 2020).

<sup>55</sup> Ibid.

<sup>56</sup> International Displacement Monitoring Centre report quoted in Ajailu Niumai’s empirical work “The politics of Trafficking amongst Tribal Women in Manipur-North- East India” SNDT Women's University, Mumbai, Winter June 18, 2012, available at <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.1005.488&rep=rep1&type=pdf#page=124> (last accessed on 06.03.2021)

Sonamura district to metro cities like Kolkata, Delhi, and Mumbai for the purpose of labour and commercial sexual exploitation"<sup>57</sup>.

Further, in Northeastern states, “nearly 2,00,000 people are living in different camps without proper basic amenities”<sup>58</sup>. It predisposes them to traffickers who prey on these vulnerable people living in inhumane conditions of refugee camps. According a news report, Tripura police detained eight tribal Bru refugee girls from six relief camps of North Tripura's Kanchanpur while they were being trafficked to Gujarat. These girls according to the police report were trafficked by luring them of a better life prospects<sup>59</sup>.

#### Land Routes for Trafficking from Bangladesh

District in Bangladesh	Transit Upazila	Trafficking Route or last transit point in Bangladesh	Transit Point in India
Brahmanbaria	Akhaura	Gopinathpur	Agartala
Chaudanga	Jiban Nagar	Darshana	Belonia
Comila	Chhouddagram	Chouara	Agartala
	Burichang	Rajapur	Agartala

Source: Shamin and Kabir<sup>60</sup>

<sup>57</sup> Dolly Mishra. *Impact of globalization on human trafficking in India A case study of the Northeastern region*, School of International Studies Central University of Gujarat (2019)(Unpublished Thesis), available at <http://hdl.handle.net/10603/331833> (last accessed January 15th 2020).

<sup>58</sup> Jayanto Choudhury and Purbita Gupta. *Trafficking in Women and Children: Tripura Perspective*. (Naba Chandan Prakashan, Agartala, 2012).

<sup>59</sup> Tripura cops rescue 10 Brus from trafficking. Available at [http://timesofindia.indiatimes.com/articleshow/53042603.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/53042603.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst) (last accessed on May 15<sup>th</sup> 2020)

<sup>60</sup> Shamim I and Kabir F. *Child trafficking: the underlying dynamics*. 88 (Dhaka, Center for Women and Children Studies, 1998).

The aforementioned detail in the table provides the transit point in bordering region of Bangladesh and Tripura, India for human trafficking. In India the main transit points are Belonia and Agartala. Based on performance of state in terms of tackling human trafficking Tripura has been categorized as Category four states where concerns for women and child rights are low; crime rate is very high; magnitude of immoral trafficking is high; legal and administrative framework does not exist properly and state is not properly implementing legal provisions.

#### **4.4. Summing Up**

It is increasingly being noticed that India has emerged source, destination and transit nation for human trafficking in general and trafficking of women in particular. Due to its geographical location, Northeast sharing with China, Bhutan, Myanmar and Bangladesh, places the region at high risk of cross-border trafficking extensive international border places the region at high risk of cross-border trafficking. A detailed analysis points out how trafficking is a structural crime because of complicity of state machinery. The data reveals that among the North Eastern states the state of Assam, Manipur, Tripura and Nagaland witnesses relatively more cases of immoral trafficking than other Northeastern states. Whereas, Meghalaya and Sikkim are best performing states in terms of tackling the menace of human trafficking. Any concerted effort to tackle the menace of human trafficking needs to take into cognizance the state specific scenario into account.



## CHAPTER- V

### PENAL POLICY ON COMBATTING TRAFFICKING OF WOMEN

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#### 5.1. Introduction

Penal policy is understood to mean a rational state response to crime.<sup>1</sup> The present chapter aims at understanding the penal policy to combat trafficking of women. In order to identify Penal Policy of India this chapter also deliberates upon the administration of criminal justice system of India. While deliberating upon the penal policy of India, this chapter deals with: policy of general deterrence; theory of incapacitation; theory of reformation; public prosecution; standard of proof; release of offenders on probation of good conduct;; juvenile offenders: sentencing policy; and executive clemency. Furthermore, penal policy of India on combating human trafficking is reflected in the legal framework against immoral trafficking. Some of the major provisions dealt in the subsequent section are following: India Penal Code, 1860; Criminal Procedure Code, 1973; Immoral Traffic (Prevention) Act, 1956; Protection of Children from Sexual Offences Act, 2012.

#### 5.2 Penal Policy: An Overview

The very emergence of penal policy as a field is premised on a range of influential ideas on modern political philosophy, most notably those of Beccaria<sup>2</sup> and Bentham.<sup>3</sup>

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<sup>1</sup> Nicola Lacey, David Soskice et al, Understanding the Determinants of Penal Policy: Crime, Culture, and Comparative Political Economy, 1 *Annual Review of Criminology* .p 195-217(2018).

<sup>2</sup> C. Beccaria, *On Crimes and Punishments*. (Seven Treasures Publ, Huntingstone, 1764)

<sup>3</sup> J. Bentham. *An Introduction to the Principles of Morals and Legislation*. (Athlone Press, London, 2<sup>nd</sup> Ed, 1781).

However the determinants of penal Policy remained unexplored for a long time till twentieth century. Labeling theory<sup>4</sup> called into question the standard assumption that penal policy was a rational state response to crime. Labeling theory posited a causal link between punishment and crime implying that the social practices of criminalization and punishment were playing broad societal roles and were hence driven by broad political-economic forces that helped to explain the policy decisions that were the proximate causes of penal practices criminalization.

The aims of a Penal Policy could be identified as follows<sup>5</sup>:

1. A concern to develop clear principles for the assignment of some offenders to prison, some to community sanctions;
2. A desire to base punishment on the seriousness of the offence and/or likelihood of reoffending rather than on the needs or circumstances of the offender;
3. A concern with rights (formally defined) rather than remedies - rights of offenders to fair punishment; rights of the public to protection from predatory criminals; rights of the state to retribution and of victims to compensation.

Phrases—“penal policy” “punishment policies, practices, and outcomes” are generally used to describe Penal Policy but they are not sufficient on their own to indicate Penal Policy of a country “as it is an unspecified mix of attitudes, enactments, motivations, policies, practices, and ways of thinking that taken together express greater intolerance of deviance and deviants, and greater support for harsher policies and severer

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<sup>4</sup> H. Becker, *Outsiders*. (New York: Free Press, New York, 1963)

<sup>5</sup>Hudson B.A. *Penal Policy and Criminal Justice*, 122-148 (Penal Policy and Social Justice. Palgrave, London, 1993)

punishments.”<sup>6</sup> Among important indicators are the enactment, and effectuation of harsher policies, whether harsher policies are broadly or narrowly focused, whether and in what ways practices change in response to new policies, and whether harsher policies and practices characterize both the juvenile and adult systems and only one of them<sup>7</sup>. Perhaps the most obvious candidate for an explanation of how penal policy develops lies in crime: After all, the politicians, policy experts and practitioners in the criminal justice system, who create, shape, and interpret penal policy, regularly articulate their concern with crime as well as operate within an institutional framework explicitly justified as a response to crime, understood variously as harmful, wrongful, pathological, and/or costly forms of behavior<sup>8</sup>.

Thus Penal Policy can be understood to be a Policy which determines what to punish, how to punish and how much to punish and the objectives intended to be achieved by the punishment. It contemplates the nature and quantum of punishment. It could be different in different countries and it can vary for varying nature of offences within a country.

### **5.3 Administration of Criminal Justice**

In order to identify Penal Policy of India it will be in the fitness of things to understand the administration of criminal justice system of India. Administration of

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<sup>6</sup> Michael Tonry, *Crime and Justice*, 36 *Crime, Punishment, and Politics in a Comparative Perspective*, p 1-48 (2007)

<sup>7</sup> *Supra* note. 6

<sup>8</sup> *Supra* note. 1

criminal justice in India is founded on a principle that a criminal act or omission which has been made punishable by a law for the time being in force is not only an offence committed against the person who suffers harm but is also a wrong against the society. The structure of our criminal law, can be identified in the Indian Penal Code (I.P.C) along with other penal laws and the Criminal Procedure Code (Cr.P.C), I.P.C 1860. Penal Laws prohibit the doing of certain acts or omissions and prescribes punishment for doing the act which has been prohibited. Mensrea is an essential ingredient of the offences manifested by the use of terms like dishonestly, voluntarily knowingly, fraudulently; maliciously etc. crimes against the state, counterfeiting coinage do not require mensrea. All the offences mentioned under the Indian Penal Code and other penal laws have to be read subject to the provisions of Section 6 I.P.C<sup>9</sup>. Children below the age of 12 years have been absolved of criminal liability unless it is proved that the child has attained sufficient maturity to understand the nature and consequences of his act.<sup>10</sup>The Indian Penal Code, 1860 also contain provisions dealing with extraterritorial jurisdiction under Section 3 and Section 4.<sup>11</sup>Section 3 of the IPC gives criminal jurisdiction to the court to try a person who is

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<sup>9</sup> Indian Penal Code, 1860(Act no. 45 of Year 186) Sec 6-Definitions in the Code to be understood subject to exceptions.—Throughout this Code every definition of an offence, every penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the Chapter entitled Section 6 I.P.C “General Exceptions”, though those exceptions are not repeated in such definition, penal provision, or illustration.

<sup>10</sup>. Indian Penal Code, 1860(Act no. 45 of Year 186) Sec 8-Act of a child above seven and under twelve of immature understanding.—Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

<sup>11</sup> Indian Penal Code, 1860(Act no. 45 of Year 186) Sec 3. Punishment of offences committed beyond, but which by law may be tried within, India.—Any person liable, by any Indian law to be tried for an offence committed beyond India shall be dealt with according to the provisions of this Code for any act committed beyond India in the same manner as if such act had been committed within India: Section 4 Extension of Code to extra-territorial offences. —The provisions of this Code apply also to any offence

subject to Indian laws and has committed the offence beyond the territorial limits of India. In such a case, the person will be held liable for an offence in the same manner as the criminal act has been committed within India. The defence that such an act is not an offence under the ordinary laws of the country where the offence has been committed, will not be available to the person so accused of committing the crime beyond the territorial jurisdiction of India. The scope of section 3 is wide enough as it not only makes Indian citizens liable for an offence committed abroad, but also those who are not subject to Indian Laws has committed a crime against an Indian. If we look at the provisions of Indian Penal Code it will be found that in most of the cases it has provided for the maximum punishment which a criminal court can award to the offender. In certain circumstances minimum punishment has also been provided. Except in so far providing maximum punishment and minimum punishment as may be the case a wide discretion has been provided to the Judge in the matter of awarding the nature and amount of punishment. The Code of Criminal Procedure is a law of Procedure. The purpose of the code is to provide machinery for prosecution, trial and punishment of offenders as provided under the substantive criminal law. i.e., Indian Penal Code and other penal laws legislated by the State from time to time. The rules of procedure as provided by the Code of Criminal Procedure regulate the procedure in

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committed by—(1) any citizen of India in any place without and beyond India;(2) any person on any ship or aircraft registered in India wherever it may be;<sup>9</sup> (3) any person in any place without and beyond India committing offence targeting a computer resource located in India Explanation.—In this section—(a) the word “offence” includes every act committed outside India which, if committed in India, would be punishable under this Code;(b) the expression “computer resource” shall have the meaning assigned to it in clause (k) of sub-section (1) of section 2 of the Information Technology Act, 2000.

the administration of criminal justice. The Important objectives of the Code of Criminal Procedure are: to provide an opportunity to the accused person to get a fair trial in accordance with the principles of natural justice and to make every possible efforts to prevent delay in investigation and provide justice to the victim, accused and the society at large as we have seen above that the criminal wrongs are committed not only against the individual but the state as well.

It provides a detailed scheme for working of various functionaries of the state to help and assist the administration of Criminal Justice in India. The investigation, inquiry and trial of the offences stated under the I.P.C or any other penal laws created by the state. However the procedure provided under the Code of Criminal Procedure is subject to any other law that may be in force which regulates the manner of investigation, inquiry or trial of the matter. The Code of Criminal procedure also provides a mechanism for providing compensation to the victims of crime.<sup>12</sup> Though the Criminal Courts seldom exercises the power of providing compensation to the

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<sup>12</sup> The Code of Criminal Procedure, 1973 (Act no 2 of 1974) Sec 357-Order to pay compensation:. (1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment order the whole or any part of the fine recovered to be applied-

- (a) in defraying the expenses properly incurred in the prosecution;
- (b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;
- (c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;
- (d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto

victims of crime. In Hari Singh v. Sukhbir Singh and Ors<sup>13</sup>, the Court held: “Sub-section (1) of Section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused. In this case, we are not concerned with Sub-section (1). We are concerned only with Sub-section (3). It is an important provision but Courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the Court to award compensation to victims while passing judgment of conviction. In addition to conviction, the Court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused. It may be noted that this power of Courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system.”

As per Seventh Schedule, of the Constitution of India ‘Police’ and ‘Public Order’ are State subjects. Thus the primary responsibility of prevention, detection, registration, investigation and prosecution of crimes, lies with the State Governments. However, the Government of India in appropriate matter of prevention and control of crime through the Ministry of Home Affairs issues advisory to state Governments. The state Governments having regard to the needs and the attending circumstances may make special laws to deal with a crime.<sup>14</sup> It is also empowered to make suitable

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<sup>13</sup>. HariKishan&AnrvsSukhbir Singh &Ors (1988) 4 S.C.C. 551

<sup>14</sup>. For instance The Maharashtra Control of Organised Crime Act, 1999 is a law enacted by the state of Maharashtra in India in 1999 to combat organised crime and terrorism. Known as 'MCOCA' Similarly various states have enacted state laws to deal with the issue of witch hunting The Prevention of Witch (Daain) Practices Act, 1999: Bihar.The Prevention of Witch (Daain)Practices Act, 2001-Jharkhand:ChhattisgarhTonahiPratadnaNivaran Act, 2005:The Odisha Prevention of Witch Hunting Act, 201:The Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and

amendments in the Code of Criminal Procedure to fulfill the specific needs of the state to deal with crime. The amendment so made by the state government will be effective within the state only. The provisions of Cr.P.C are applicable where offence inquired into, tried or otherwise dealt with has been committed under the Indian Penal Code or under any Special law made by the Central government or State Government and the offence.

Section 188(4) Cr.P.C gives criminal jurisdiction to the court to try for an offence where any person who has committed the offence beyond the territorial limits of India is subject to Indian laws. In such a case, the person will be held for an offence in the same manner as if such an act has been committed within India. The Criminal Procedure Code classifies offenses into two categories i.e., cognizable and non-cognizable offenses, further classification has been done by the code to distinguish offenses under the Indian Penal Code based on the magnitude of the punishment as a bailable and non-bailable offense.<sup>15</sup> It has been observed that all serious offences have been made cognizable and non bailable. The other kind of classification has been made on the basis of compoundable and non compoundable. Section 320 provides for the Compounding of offences and provides that the offences punishable under the sections of the Indian Penal Code may be compounded by the persons mentioned in

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Aghori practices and black magic Act, 2013: The Rajasthan Prevention of Witch Hunting Act, 2015. The Assam Witch Hunting (Prohibition, Prevention and Protection Act) 2015: The Goa Children's Act, 2003.

<sup>15</sup> Indian Penal Code, 1860(Act no. 45 of Year 186) Sec 2(c) "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant; Section 2 (a) "bailable offence" means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and non-bailable offence means any other offence.



the third column of that Table. It is pertinent to mention that most of the serious offences have been made non compoundable<sup>16</sup>.

The Code of Criminal procedure contemplated adversarial system of trial. Though certain elements of inquisitorial system are also present. For example Judge's power to put questions or order production of document or a thing which the court deems fit for arriving at truth<sup>17</sup>. Similarly under the provisions of Section 313 Cr.P.C the court is empowered to provide an opportunity to the accused to explain the circumstances appearing against the accused. However the accused is not bound to answer the questions put by the Court.<sup>18</sup> Though the system which has been contemplated under the Code of Criminal Procedure is adversarial but it does not preclude the court to enquire the truth but the criminal courts at times do not take proactive role to come to the truth. In the case of Pappu vs. The State of

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<sup>16</sup> Compoundable offences are those offences where, the complainant (one who has filed the case, i.e. the victim), enter into a compromise, and agrees to have the charges dropped against the accused. However, such a compromise, should be a "Bonafide," and not for any consideration to which the complainant is not entitled to: In Non-compoundable offense, no compromise is allowed. Even the court does not have the authority and power to compound such offense.

<sup>17</sup> Indian Evidence Act 1872 (I. of 1872) Sec 165—The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question: Provided that the Judgment must be based upon facts declared by this Act to be relevant, and duly proved: Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the questions were asked or the documents were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

<sup>18</sup> The Code of Criminal Procedure, 1973 (Act no 2 of 1974) Sec 313-Power to examine the accused.(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court-(a) may at any stage, without previously warning the accused, put such questions to him as the Court considers necessary;(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case: Provided that in a summons- case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

Maharashtra<sup>19</sup> the supreme Court commented “A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead to the discovery of the fact in issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty.” In the case of Ram Chander Vs. State of Haryana,<sup>20</sup> Hon'ble Court observed “The adversary system of trial being what it is, there is an unfortunate tendency for a judge presiding over a trial to assume the role of a referee or an umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inevitable distortions flowing from combative and competitive element entering the trial procedure. If a criminal court is to be an effective instrument in dispensing justice, the presiding judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth.”

It is a fundamental rule of Criminal justice administration that the accused person is presumed to be innocent unless his guilt is proved beyond reasonable doubt.<sup>21</sup> The principle is based on legal adage that it is better that ten criminals escape than that one innocent person is wrongfully convicted. Though this is not an inviolable

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<sup>19</sup>The Commissioner Of Income Tax ... vsGhatgePatil Transport Lt, 14.10.2014 - BOMHC

<sup>20</sup>Ram Chandervs State Of Haryana, (1981) 3 SCC 191

<sup>21</sup>. Babu Singh v. State of Punjab, (1964) 1 Cri. LJ 566 at 572

rule of law that the accused has to be presumed innocent. There are certain offences like offence of rape there is a presumption against consent to sexual intercourse.<sup>22</sup> Similarly in the case of dowry deaths under section 304B of I.P.C<sup>23</sup> there is a presumption under section 113b of Indian Evidence Act regarding dowry death<sup>24</sup>. Under section 29 of Offences under Protection of Children from Sexual Offences (POCSO) Act, 2012 where a person is prosecuted for committing an offence against a minor child it will be presumed that he has committed the offence he is accused of. Similarly under section 30 the court can presume the culpable mental state of the accused where he is prosecuted for committing an offence against the minor child. Section 6 in the Immoral Traffic (Prevention) Act, 1956 provides that: “Where any person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offence under sub-section (1). Where a child or minor found in a brothel, is on medical examination, detected to have been sexually abused, it shall be presumed, unless the contrary is proved, that the child or minor has

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<sup>22</sup>. Indian Evidence Act 1872 (I. of 1872) Sec 114A- Presumption as to absence of consent in certain prosecutions for rape.—In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of section 376 of the Indian Penal Code, (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.

<sup>23</sup>. Indian Penal Code, 1860 (Act no. 45 of Year 186) Sec 304B. - (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

<sup>24</sup>. Indian Evidence Act 1872 (I. of 1872) Sec 113B, Presumption as to dowry death.—When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death. Explanation.—For the purposes of this section, “dowry death” shall have the same meaning as in section 304B, of the Indian Penal Code, (45 of 1860).

been detained for purposes of prostitution or, as the case may be, has been sexually exploited for commercial purposes..... A person shall be presumed to detain a woman or girl in a brothel or in or upon any premises for the purpose of sexual intercourse with a man other than her lawful husband, if such person, with intent to compel or induce her to remain there,— (a) Withholds from her any jewellery, wearing apparel, money or other property belonging to her, or (b) threatens her with legal proceedings if she takes away with her any jewellery, wearing apparel, money or other property lent or supplied to her by or by the direction of such person.”

The Code of Criminal Procedure provides bifurcated Criminal trial.<sup>25</sup> The Criminal court in trial of Warrant case or a Session Court in a Session trial decides in the first stage whether the accused is guilty. Once the accused is declared to be guilty and the Court does not proceed according to the provisions of Section 360 Cr.P.C, hears the accused on the amount of punishment.<sup>26</sup> It is pertinent to mention here that the deviation from the provisions of section 235(2) Cr.P.C is not permissible to the court and the court is under the onerous duty to hear the accused on the sentence. It should not be a mere formality. Though no time gap has been provided by the Code for the hearing of the accused on the point of the sentence after he is found to be guilty but it has been settled that the person should be in a condition to make effective representation on the point of his sentence. The Supreme Court in the case of *AllauddinMian&Ors. Sharif Mian& others vs. State Of Bihar*<sup>27</sup> stated “A sentencing

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<sup>25</sup>Bifurcated trial means that the trial is conducted in two stages First step is the determination of guilt and the second step is the award of proper sentence to the offender.

<sup>26</sup> The Code of Criminal Procedure, 1973 (Act no 2 of 1974) SS 235(2), 248(2)

<sup>27</sup>*AllauddinMianvs State Of Bihar*, AIR1989 S.C 1456

decision taken without following the requirements of sub-section (2) of section 235 of the Code in letter and spirit may have to be replaced by an appropriate order”.....The sentencing court must approach the question seriously and must endeavour to see that all the relevant facts and circumstances bearing on the question of sentence are brought on record. Only after giving due weight to the mitigating as well as the aggravating circumstances placed before it, it must pronounce the sentence. We think as a general rule the Trial Courts should after recording the conviction adjourn the matter to a future date and call upon both the prosecution as well as the defence to place the relevant material bearing on the question of sentence before it and thereafter pronounce the sentence to be imposed on the offender.”

The administration of Criminal justice system followed in India for dispensation of criminal justice in India is the adversarial system. In adversarial system responsibility for the production of evidence is placed on the opposing party and the judge acts as a neutral referee between the parties. The accused even enjoys the right to silence and cannot be compelled to reply. The principle that the accused person is presumed to be innocent unless his guilt is proved beyond reasonable doubt is of cardinal importance in the administration of justice.<sup>28</sup> Actually this principle is based on legal adage that it is better that ten criminals escape than that one innocent person is wrongfully convicted. It can be inferred that the various rights provided to the accused remains well protected during the course of trial accused. He is presumed to be innocent and the burden is entirely on the prosecution to prove beyond reasonable doubt that he is guilty. The Prosecution has to stand on his legs. The judge

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<sup>28</sup>Babu Singh v. State of Punjab (1964) 1 Cri. LJ 566 at 572

acts like an umpire to see whether the prosecution has been able to prove the case beyond reasonable doubt and gives the benefit of doubt to the accused. In spite of various presumptions as pointed out above in case of certain offences against women and children the system is aligned in favour of the accused and is insensitive to the rights and the physical, mental and social sufferings of the victims.<sup>29</sup>

#### **5.4 Penal Policy of India**

Penal Policy of a country is its policy choice dependent upon the shared moral attitudes of the people their Constitutional aspirations. The country shapes its contemporary penal policy having regard to the social and political temperament against the crime, criminals and the victims thereof. The theories of punishment are used to rationalize the policy. Policy framers then decide to adhere to theories of punishment which advances their policy goals. However adherence to a particular theory and Penal Policy are not static but are transitory in nature. It also depends upon historical experience and the nature of the governance of the country. However the theories of punishment work other way also in so far it influences the policy against crime and the offenders. Propriety of a Criminal sanctions, are largely determined by the theory of punishment to which they subscribe. People agree with the theory of punishment that is most likely to generate the outcome they believe is the correct one. Thus theories of punishment are intricately related to penal Policy of the Country.

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<sup>29</sup>Government of India, Report: *Committee on Reforms of Criminal Justice System* (Ministry of Home Affairs, March 2003)

There are three justifications traditionally advanced in support of punishment in general, namely, (1) reformation; (2) retribution and (3) deterrence. These are the three justifications or rationalizations of punishment. If it cannot be justified with reference to one or the other of these three penological purposes, it will be regarded as arbitrary and irrational. The purpose of punishment is (1) to discourage and he is deterred from repeating the crime in future. (2) to confine the offender so that he may not be in a condition to harm the society; and (3) to reform and rehabilitate the offender. In a civilised society there is no place for punishment without any objective to achieve. It cannot be for vengeance or retribution.<sup>30</sup> Though retribution as a purpose of punishment can be dismissed on both moral and logical grounds, the desire for vengeance is an inherent attitude against a harm caused by the offender. It has been argued that there are certain criminal conduct which is so atrocious that society demands deterrence against the offence and retribution outweighs any considerations of reform or rehabilitation of the perpetrator.<sup>31</sup> Retribution though regarded by some as a proper end of punishment, it lacks any legitimate space in an enlightened philosophy of punishment.<sup>32</sup> Our approach regarding punishment of the offender is rationalizations, of penal policy<sup>33</sup>.

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<sup>30</sup>Bachan Singh and Ors. vs. State of Punjab and Ors, AIR 1980 SC 898

<sup>31</sup> Ibid

<sup>32</sup> Ibid

<sup>33</sup>Robert S. Redmount, Some Basic Considerations Regarding Penal Policy, 49 J. Crim. L. Criminology & Police Sci. 426 (1958-1959).

#### 5.4.1 Policy of General Deterrence

Bentham<sup>34</sup> and Beccaria<sup>35</sup> emphasised the instructional nature of punishment and is aimed at the general deterrence of crime.<sup>36</sup> Sometimes, it is the deterrence theory which over weights the mind of the judge, in the cases where the nature of the crime committed is heinous in nature or express extreme depravity. In any case, it cannot be denied that the purpose of punishment is deterrence, guided by the considerations of justice.<sup>37</sup> In certain conditions especially when it comes to award punishment to a person for being involved in a heinous crime, the deterrence theory as a rationale for punishing the offender becomes necessary. In such cases, there is no scope for mercy, and compassion. In the cases where the deterrence theory needs to be applied, while determining the quantum of sentence, discretion lies with the Court. However in the course of exercising the judicial discretion, the Court should be guided by reason and fair play, the discretion should not be based on individual whim or caprice. It is the duty of the Court to impose adequate sentence, having regard to the protection of the society and also a legitimate response to the collective conscience.<sup>38</sup> Protection of society and prevention of criminal activities must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a tool of social control should meet the challenges confronting the society. Friedman in his "Law in Changing Society" stated that, "State of criminal law continues to be - as it should be - a decisive reflection of social consciousness of society". Therefore the court law under no

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<sup>34</sup> Supra note 3 at 426.

<sup>35</sup> Supra note 3

<sup>36</sup> Supra note 33

<sup>37</sup> State of Himachal Pradesh vs. Nirmala Devi, 10.04.2017 - SC

<sup>38</sup> Ibid



condition hesitate to adopt the corrective machinery or the deterrence based on facts of the case. The proper sentence meets the criterion of sternness where it should be, and it should be instilled with mercy where ever it is required.<sup>39</sup> In State TR. P.S. Lodhi Colony, New Delhi v. Sanjeev Nanda<sup>40</sup>, Justice K.S. Radhakrishnan, in his separate opinion, in context of adequate sentencing, has expressed as follows:

“Law demands that the offender should be adequately punished for the crime, so that it can deter the offender and other persons from committing similar offences. Nature and circumstances of the offence; the need for the sentence imposed to reflect the seriousness of the offence; to afford adequate deterrence to the conduct and to protect the public from such crimes are certain factors to be considered while imposing the sentence.”

#### **5.4.2 Theory of Incapacitation**

Incapacitation of an offender prevents future crime by secluding the offender from society. Means and methods of incapacitation are imprisonment or execution of death sentence. Incapacitation reduces the possibility of committing crime through direct and active involvement during the incarceration experience. Though it is not impossible to commit a crime in prison, the possibility is largely impaired by the strict control and vigil of prison authorities. It will be difficult for a person to commit crime with the same level of comfort as was the case prior to their imprisonment. It is needless to point out here that prevented crimes directly benefits the society.<sup>41</sup>

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<sup>39</sup> State of Himachal Pradesh vs. Chander Parkash, 12.06.2013 - HPHC

<sup>40</sup> State TR. P.S. Lodhi Colony, New Delhi v. SanjeevNanda ,2102 CrI.L.J. 4174 (SC).

<sup>41</sup>S.D, Bushway .Incapacitation, Encyclopedia of Criminology and Criminal Justice, 2443(2014).

### 5.4.3 Theory of reformation

The reformatory theory is also known as rehabilitative sentencing. The purpose of punishment is reformation of the offender and to bring him back to the society as a law adhering member of the society. The nature and purpose of the correctional philosophy in criminology has been aptly described by Justice Krishna Iyer, "Every saint has a past and every sinner a future, never write off the man wearing the criminal attire but remove the dangerous degeneracy in him, restore his retarded human potential by holistic healing of his fevered, fatigued or frustrated inside and by repairing the repressive, though hidden, injustice of the social order which is vicariously guilty of the criminal behavior of many innocent convicts. Law must rise with life and jurisprudence responds to humanism."<sup>42</sup> The reformatory theory of punishment is based on a premise that every man is born good but circumstances transform him into a criminal.<sup>43</sup>

Among the conflicting theories of punishment modern criminologists are emphasizing the need of reformatory approach towards the criminal as the most beneficial aspect. Retributive theory of punishment has no place in the civilised society. The civilised society has realised that retribution cannot successfully address the rising criminal offences. The modern diagnosis of cause of crime made by criminologists has drastically changed the approach towards crime and punishment. The purpose of punishment has now shifted from retribution to reformation so that the original man, who was the law adhering person could be taken out from the ailing

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<sup>42</sup>Raju vs. The State of Maharashtra and Ors. (1998) 100 BOMLR 439

<sup>43</sup>State of Gujarat and Ors. vs. Hon'ble High Court of Gujarat, 24.09.1998 – SC.

criminal.<sup>44</sup> The sentencing policy needs to be fine tuned with the modern penological principles with changing time. Undoubtedly, the necessary emphasis should lie on the gravity of the offense while deciding the quantum of sentence. But at the same time, other guiding elements of possibility of rehabilitation of the offender including, consideration to the grounds for mitigation of sentence should also be considered within the province of judicial discretion. The awarding of proper and proportionate punishment remains the onerous duty of the Courts and they should not be carried away by the factors which are not relevant to the case while deciding the quantum of sentence. The factors which should be considered relevant will depend on the facts and circumstances of each case, and cannot be formalized.<sup>45</sup>

#### **5.4.4 Public Prosecution**

Prosecution is carried out by Public Prosecutors appointed by the State Government or Central government as may be the case. Sub-section (2) of Section 301 further provides that “if in any such case, a private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Asstt. Public Prosecutor in charge of the case shall conduct the prosecution and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Asstt. Public Prosecutor, and may with the permission of the Court submit written arguments after the evidence is closed in the case.....but he shall work and function under the directions of the Public Prosecutor and if so required, he may file written arguments with the permission of the Court, after the evidence is closed in the case. This all makes it very clear that the provisions

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<sup>44</sup> Ibid

<sup>45</sup>Surinder Singh vs. State (Union Territory of Chandigarh, 26.11.2021 – SC.

of the aforesaid sections are that the complete charge of a criminal case cannot be handed over to the hands and entrustment of the private counsel engaged by a private party or the first informant of the case” The underlying concept of public prosecution lies in the concept of a fair trial to the accused. The Supreme Court, in the case of Shiv Kumars case<sup>46</sup> held that a if a private counsel is engaged by a party, and is allowed a free hand to carry out the prosecution He will try to secure conviction even if it is not a fit case for conviction , but a Public Prosecutor is not expected to show a thirst to conviction in the case<sup>47</sup>.

Public prosecutor is appointed by the state and conducts the prosecution on behalf of the state. His function is to ensure that the case is clearly presented before the court. Even though he appears on the side of the state or for benefit of the victim. While functioning on behalf of the state his duty is to see that the accused person’s right is not violated. He is expected to discharge his duties with the highest possible level of professional excellence. “We are fully alive to the fact that owing to the inefficient manner in which the prosecution was handled by the lawyers appearing for the Government and by the magistrates before whom the case was tried, the unfortunate result may be that persons who may have committed serious crimes might escape but if during all these years the accused have not been given the charges which they could reasonably follow and meet, such a result is unavoidable”<sup>48</sup>.

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<sup>46</sup>Shiv Kumar v. Hukam Chand, (1999)7SCC467

<sup>47</sup>Sunil Puri vs. State of Chhattisgarh, 05.05.2006 – CGHC.

<sup>48</sup>K.V. Krishnamurthy Iyer and Ors.vs. The State of Madras AIR 1954 SC 406

### 5.4.5 Standard of Proof

A higher standard of proof is required in criminal cases than in civil cases.<sup>49</sup> However there is no absolute standard in criminal cases. The charge must be proved beyond reasonable doubt, but there may be degree of proof within that standard. In order to convict a person for a crime it has to be proved beyond reasonable doubt that it was the accused alone who had committed the offence.<sup>50</sup> In the case of circumstantial evidence, the standard of proof required to convict a person should be such that the guilt of the accused is established without any reasonable doubt. The law requires, that the circumstances relied upon in support of the conviction must be fully established, and that the chain of evidence furnished by those circumstances must be so complete, so as not to leave any reasonable doubt for a conclusion, consistent with the innocence of the accused. The circumstances from which the conclusion of guilt is to be drawn, must not only be fully established, but also be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. They must not be capable of being explained by way of any other hypothesis except the guilt of the accused, and when all the said circumstances are collectively considered, the same must lead only to the irresistible conclusion that the accused alone is the perpetrator of the crime in question.<sup>51</sup> Addressing this aspect Ian H. Dennis, in his treatise *The Law of Evidence*<sup>52</sup> stated: “Where the case against the accused depends wholly or partly on inferences from circumstantial evidence, fact finders cannot logically convict unless

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<sup>49</sup>State of Maharashtra and Ors. vs. Padmakar Balkrishna Samant (1982) 84 BOMLR 427

<sup>50</sup>Narain Tiwari vs. State of H.P., 26.12.2018 – HPHC.

<sup>51</sup>Raj Kumar Singh vs. State of Rajasthan , AIR 2013 SC 3150

<sup>52</sup>H. Dennis . *The Law of Evidence London*, 483 (Sweet & Maxwell 5th edition, 2013)

they are sure that inferences of guilt are the only ones that can reasonably be drawn. If they think that there are possible innocent explanations for circumstantial evidence that are not "merely fanciful", it must follow that there is a reasonable doubt about guilt. There is no rule, however, that judges must direct juries in terms not to convict unless they are sure that the evidence bears no other explanation than guilt. It is sufficient to direct simply that the burden on the prosecution is to satisfy the jury beyond reasonable doubt, or so that they are sure."<sup>53</sup> The purpose of requiring very high standards of evidence in criminal cases minimises the risk of a wrongful conviction. The logical conclusion of this high standard of evidence is that if on the evidence, the judge believes that the accused is "probably" guilty, or "likely" to be guilty in that condition the accused is entitled to be released. Insistence on very high standard of proof may lead to acquittal of guilty who could have reasonably beheld guilty if the standard of proof were the lower. Such acquittals are the insulation against wrongful convictions.<sup>54</sup>

Thus it can be inferred that the policy framers have decided not to run the risk of innocent persons being convicted for the purpose of securing the conviction of the guilty.<sup>55</sup> In other words the penal policy is to leave hundred criminals but not to convict an innocent. The penal policy is purposive restraint on the liberty of the criminal. The convict is sent into prison with an aim or objective to reform him and

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<sup>53</sup> Jose vs. The Sub-Inspector of Police, Koyilandy and Ors, 03.10.2016 – SC.

<sup>54</sup> Ibid

<sup>55</sup> RohidasManikKasrale vs. The State of Maharashtra , 07.12.2011 – BOMHC.

deter the criminals. The prison condition should be such that it reforms the offender and does not make him more hardened criminal dangerous to the society.<sup>56</sup>

#### **5.4.6. Release of Offenders on Probation of Good Conduct**

The purpose of the provisions of the Probation of Offenders Act, Act 1958 is to reform the juvenile offenders.<sup>57</sup> It tries to ensure that the offender observes good behaviour and continues to be a law-abiding and law fearing citizen.<sup>58</sup> In case of an offender under the age of 21 years on the date of commission of the offence, the court is expected ordinarily to give benefit of the provisions of the Act. The normal rule is to provide the benefits conferred under the Act Punishment is an exception and should be used only when the court considers it necessary having regard to the circumstances of the case including nature of the offence and the character of the offender. When the court refuses the offender the benefits of the Act it is necessary for the court to record the reasons thereof. Considerations relevant to the adjudication of this aspect are: “circumstances of the case, nature of the offence and character of the offender.”<sup>59</sup>

When a Court is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in

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<sup>56</sup> Ramesh Kaushik vs B. L. Vig, Superintendent And Anr, AIR1981 1767

<sup>57</sup> Ajahar Ali V. State of West Bengal, (2013) 3 SCC

<sup>58</sup> Gopal vs. State of Rajasthan, 23.04.2008 – RAJHC.

<sup>59</sup> Indian Penal Code, 1860(Act no. 45 of Year 186) Sec 360(1) contemplates as to which offenders are entitled to the benefit of probation and on what conditions. It contemplates that firstly, if any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less; and secondly, when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, is entitled to the benefit of probation.

any other law for the time being in force, the court may, release him on his entering into a bond with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) and in the meantime to keep the peace and be of good behavior.<sup>60</sup>

When any person is found guilty of having committed an offence punishable Under Section 379 or Section 380 or Section 381 or Section 404 or Section 420 of the Indian Penal Code, or any offence punishable with imprisonment for not more than two years, with or without fine both, under the Indian Penal Code, the Court may, instead of sentencing him to any punishment or releasing him on probation of good conduct may release him after due admonition<sup>61</sup>.

#### **5.4.7 Juvenile Offenders: Sentencing Policy**

As regard to the juveniles in conflict with law are concerned policy of India is to rehabilitate the juvenile offender rather than adopting punitive measures against him. A juvenile offender cannot be awarded Death Penalty or Life Imprisonment. Section 15(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000 provides that “Where a Board is satisfied on inquiry that a juvenile has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the Board may, if it thinks so fit,..... (e) direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or

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<sup>60</sup> Probation of Offenders Act, 1958 (Act no. 20 of 1958) Sec 4.

<sup>61</sup> Lakhanlal v. State of M.P., (2021) 6 SCC 100



without surety, as the Board may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years.” It was contended in the case of Mukesh and anr. vs. State of NCT of Delhi &Ors<sup>62</sup> also known as the Nirbhaya rape case, that the age of the should not be used as a protection against the level of cruelty he perpetrated on the victim. He was found to have physically tortured the woman with an iron rod, caused the intestine to come out of her body. However the juvenile was left free after completing his assigned term of imprisonment by the Court. The Supreme Court in the case of Gaurav Kumar v. State of Haryana<sup>63</sup> commented “that the Juvenile Justice Act of 2000 needed to be reexamined since it had failed to dissuade minors in the country from committing small as well as grave crimes. The participation of juvenile offenders under the age of 18 in horrible crimes like gang rape and brutal murders made the Indian legislature to pass new legislation, “Juvenile Justice (Care and Protection) Act, 2015.” This Act repealed the previous juvenile statutes and made a few significant amendments. One of the most notable modifications was that if a child between the ages of 16 and 18 is found to be involved in a heinous crime, he could be tried as an adult offender.

#### **5.4.8 Executive Clemency**

Under the Indian Constitution, 1950, Article 72 and Article 161 empower the Governor and the President to grant pardon, suspend, remit or commute the sentence. The Criminal Procedural Code, 1973, also contain the provisions related to suspension, remission and commutation of sentence. The power to remit, suspend or

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<sup>62</sup>Mukesh and anr.vs. State of NCT of Delhi &Ors, (2017) 6 SCC 1.

<sup>63</sup>2015 (4) SCALE 531

commutate a sentence is exercised by the head of the state. The executive can show mercy on the convict by way of remission, suspension or commutation etc. The basic purpose of the suspension, remission, commutation and other forms of showing mercy is to take into consideration certain aspects of the case which do not arise during the proceedings in the court of law. Under Article 72, the President has the power to pardons, reprieves, respites or remission of punishment or to suspend remit or commute the sentence of any person convicted of any offence.

Similarly, under Article 161 of the Constitution of India, these powers are conferred on the Governor of the States. The Governor can pardon, reprieve, respite a punishment or suspend, remit<sup>64</sup> or commute the sentence, which is given on the basis of the laws prevalent in the State, to which the executive power of the State extends. In remission, the nature of the sentence is remained untouched; while the duration is reduced i.e. the rest of the sentence need not be undergone. The effect of the remission is that the prisoner is given a certain date on which he shall be released and the eyes of the law he would be a free man. However, in case of breach of any of the condition of remission, it will be cancelled and the offender has to serve the entire term for which he was originally sentenced.

The power of remission and suspension should not in any way interfere with the conviction of the court; it should affect the execution of the sentence. The State

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<sup>64</sup> The Code of Criminal Procedure, 1973 (Act no 2 of 1974) Sec 433A-Restriction on powers of remission or commutation in certain cases.—Notwithstanding anything contained in section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.

authority is under an obligation to at least exercise its discretion in relation to an honest expectation perceived by the convict, at the time of his conviction that his case for premature release would be considered after serving the sentence, prescribed in the short-sentencing policy existing on that date<sup>65</sup>. In the case of Union of India versus Sriharan alias Murgan and Others<sup>66</sup> the Constitution Bench held as follows: “The power under Sections 432/433 Cr.P.C and the one exercisable under Articles 72 and 161 of the Constitution, as laid down in Maru Ram are streams flowing in the same bed. Both seek to achieve salutary purpose. As observed in Kehar Singh in clemency jurisdiction it is permissible to examine whether the case deserves the grant of relief and cut short the sentence in exercise of Executive Power which abridges the enforcement of a judgment. Clemency jurisdiction would normally be exercised in the exigencies of the case and fact situation as obtaining when the occasion to exercise the power arises. Any order putting the punishment beyond remission will prohibit, exercise of statutory power designed to achieve same purpose under Sections 432/433 Cr.P.C. In our view, Courts cannot and ought not deny to a prisoner the benefit to be considered for remission of sentence. By doing so, the prisoner would be condemned to live in the prison till the last breath without there being even a ray of hope to come out. This stark reality will not be conducive to reformation of the person and will in fact push him into a dark hole without there being semblance of the light at the end of the tunnel.”<sup>67</sup>

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<sup>65</sup>Anil Kumar and Ors.vs. The State of Jharkhand and Ors, 30.11.2021 – JHRHC.

<sup>66</sup>Union of India versus Sriharan alias Murgan and Others, 2016 (1) JLJR 121 (SC)

<sup>67</sup> Supra note 65

Penal Policy of India is based on elements of deterrence, incapacitation and reformation. Crime is an act which is considered to be harmful for an individual or the state and is committed by persons regarded as proper subject for infliction of punishment. An offence is considered to be a wrong against the state and the public prosecutor is solely responsible to prosecute the offender. The victim has been given minimal participation in a criminal trial though the victim can instruct a private pleader to prosecute the offender. The private pleader so appointed by the victim can assist the public prosecutor and is also entitled to submit written arguments. All offences of serious nature have been made cognizable and non Bailable. Death penalty has not been considered to be cruel and degrading and has been reserved for very limited number of offences. Penal policy in general is soft on accused in general and juvenile offenders in particular. The standard of proof required for conviction of an accused in criminal cases is beyond reasonable doubt. The Malimath Committee formed to suggest reforms in the administration of criminal justice was of the view that the standard of proof very unreasonable burden on the prosecution. It suggested for the dilution of the standard of proof but it was not accepted by the government of India<sup>68</sup>.

Utmost care has been made to protect the interest of the accused and the victim of an offence remains largely neglected. However post 2013 the policy has

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<sup>68</sup> Government Of India, Report: *Committee on Reforms of Criminal Justice System*, (Ministry Of Home Affairs, Report Volume I, March 2003) available at [https://www.mha.gov.in/sites/default/files/criminal\\_justice\\_system.pdf](https://www.mha.gov.in/sites/default/files/criminal_justice_system.pdf) (last visited on 15.3.2022).

become tough on offences in general and sexual offences in particular.<sup>69</sup> Before the amendment Act of 2013 there were no specific provisions dealing with an acid attack. The accused were convicted under section 320, 322, 325 or 326 of the Indian Penal Code, for the offences of grievous hurt. After the amendment Act of 2013, Section 326A was inserted which has provided for a strict punishment. Section 325A provides “ Any person, who causes permanent or partial damage, deformity, burns, maims, disfigures or disables, any part of the body or causes grievous hurt by throwing or administering acid to that person with the intention of causing or with the knowledge that he is likely to cause such injury, shall be punished with imprisonment for not less than ten years extendable to imprisonment for life, and with fine, which shall be just and reasonable to meet the medical expenses of the treatment of the victim and any fine imposed under this section shall be paid to the victim”.

### **5.5 Penal Policy of India on combating human trafficking**

Penal Policy of India on combating human trafficking is reflected in the Legal Framework against immoral trafficking. The Crime rate, The conviction rate and the

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<sup>69</sup>New provision under s Indian Penal Code, 1860(Act no. 45 of Year 186) Ss166 A has been made for punishing public servants who refuse to record a FIR in cases of specified crimes against women including rape A new section 166 B has been inserted for punishing those in charge of a public or private hospital for refusal to provide free medical treatment for victims of rape. The definition of rape in section 375 has been widened to include acts other than forcible penile penetration or sexual intercourse. Consent has been defined by adding an explanation to section 375 as “unequivocal voluntary agreement” The age of consent has also been raised from 16 to 18 years. The judicial discretion available to impose a reduced sentence (lesser than the required minimum) has been deleted. A separate section 376 D has been made for the offence of gang rape with a higher punishment. The amendment made separate section for rape that caused death or persistent vegetative state of the victim under section 376 A. With this section, the amendment introduced death penalty as a punishment for rape that caused vegetative state or death. After the 2013 amendment, punishment for sexual intercourse by a husband upon his wife during separation without her consent (section 376B, substituting section 376A) has been increased to seven years, with a minimum punishment of two years.

treatment meted out to those who are found guilty of involvement in immoral trafficking , nature and quantum of punishment inflicted on persons found involved in human trafficking. The means and methods of dealing with the victims of immoral trafficking are also the indicators of the penal policy on immoral trafficking. In India, punishments are defined in section 53, chapter 3 of the Indian penal code, 1860. Section 53 of IPC reads that there are six types of punishments available under the law of India, those being, death, imprisonment for life, rigorous imprisonment or simple imprisonment, forfeiture of property and fine. The forms of punishment must satisfy certain principles under criminal law.

Immoral trafficking of women is an organized crime of continuing nature. Indian penal code before the amendment Act of 2013 lacked any provision related to immoral trafficking. However, there are various sections under the Indian Penal Code which are in some way or the other deals with various crimes which take place in the immoral trafficking.

### **5.5.1 India Penal Code, 1860**

Penal Code, 1860 specifically deals with two kinds of kidnapping: Kidnapping from India<sup>70</sup> Kidnapping from lawful guardianship<sup>71</sup>. Inducing someone by force or deceitful means to go from a place.<sup>72</sup>A trafficked person is at times subjected to an act of abduction which involves using of deceitful means by another and thereby forcefully compels the victim to go from any place. Section 363 I.P.C

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<sup>70</sup> Indian Penal Code, 1860(Act no. 45 of Year 186) Sec 360

<sup>71</sup> Indian Penal Code, 1860(Act no. 45 of Year 186) Sec 361

<sup>72</sup> Indian Penal Code, 1860(Act no. 45 of Year 186) Sec 362

provides Punishment for kidnapping.<sup>73</sup> Sections 361 and 363 IPC are to be read together.<sup>74</sup> Punishment to a person who kidnaps or abducts another person with an intention to secretly and wrongfully confine her.<sup>75</sup>

Kidnapping or abducting or inducing a woman to compel her to marry against her will, or forcing or seducing the said woman to have an illicit intercourse.<sup>76</sup> Inducing a minor girl who is under the age of 18 years to go from any place or to do any act such that such girl may be forced or seduced to have an illicit intercourse with any person is punishable.<sup>77</sup>

Section 366, I.P.C. is kidnapping or abducting a woman either by force or by deceitful means, or inducing her to leave a place and thereafter force her to have an illicit intercourse or compel her to marry any person. Under Section 366, I.P.C. the inducement to leave the place with the knowledge that the victim would be compelled to marry any person against her will or will be forced to have an illicit intercourse are the elements of the Section.<sup>78</sup> Act of trafficking in human beings and their exploitation is punishable.<sup>79</sup> The Criminal Law (Amendment) Act, 2013 has been reframed and its scope has been enlarged. The amended section 370I .P.C unlike the

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<sup>73</sup> Indian Penal Code, 1860(Act no. 45 of Year 186) Sec 363 - Whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

<sup>74</sup> State vs. Sartaj Khan, 07.12.2017 - UCHC

<sup>75</sup> Indian Penal Code, 1860(Act no. 45 of Year 186) Sec 365

<sup>76</sup> Indian Penal Code, 1860(Act no. 45 of Year 186) Sec 366

<sup>77</sup> Indian Penal Code, 1860(Act no. 45 of Year 186) Sec 366-A

<sup>78</sup> Ramu vs. State , 22.02.1995 - MADHC

<sup>79</sup> Indian Penal Code, 1860(Act no. 45 of Year 186) Sec 370, Sub-section 4 of Section 370 IPC lays down that if the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment and shall also be liable to fine.

earlier framework of section 370 which was confined to mischief of slavery. The amendment Act of 2013 added Section 370A<sup>80</sup>. Selling, hiring or otherwise disposing a minor under the age of 18 years for purposes of prostitution, etc. is punishable<sup>81</sup>. Sections 354, 354-A, 354-B, 354-C, and 354-D were added by the Criminal Law (Amendment) Act, 2013<sup>82</sup>.

Importing any girl under the age of 21 years from a foreign country with intent that she will be forced or seduced to illicit intercourse.<sup>83</sup> Rape, gang rape is a major consequence of trafficking and also lays down severe punishment.<sup>84</sup>

### **5.5.2 Criminal Procedure Code, 1973**

Though the provisions of Code of Criminal Procedure basically deal with investigation, inquiry and Trial of offences under the Indian Penal Code or any special law legislated by parliament or State Legislature. However there are few provisions which can be used in context of offences under immoral Trafficking of women. Such provisions are as follows. Responsibility for providing compensation to trafficking

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<sup>80</sup> Indian Penal Code, 1860 (Act no. 45 of Year 186) Sec 370A. (1) Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.

<sup>81</sup> Indian Penal Code, 1860 (Act no. 45 of Year 186) Sec 370A- With imprisonment of either description for a term which may extend to 10 years and shall also be liable to fine

<sup>82</sup> Indian Penal Code, 1860 (Act no. 45 of Year 186) SS 354, 354-A, 354-B, 354-C, and 354-D – These sections punish any person who assaults or uses criminal force on a woman intending to outrage modesty, disrobe her, or to commit an offence of voyeurism or stalking.

<sup>83</sup> Indian Penal Code, 1860 (Act no. 45 of Year 186) Sec 366-B – The person so importing shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

<sup>84</sup> Indian Penal Code, 1860 (Act no. 45 of Year 186) Sec 376D deals with gang rape. It states that “When a woman is raped by one or more persons which constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the rape and shall be sentenced with rigorous imprisonment for a term which must not be less than 20 years, but which may extend to life which shall mean imprisonment for the remainder of the natural life of the person, and with fine. Such a fine must be just and reasonable in order to meet the victim’s medical expenses and rehabilitation further, provided that any fine imposed under this section shall be paid to the victim.



victims is fragmented between the Central Government and individual States. This is l Section 357 and Section 357-A Cr.P.C which is pertaining to payment of compensation to the victims of crime. When the punishment contemplates fine Section 357 Cr.P. C provides that the fine can be used to pay compensation to the victim. But if the offender is not traced or where no trial takes place, the victim or his dependents are entitled to be paid compensation under the scheme formulated by the State Government in coordination with the Central Government.<sup>85</sup>

Power of the court to try cases summarily.<sup>86</sup> Section 22B is a special law and hence prevails over the general law that is the Code of Criminal Procedure, 1973 as regards the trial of offences are concerned. The section22B provides that “Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the State Government may, if it considers it necessary so to do, direct that offences under the immoral

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<sup>85</sup> The Code of Criminal Procedure, 1973 (Act no 2 of 1974) Sec 357- (1)Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who, require rehabilitation.

(2)Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1)

(3)If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

(4)Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

(5)On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6)The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer incharge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.

<sup>86</sup> The Code of Criminal Procedure, 1973 (Act no 2 of 1974) Chapter XXI Summery Trial- In this trial, the cases are disposed of speedily as the procedure is simplified and the trial of such cases are done summarily.

Trafficking Act 1956 shall be tried in a summary way by a Magistrate including the presiding officer of a court established under sub-section (1) of Section 22-A and the provisions of Sections 262 to 265 (both inclusive) of the said Code, shall, as far as may be, apply to such trial.”

As we have seen above that the provisions related to investigation enquiry and trial is solely governed by the provisions contained under the Code of Criminal Procedure. Under Section 26 of the General Clauses Act, “when an act becomes an offence under two or more enactments, the offender shall be liable to be prosecuted and punished under either or any of those enactments leaving it to the discretion of the Prosecutor and the only restriction is that for the same offence, he shall not be punished twice.”<sup>87</sup>

### **5.5.3 Immoral Traffic (Prevention) Act, 1956.**

Keeping a brothel or allowing premises to be used as a brothel is punishable<sup>88</sup>.

Living on the earnings of prostitution of another person is punishable<sup>89</sup>.

Procuring, inducing or taking another person for the sake of prostitution is punishable.<sup>90</sup>Section 5 of the PITA pertains to procuring, inducing or taking person for the sake of prostitution. This offence is complete when a person procures another person for the purpose of prostitution or induces such person to go from any place

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<sup>87</sup>Ramu vs. State of U.P., 22.02.1995 – MADHC.

<sup>88</sup> The General Clauses Act, 1977 (Act No. 20 of 1977)Section 3 .

<sup>89</sup>Immoral Traffic (Prevention) Act, 1956 (ACT NO. 104 OF 1956) Sec 4 provides for punishment to any person over 18 years of age living on the earnings of prostitution.

<sup>90</sup>Immoral Traffic (Prevention) Act, 1956 (ACT NO. 104 OF 1956) Sec 5.

with intent that such person becomes the inmate of a brothel or to take such a person from one place to another with a view to carrying on prostitution.<sup>91</sup>

Detaining any women with or without his consent in any brothel or any premises for the reason that she may have sexual intercourse with any person who is not the spouse of such detained women is punishable.<sup>92</sup>Section 6 of the PITA pertains to an offence of detaining a person in premises where prostitution is carried on.<sup>93</sup>

Prostitution in any premises which is within close proximity to a public place, including a hospital, nursing home, place of religious worship, hostel, educational institution, or in an area notified under the provisions of the Act, is punishable.<sup>94</sup>

Seducing or soliciting a women for the purpose of prostitution is also an offence and is punishable.<sup>95</sup>

Section 18 provides for the closure of brothels and eviction of victims and the occupier from the premises, where such premises are within a range of two hundred yards from a public place mentioned in s. 7(1).The occupier is given only seven days notice for eviction from such premises.<sup>96</sup>

If a Magistrate receives an information that any women residing in or frequently visiting any place within the local limits of the said magistrates jurisdiction is a prostitute is empowered to issue notice to such women requiring her to appear before the Magistrate and show cause why she should not be removed from the place and be

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<sup>91</sup>Bindo Ganesh Patil vs. The State of Maharashtra , 14.08.2018 – BOMHC.

<sup>92</sup>Immoral Traffic (Prevention) Act, 1956 (ACT NO. 104 OF 1956) Sec .6

<sup>93</sup>Ibid

<sup>94</sup>Immoral Traffic (Prevention) Act, 1956 (ACT NO. 104 OF 1956) Sec 7

<sup>95</sup> Immoral Traffic (Prevention) Act, 1956 (ACT NO. 104 OF 1956) Sec 8: Punishment with imprisonment up to six months or a fine up to Rs 500, in the case of a first conviction. In case of a subsequent conviction, the prison sentence can be extended up to one year including a fine of Rs 500.

<sup>96</sup>The State of Uttar Pradesh vs. Kaushaliya and Ors, 01.10.1963 – SC.

prohibited from re-entering it, and an order to be passed by the Magistrate effecting the same on merits. Noncompliance of such a direction of the magistrate entails punishment<sup>97</sup>. The following procedural steps have been laid out under section 20 for the removal of prostitute from any place : “(1) the enquiry is initiated by a Magistrate on his receiving the requisite information that a woman a girl is a prostitute; (2) h records the substance of the information; (3) he gives notice to the woman or girl to show cause; (4) he sends, along with the notice, a copy of the record; (5) he shall give the woman or girl an opportunity to adduce evidence on two points, namely, (i) whether she is a prostitute, and (ii) whether in the interests of the general public should be required to remove herself from the place where she is residing or which she is frequenting; (6) the Magistrate shall give his findings on the said questions, and on the basis thereof, he makes the appropriate order; and (7) the disobedience of the order entails punishment of fine”.<sup>98</sup>

Establishing Special courts for speedy trial of offences under the ITP Act <sup>99</sup>In the case of Delhi Administration vs Ram Singh The Supreme Court observed “It is clear from the various provisions that the Act is a complete Code with respect to what is to be done under it..... The Act creates new offences, provides for the forum before which they would be tried and the orders to be passed on conviction of the offenders.

Necessary provisions of the Code of Criminal Procedure have been adopted fully or

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<sup>97</sup>Immoral Traffic (Prevention) Act, 1956 (ACT NO. 104 OF 1956) Sec 20

<sup>98</sup>Ibid

<sup>99</sup>Immoral Traffic (Prevention) Act, 1956 (ACT NO. 104 OF 1956) Sec 22-A-If the State Government is satisfied that it is necessary for the purpose of providing for speedy trial of offences under this Act in any district or metropolitan area, it may, by notification in the Official Gazette and after consultation with the High Court, establish one or more Courts of Judicial Magistrates of the First Class, or, as the case may be, Metropolitan Magistrate, in such district or metropolitan area.

with modifications. There are certain provisions which are such that the regular police cannot comply with them and thus they point to the conclusion that it is the special police officer alone who is to take any action which the police has to take in connection with the offences under the Act”.<sup>100</sup>

Offences under the Act have been made cognizable. The persons accused of offences under the Act can be arrested without a warrant<sup>101</sup>. But the power of investigation and arrest has been given to the special police officer or any police officer acting under his direction. A person who visits brothel house only as a customer is not covered by any of the above provisions or any other provision of the ITP Act, 1956.<sup>102</sup> There are presumptions of criminal intent under Sections 3(2-A), 4(2) and 6(3) regarding the use of the use of premises as brothels or a person living on the income of prostitution. Abetment of seduction for prostitution of women or girls has been severely punished.<sup>103</sup>

All these provisions indicate that a clear distinction has been maintained under the Act between the prostitutes, customers of the prostitution and the offenders of the offences relating to prostitution of women and girls. The distinction has also been made regarding the prostitutes who are in the trade by themselves and those who are trafficked into the acts of prostitution,<sup>104</sup> The scheme of the Act and the rules thus

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<sup>100</sup>Delhi Administration vs Ram Singh, AIR1962 SC 63.

<sup>101</sup> The Code of Criminal Procedure, 1973 (Act no 2 of 1974) Sec 157 specially mentions that the investigating officer, if necessary, is to take measures for the discovery and the arrest of the offender; and yet, the power to arrest without a warrant is not given to the regular police.

<sup>102</sup>Chandan vs. State of Karnataka and Ors, 28.03.2019 – KARHC.

<sup>103</sup>Immoral Traffic (Prevention) Act, 1956 (ACT NO. 104 OF 1956) Sec 9-Punishment for a term of imprisonment which may not be less than seven years but which may be for life.

<sup>104</sup>(2004)2GLR1764

clearly indicates that the victim-prostitutes, i.e. the trafficked persons working as prostitutes under the control of pimps and procurers and those rescued from the premises in which offences are committed in respect of such women or girls, are all re dealt with by the police officials and other authorities with utmost care and concern to ensure that they are properly rescued, kept in safe custody and rehabilitated in accordance with the provisions of the Act and the Rules.<sup>105</sup>In the cases when the offences are committed under the Act in respect of women or girls living in any premises, under search such woman or girl who is not involved in those offences are to be dealt with sensitively. Under the provisions of Section 17(4) an enquiry is made. If upon the enquiry the Magistrate is of the opinion that the woman or girl against whom an offence the offence has been committed is in need of care and protection, the magistrate can make an order of detention in a protective home. No prosecution of such victims is done under the Act.<sup>106</sup>

#### **5.5.4 Protection of Children from Sexual Offences Act, 2012.**

Section 2(1)(a) of the Act defines child“as any person below the age of eighteen years”. Where an F.I.R. is registered before the Special Juvenile Police Unit (SJPU) or local police station in respect of any offence committed against a child under the said Act, the case should be reported by the SJPU or the local police to the Child Welfare Committee (CWC) within 24 hours<sup>107</sup>.

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<sup>105</sup>Ibid

<sup>106</sup>Ibid

<sup>107</sup>Protection of Children from Sexual Offences Act, 2012(ACT NO. 32 OF 2012) Sec 19(6).

Penetrative sexual assault has been severely punished. The offender is also liable to pay fine.<sup>108</sup> But if the act is committed against a child below sixteen years, the punishment has been enhanced and it has been provided that the punishment will not be less than twenty years but may extend to the imprisonment for life till the natural death of the convict.<sup>109</sup>

A separate category of offences have been created which is termed as aggravated penetrative sexual assault. If a penetrative sexual assault is done against a child by a police officer or a member of an armed forces within the premises of the police station or within the area of deployment of the member of the armed forces as may be the case.<sup>110</sup> Section 6 provides punishment for aggravated penetrative sexual assault<sup>111</sup>.

Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of the Act, the Special Court shall

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<sup>108</sup>Protection of Children from Sexual Offences Act, 2012(ACT NO. 32 OF 2012) Sec 4(1)-Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

<sup>109</sup>Protection of Children from Sexual Offences Act, 2012(ACT NO. 32 OF 2012) Sec 4(2).

<sup>110</sup>Protection of Children from Sexual Offences Act, 2012(ACT NO. 32 OF 2012.) Sec 5 (a) Whoever, being a police officer, commits penetrative sexual assault on a child-- (i) within the limits of the police station or premises at which he is appointed; or (ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed; or (iii) in the course of his duties or otherwise; or (iv) where he is known as, or identified as, a police officer; or (b) whoever being a member of the armed forces or security forces commits penetrative sexual assault on a child-- (i) within the limits of the area to which the person is deployed; or (ii) in any areas under the command of the forces or armed forces; or ..... (u) whoever commits penetrative sexual assault on a child and makes the child to strip or parade naked in public, is said to commit aggravated penetrative sexual assault

<sup>111</sup>Protection of Children from Sexual Offences Act, 2012(ACT NO. 32 OF 2012.) Sec 6(1) Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine, or with death.

(2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.

presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.<sup>112</sup>

Hon'ble Supreme Court observed that there is an apparent conflict or incongruity between the provisions of the IPC and the POCSO Act as the sexual intercourse by husband of a married girl child (a girl child between 15 and 18 years of age) is not rape under the IPC and therefore not an offence in view of Exception 2 to Section 375. But it is an offence of aggravated penetrative sexual assault under Section 5 of the POCSO Act and punishable under Section 6 of that Act.<sup>113</sup> This conflict can be resolved by the state legislature by declaring child marriage to be void ab initio.

The provisions related to bail are equally applicable to offences under POCSO Act. Even the accuseds who have committed grave offences against the child under the Act minors are released on bail. The result is the subsequent absconding in many of those cases<sup>114</sup>. It becomes difficult for the police to secure the presence of accused. Since trafficking is an organised crime and the members of the group are at times from outside the country. Police do not have any control over them to secure their presence. Sometimes the addresses provided by the accused at the time of being released on bail are their temporary residence. In some of the cases even the documents of the sureties, which are furnished with the bail are not adequate. Hence, it is necessary to put certain

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<sup>112</sup>Protection of Children from Sexual Offences Act, 2012(ACT NO. 32 OF 2012.) Sec 29

<sup>113</sup>RavneetKaur and Ors.vs. State of Punjab and Ors, 31.08.2021 – PHHC.

<sup>114</sup>Freedom Firm vs. Commissioner of Police, Pune and Ors, 30.10.2015 – BOMHC.



conditions and lay down guidelines to be followed while releasing the accused on bail in such serious offences like offences under POCSO Act.<sup>115</sup>

Chapter III deals with using a child for pornographic purposes. On a reading of the aforesaid Chapters, it is quite clear that the legislature has intended to protect the child from any and every kind of sexual assault and harassment<sup>116</sup> The data collected by the National Crime Records Bureau shows that there has been increase in cases of sexual offences against children. This is corroborated by the "Study on Child Abuse: India 2007" conducted by the Ministry of Women and Child Development. Moreover, sexual offences against children are not adequately addressed by the existing laws. A large number of such offences are neither specifically provided for nor are they adequately penalised. The interests of the child, both as a victim as well as a witness, need to be protected. It is felt that members of the juvenile police unit offences need to be properly trained in general and in forensic sciences in particular.<sup>117</sup>

The penal policy to combat human trafficking is obscure. It is full of contradictions. The prostitution is not per se illegal. Prostitution is legal unless it is carried out "within close proximity to a public place, including a hospital, nursing home, place of religious worship, hostel, educational institution, or in an area notified under the provisions of the Act."<sup>118</sup> Thus prostitution is legal but it is illegal to own and manage a brothel. A customer of commercial sex who visits red light areas for having sex is not an offender. Living on the earnings of prostitution of another

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<sup>115</sup>Ibid at

<sup>116</sup>Eera through ManjulaKrippendorf vs. State (Govt. of NCT of Delhi) and Ors, 21.07.2017 – SC.

<sup>117</sup>Balasaheb vs. The State of Maharashtra , 22.03.2017 – BOMHC.

<sup>118</sup>Immoral Traffic (Prevention) Act, 1956 (ACT NO. 104 OF 1956) Sec 7.

person.<sup>119</sup> Procuring, inducing or taking another person for the sake of prostitution has also been made punishable.<sup>120</sup> All offences under the act are cognizable.<sup>121</sup> The Penal Policy is marked as tough on crimes of procuring any person for prostitution. The punishment ranges from three years imprisonment to fourteen imprisonments depending upon the gravity of offence.<sup>122</sup> An offence of trafficking has been dealt with severely it states that “Any person who commits trafficking in persons shall be punishable on first conviction with rigorous imprisonment for a term which shall not be less than seven years and in the event of a second or subsequent conviction with imprisonment for life”<sup>123</sup> Extreme Punishment i.e a punishment of life imprisonment has been prescribed for an offence of procuring a child for prostitution. The rigorous of Immoral Trafficking of Women Act 1956 has been enhanced by various preemptions which absolve the prosecution from proving certain elements of offence. For example presumption under section 3(2A) pertaining to allowing premises to be used as a brothel,<sup>124</sup> Section 4(2)(c) related to living on the earnings of prostitution.<sup>125</sup>

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<sup>119</sup>Immoral Traffic (Prevention) Act, 1956 (ACT NO. 104 OF 1956) Sec Section 4.

<sup>120</sup>Immoral Traffic (Prevention) Act, 1956 (ACT NO. 104 OF 1956) Se 5.

<sup>121</sup>Immoral Traffic (Prevention) Act, 1956 (ACT NO. 104 OF 1956) Sec 14. Offences to be cognizable.—Notwithstanding anything contained in<sup>47</sup> [the Code of Criminal Procedure, 1973 (2 of 1974)], any offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of that Code

<sup>122</sup>Immoral Traffic (Prevention) Act, 1956 (ACT NO. 104 OF 1956) Sec 5(1) (a) procures or attempts to procure a person whether with or without his/her consent, for the purpose of prostitution; or (b) induces a person to go from any place, with the intent that he/she may for the purpose of prostitution become the inmate of, or frequent, a brothel; or (c) takes or attempts to take a person or causes a person to be taken, from one place to another with a view to his/her carrying on, or being brought up to carry on prostitution ; or (d) causes or induces a person to carry on prostitution; shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years.

<sup>123</sup>Immoral Traffic (Prevention) Act, 1956 (ACT NO. 104 OF 1956) Sec 5B (1).

<sup>124</sup>Immoral Traffic (Prevention) Act, 1956 (ACT NO. 104 OF 1956) Sec 3(2A) sub-section (2), it shall be presumed, until the contrary is proved, that any person

Presumptions regarding recruiting, transporting . . . , a person for the purpose of prostitution.<sup>126</sup> Detaining a person in premises where an act of prostitution is carried out<sup>127</sup>. “Where a child found in a brothel, is, on medical examination, detected to have been sexually abused, it shall be presumed unless the contrary is proved, that the child has been detained for purposes of prostitution or, as the case may be, has been sexually exploited for commercial purposes”<sup>128</sup> Similarly the presumption under section 6(3) which states “A person shall be presumed to detain a person in a brothel or in upon any premises for the purpose of sexual intercourse with a man other than her lawful husband, if such person, with intent to compel or induce her to remain there,— (a) withholds from her any jewellery, wearing apparel, money or other property belonging to her, or (b) threatens her with legal proceedings if she takes away with her any jewellery, wearing apparel, money or other property lent or supplied to her by or by the direction of such person” are some of the remarkable efforts for the proliferation of the objectives of the Act.

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referred to in clause (a) or clause (b) of that sub-section, is knowingly allowing the premises or any part thereof to be used as a brothel or, as the case may be, has knowledge that the premises or any part thereof are being used as a brothel

<sup>125</sup>Immoral Traffic (Prevention) Act, 1956 (ACT NO. 104 OF 1956) Sec 4 (2) (c)-It shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meaning of sub-section (1).

<sup>126</sup>Immoral Traffic (Prevention) Act, 1956 (ACT NO. 104 OF 1956) Sec 5A Explanation.

<sup>127</sup>Immoral Traffic (Prevention) Act, 1956 (ACT NO. 104 OF 1956) Se 6(2).

<sup>128</sup>Immoral Traffic (Prevention) Act, 1956 (ACT NO. 104 OF 1956) Sec 6(2A).

### **5.5.5 The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018<sup>129</sup>**

The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 was introduced in Lok Sabha and passed by Lok Sabha on July 26th 2018. This bill has comprehensive provisions for prevention, protection, rescue and rehabilitation of victims. It aims at unifying existing legislations and covers the ambit of anti-trafficking law.

This Bill has the provision for establishing the National Anti-Trafficking Bureau with following functions: "co-ordinate and monitor surveillance and preventive efforts along with the known or probable routes"<sup>130</sup>; "facilitate surveillance, enforcement and preventive steps at source, transit and destination points"<sup>131</sup>; "maintain co-ordination between various law enforcement agencies and non-Governmental organizations and other stakeholders"<sup>132</sup>; "strengthen the intelligence apparatus to improve the collection, collation, analysis and dissemination of operational intelligence"<sup>133</sup>; "increase international co-operation and co-ordination"<sup>134</sup>. Further, the mandate is also at "co-ordinating investigating activities among the Districts, States and with other

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<sup>129</sup> The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 available at [http://164.100.47.4/BillsTexts/LSBillTexts/PassedLoksabha/89-C\\_2018\\_LS\\_Eng.pdf](http://164.100.47.4/BillsTexts/LSBillTexts/PassedLoksabha/89-C_2018_LS_Eng.pdf) (last accessed on May 20<sup>th</sup> 2020)

<sup>130</sup> The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 section 4(i)

<sup>131</sup> The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 section 4(ii)

<sup>132</sup> The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 section 4(iii)

<sup>133</sup> The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 section 4(iv)

<sup>134</sup> The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 section 4(v)

countries in case of cross-border trafficking of persons”<sup>135</sup>; “develop and monitor a database on every crime under this Act”<sup>136</sup>.

A major initiative is towards undertake steps for timely and effective action on post-rescue care and protection”<sup>137</sup>; and “monitor and facilitate victim and witness protection protocols, rules and procedures including video conferencing during trial of offences which have ramifications across States and beyond borders”<sup>138</sup>.

The aforementioned Bill has provisions for establishment of Anti-Trafficking Units for “dealing with all matters of prevention, rescue, protection and care of victims and witnesses and of investigation and prosecution of any offence under this Act”<sup>139</sup>.

Further, the Bill also envisages a provision for establishment of “Anti-Trafficking Relief and Rehabilitation Committee”. It aims to “facilitate and ensure rehabilitation and relief services including compensation, repatriation, re-integration to the victims through concerned Ministries, Departments and statutory bodies”<sup>140</sup>. This committee aims at working at national, state and district levels. Therefore, the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 is a comprehensive bill aimed at approaching the menace of human trafficking from all possible angles. However, the proposed bill tends to ignore Supreme Court observation in *Buddhadev Karmaskar vs Union of India*, stating that rescued trafficked women shouldn’t be

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<sup>135</sup> The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 section 4(ix)

<sup>136</sup> The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 section 4(xv)

<sup>137</sup> The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 section 4 (xxiii)

<sup>138</sup> The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 section 4(xxiv)

<sup>139</sup> The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 section 10(1)

<sup>140</sup> The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 section 11 (3i)

forced to be institutionalized in the name of rehabilitation, alternatively community-based rehabilitation approach may also be explored.

## **5.6. Police and Judicial Response**

Special police officer (SPO) is appointed by the state government and in some cases by the District Magistrate (DM). ““Special police officer” means a police officer appointed by or on behalf of the State Government to be in charge of police duties within a specified area for the purpose of this Act”<sup>141</sup>.

The SPO appointed by the state government shall be an officer above the rank of sub-inspector of police. Whereas, DM may appoint a retired police officer or a retired officer of military<sup>142</sup>. Further, the ITPA stipulates that, “Provided that no such power shall be conferred on, — (a) a retired police officer unless such officer, at the time of his retirement, was holding a post not below the rank of an inspector; (b) a retired military officer unless such officer, at the time of his retirement, was holding a post not below the rank of a commissioned officer”<sup>143</sup>.

Notwithstanding that, there is also a provision of assistance to the SPOs, “For the efficient discharge of his functions in relation to offences under this Act,— (a) the

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<sup>141</sup> Section 2(i) of The Immoral Traffic (Prevention) Act, 1956. *available at* [https://tcw.nic.in/Acts/Immoral\\_Traffic\\_Prevention\\_Act\\_\(ITPA\)\\_1956.pdf](https://tcw.nic.in/Acts/Immoral_Traffic_Prevention_Act_(ITPA)_1956.pdf) (last visited on October 5, 2019).

<sup>142</sup> Section 13 (1) and (2) of The Immoral Traffic (Prevention) Act, 1956. *available at* [https://tcw.nic.in/Acts/Immoral\\_Traffic\\_Prevention\\_Act\\_\(ITPA\)\\_1956.pdf](https://tcw.nic.in/Acts/Immoral_Traffic_Prevention_Act_(ITPA)_1956.pdf) (last visited on October 5, 2019).

<sup>143</sup> Section 13(2-A) (a) and (b) of The Immoral Traffic (Prevention) Act, 1956. *available at* [https://tcw.nic.in/Acts/Immoral\\_Traffic\\_Prevention\\_Act\\_\(ITPA\)\\_1956.pdf](https://tcw.nic.in/Acts/Immoral_Traffic_Prevention_Act_(ITPA)_1956.pdf) (last visited on October 5, 2019).

special police officer of an area shall be assisted by such number of subordinate police officers (including women police officers wherever practicable) as the State Government may think fit; and (b) the State Government shall associate with the special police officer a non-official advisory body consisting of not more than five leading social welfare workers of that area (including women social welfare workers wherever practicable) to advise him on questions of general importance regarding the working of this Act.”<sup>144</sup> Outlining the role of Central Government, the Act stipulates that, “The Central Government may, for the purpose of investigating any offence under this Act or under any other law for the time being in force dealing with sexual exploitation of persons and committed in more than one State appoint such number of police officers as trafficking police officers and they shall exercise all the powers and discharge all the functions as are exercisable by special police officers under this Act with the modification that they shall exercise such powers and discharge such functions in relation to the whole of India.”<sup>145</sup>

The ITPA empowers SPOs significantly to the extent that they can search without warrant. “Notwithstanding anything contained in any other law for the time being in force, whenever the special police officer or the trafficking police officer as the case may be, has reasonable grounds for believing that an offence punishable under this Act has been or is being committed in respect of a person living in any premises, and

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<sup>144</sup> Section 13(3) of The Immoral Traffic (Prevention) Act, 1956. available at [https://tcw.nic.in/Acts/Immoral\\_Traffic\\_Prevention\\_Act\\_\(ITPA\)\\_1956.pdf](https://tcw.nic.in/Acts/Immoral_Traffic_Prevention_Act_(ITPA)_1956.pdf) (last visited on October 5, 2019).

<sup>145</sup> Section 13(4) of The Immoral Traffic (Prevention) Act, 1956. available at [https://tcw.nic.in/Acts/Immoral\\_Traffic\\_Prevention\\_Act\\_\(ITPA\)\\_1956.pdf](https://tcw.nic.in/Acts/Immoral_Traffic_Prevention_Act_(ITPA)_1956.pdf) (last visited on October 5, 2019).

that search of the premises with warrant cannot be made without undue delay, such officer may, after recording the grounds of his belief, enter and search such premises without a warrant”<sup>146</sup>. Further, “Before making a search under sub-section (1), the special police officer or the trafficking police officer, as the case may be shall call upon two or more respectable inhabitants (at least one of whom shall be a woman) of the locality in which the place to be searched is situate, to attend and witness the search and may issue an order in writing to them or any of them so to do: Provided that the requirement as to the respectable inhabitants being from the locality in which the place to be searched is situate shall not apply to a woman required to attend and witness the search”<sup>147</sup>.

In a leading judgment court observed that as per Section 13(2) of this Act specify that the Special Officer shall not be below the rank of Inspector of Police. However, in the case under consideration court observed that, “Thus, as against the Circle Inspector, Taliparamba, who is the Special Police Officer, competent to investigate the case, it was the Assistant Sub Inspector who registered the crime and it was the Dy. S.P. (Administration), Kannur who conducted the investigation and laid the charge before Court. The Dy. S.P. (Administration), Kannur may be an officer not below the rank of an Inspector of Police as provided under Section 13(2) of the Act. But what Section 13(2) has prescribed is the minimum rank for the State Government to appoint by a

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<sup>146</sup> Section 15(1) of The Immoral Traffic (Prevention) Act, 1956. available at [https://tcw.nic.in/Acts/Immoral\\_Traffic\\_Prevention\\_Act\\_\(ITPA\)\\_1956.pdf](https://tcw.nic.in/Acts/Immoral_Traffic_Prevention_Act_(ITPA)_1956.pdf) (last visited on October 5, 2019).

<sup>147</sup> Section 15(2) of The Immoral Traffic (Prevention) Act, 1956. available at [https://tcw.nic.in/Acts/Immoral\\_Traffic\\_Prevention\\_Act\\_\(ITPA\)\\_1956.pdf](https://tcw.nic.in/Acts/Immoral_Traffic_Prevention_Act_(ITPA)_1956.pdf) (last visited on October 5, 2019).



notification under Section 13(1) of the I.T.P. Act. Once an officer of a specified rank, namely the Circle Inspector of Police has been appointed by the State Government under Sub-section (1) of Section 13 of the I.T.P. Act, it is futile for the Public Prosecutor to contend that any officer higher in rank than the officer specified under Section 13(2) of the ITP Act can conduct the investigation. I am fortified in this connection by the decision of this Court in *Sinu sainudheen v. Sub Inspector of Police* 2002 (1) KLT 693. Thus, the officer (Assistant Sub Inspector) who registered the crime and the Officer - Dy.S.P. (Administration) who conducted the investigation and charge sheeted the petitioner herein, were not empowered to do so”<sup>148</sup>.

In yet another case, court observed that, “since the Suppression of Immoral Traffic in Women and Girls Act, 1956, created new offences and prescribed the procedure for dealing with them, it was a complete code in itself and to that extent the provisions of the Act must prevail over those of the Code of Criminal Procedure, 1898; that as the Act provided for the appointment of a special police officer for dealing with offences under the Act in the area within his jurisdiction, he and his assistant police officers were the only persons who could investigate offences under the Act committed within that area, and that police officers not specially appointed as special police officers could not investigate the offences under the Act even though they were cognizable offences.”<sup>149</sup>

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<sup>148</sup> *K. Radhakrishnan vs State Of Kerala*, 2008 (2) KLJ 68

<sup>149</sup> *Delhi Administration v. Ram Singh* AIR 1962 SC 68

In another case Jharkhand High court observed that in case of prosecution under ITPA, the Investigating officer should be the SPO. “Under the said circumstances, investigation done by him is wholly without jurisdiction. Thus, the charge sheet submitted against the accused under Section 4/5 of the Immoral Traffic (Prevention) Act by the said Sub-Inspector of Police cannot become basis for cognizance”.<sup>150</sup> Further, the High Court of Karnataka in a case pertaining to ITPA ruled that, “the investigation has been conducted by the officer incompetent to investigate the matter. According to Section 13 of the Act, only the officer who is of the rank of Police Inspector or above, who are specifically authorized by the Government, are entitled to investigate the offences under the ITP Act”.<sup>151</sup>

Further, one of the significant things which the verdicts highlighted is that, “the offences under Sections 3, 4, 5 and 7 of the ITP Act and Section 370 IPC are not attracted, so far as the customers of a brothel house is concerned. In fact, this Court has consistently come to the conclusion after analyzing the above said provisions in the above said cases, that the constitution of the offences are not made-out so far as the customers are concerned. This is also evident from the reading of the above said provisions that,- Section-3 of the Act is a section which provides punishment for keeping a brothel or allowing premises to be used as brothel. Section-4 provides for punishment of living on the earnings of the prostitution. Section-5 provides procuring, inducing or taking person for the sake of prostitution. Section-7 applies to prostitution

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<sup>150</sup> Ashok Sharma vs State Of Bihar on 16 February, 2012 Criminal Misc. No. 8545 of 1999 (R)

<sup>151</sup> Chandru S vs The State OF Karnatka 2017

and in or in the vicinity of public place. Therefore, none of the above said provisions are attracted so far as the customers are concerned. Though it is felt by this Court on various occasions that the customer virtually encourages prostitution, but in the absence of any specific penal provision, it cannot be said that he is liable for any prosecution for the above said offences.”<sup>152</sup>

ITPA defines Magistrate as, ““magistrate“ means a Magistrate specified in the second column of the Schedule as being competent to exercise the powers conferred by the section in which the expression occurs and which is specified in the first column of the Schedule””<sup>153</sup>. Magistrate has the power to rescue under ITPA in following cases: “(1) Where a Magistrate has reason to believe from information received from the police or from any other person authorised by State Government in this behalf or otherwise, that any person is living, or is carrying, or is being made to carry on, prostitution in a brothel, he may direct a police officer not below the rank of a sub-inspector to enter such brothel, and to remove there from such person and produce her before him. (2) The police officer, after removing the person shall forthwith produce her before the Magistrate issuing the order””<sup>154</sup>.

Magistrate is also empowered to order closure of brothel and eviction of offenders from the premises under ITPA:

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<sup>152</sup> Chandru S vs The State OF Karnatka 2017

<sup>153</sup> Section 2(c) of The Immoral Traffic (Prevention) Act, 1956. *available at* [https://tcw.nic.in/Acts/Immoral Traffic Prevention Act \(ITPA\) 1956.pdf](https://tcw.nic.in/Acts/Immoral Traffic Prevention Act (ITPA) 1956.pdf) (last visited on October 5, 2019).

<sup>154</sup> Section 16 (1) and 16 (2) of The Immoral Traffic (Prevention) Act, 1956. *available at* [https://tcw.nic.in/Acts/Immoral Traffic Prevention Act \(ITPA\) 1956.pdf](https://tcw.nic.in/Acts/Immoral Traffic Prevention Act (ITPA) 1956.pdf) (last visited on October 5, 2019).

“A Magistrate may, on receipt of information from the police or otherwise, that any house, room, place or any portion thereof within a distance of two hundred metres of any public place referred to in sub-section (1) of Section 7 is being run or used as a brothel by any person, or is being used by prostitutes for carrying on their trade, issue notice on the owner, lessor or landlord or such house, room, place or portion or the agent of the owner, lessor or landlord or on the tenant, lessee, occupier of, or any other person in charge of such house, room, place, or portion, to show cause within seven days of the receipt of the notice why the same should not be attached for improper use thereof, and if, after hearing the person concerned, the Magistrate is satisfied that the house, room, place or portion is being used as a brothel or for carrying on prostitution, then the Magistrate may pass orders,— (a) directing eviction of the occupier within seven days of the passing of the order from the house, room, place, or portion; (b) directing that before letting it out during the period of one year or in a case where a child has been found in such house, room, place or portion during a search under Section 15, during the period of three years, immediately after the passing of the order, the owner, lessor or landlord or the agent of the owner, lessor or landlord shall obtain the previous approval of the Magistrate; Provided that, if the Magistrate finds that the owner, lessor or landlord as well as the agent of the owner, lessor or landlord, was innocent of the improper user of the house, room, place, or portion, he may cause the same to be restored to the owner, lessor or landlord or the agent of the owner, lessor landlord, with a

direction that the house, room, place or portion shall not be leased out, or otherwise given possession of, to or for the benefit of the person who was allowing the improper use therein”<sup>155</sup>.

Court of law has time and again adjudicated regarding the power of Magistrate under ITPA. In a landmark judgement it has been held that, “Even a woman or girl living in a brothel or who is carrying on or being made to carry on prostitution in a brothel and removed therefrom on the direction of Magistrate under Section 16(1) is required to be produced under Section 16(2) of the Act before the Magistrate issuing the order and is required to be dealt with in accordance with Section 17 (2), (3), (4) and (5) for the purposes of safe custody and rehabilitation.”<sup>156</sup>

In one of the significant judgment Court delimits the power of magistrate, Court observed that, ““A close scrutiny of the said Sub-sections leaves one in no doubt that every function of the learned Magistrate whichever is to be performed by him is subject to the provisions of Sub-section (5) of Section 17.”<sup>157</sup>

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<sup>155</sup> Section 18 (1) of The Immoral Traffic (Prevention) Act, 1956. *available at* [https://tcw.nic.in/Acts/Immoral Traffic Prevention Act \(ITPA\) 1956.pdf](https://tcw.nic.in/Acts/Immoral_Traffic_Prevention_Act_(ITPA)_1956.pdf) (last visited on October 5, 2019).

<sup>156</sup> Sahyog Mahila Mandal And Anr. vs State Of Gujarat And Ors : MANU/GJ/0110/2004

<sup>157</sup> Smt. Sangeeta And Ors. vs The State And Ors : MANU/DE/0613/1995

Further, Sub-section (5) of Section 17 of The Immoral Traffic (Prevention) Act, 1956 states that, “In discharging his functions under sub-section (2), a Magistrate may summon a panel of five respectable persons, three of whom shall, wherever practicable, be women, to assist him; and may, for this purpose, keep a list of experienced social welfare workers, particularly women social welfare workers, in the field of suppression of immoral traffic in persons” *available at*

In another judgment it is upheld that, “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 in conflict with law, or to the Child Welfare Committee if such person is a child in need of care and protection.”<sup>158</sup> Asserting the magistrate power under Section 20 of ITPA Court observed that, “It is notable that for exercise of powers under Section 20 of the IT Act, being the removal of a prostitute from any place... powers have been granted inter alia on Executive Magistrates specially empowered by the State Government as well.”<sup>159</sup>

Further, citing Section 20 of ITPA Court observed that, “Section 20, in order to prevent moral decadence in a busy locality, seeks to restrict the movements of the

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[https://tcw.nic.in/Acts/Immoral\\_Traffic\\_Prevention\\_Act\\_\(ITPA\)\\_1956.pdf](https://tcw.nic.in/Acts/Immoral_Traffic_Prevention_Act_(ITPA)_1956.pdf) (last visited on October 5, 2019).

<sup>158</sup> Prerana v. State of Maharashtra and Ors., 2003 (2) MhLj 105

Further, Sub-section (2) of Section 17 of The Immoral Traffic (Prevention) Act, 1956 states that, “when the person is produced before the appropriate Magistrate under sub-section (5) of Section 15 or the Magistrate under sub-section (2) of Section 16, he shall, after giving her an opportunity of being heard, cause an inquiry to be made as to the correctness of the information received under sub-section (1) of Section 16, the age, character and antecedents of the person and the suitability of her parents, guardian or husband for taking charge of her and the nature of the influence which the conditions in her home are likely to have on her if she is sent home, and, for this purpose, he may direct a Probation Officer appointed under the Probation of Offenders Act, 1958, to inquire into the above circumstances and into the personality of the person and the prospects of her rehabilitation” *available at* [https://tcw.nic.in/Acts/Immoral\\_Traffic\\_Prevention\\_Act\\_\(ITPA\)\\_1956.pdf](https://tcw.nic.in/Acts/Immoral_Traffic_Prevention_Act_(ITPA)_1956.pdf) (last visited on October 5, 2019).

<sup>159</sup> Avijit Biswas v. The State of West Bengal and Ors.: MANU/WB/0386/2020

second category of prostitute and to deport such of them as the peculiar methods of their operation in an area may demand.”<sup>160</sup>

### **Summing Up**

It will be relevant to mention here that the policy makers declares its penal policy and then the judiciary is required to apply the penal policy to individual cases. The Penal Policy is thus reflected in statutory laws and judicial decisions .However if the government feels that its Penal policy is not properly reflects the declared policy it undertakes to amend the law in such a way that policy is reflected in future judicial decisions. It will be apt to mention that the Penal- Policy is also shaped by authoritative judicial pronouncement.

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<sup>160</sup> State of U.P. v. Kaushailiya, (1964) 4 SCR 1002; AIR 1964 SC 416

Further, Section (20) of The Immoral Traffic (Prevention) Act, 1956 states that, “Removal of prostitute from any place.—(1) A magistrate on receiving information that any 1 [person] residing in or frequenting any place within the local limits of his jurisdiction, is a prostitute, may record the substance of the information received and issue a notice to such 1 [person] requiring him to appear before the magistrate and show cause why he should not be required to remove himself from the place and be prohibited from re-entering it. (2) Every notice issued under sub-section (1) shall be accompanied by a copy of the record aforesaid, and the copy shall be served along with the notice on the 1 [person] against whom the notice is issued.] (3) The magistrate shall, after the service of the notice referred to in sub-section (2), proceed to inquire into the truth of the information received, and after giving the 1 [person] an opportunity of adducing evidence, take such further evidence as he thinks fit, and if upon such inquiry it appears to him that such 1 [person] is a prostitute and that it is necessary in the interests of the general public that such 1 [person] should be required to remove himself there from and be prohibited form re-entering the same, the magistrate shall, by order in writing communicated to the 1 [person] in the manner specified therein, require him after a date (to be specified in the order) which shall not be less than seven days from the date of the order, to remove himself from the place to such place whether within or without the local limits of his jurisdiction, by such route or routes and within such time as may be specified in the order and also prohibit him from re-entering the place without the permission in writing of the magistrate having jurisdiction over such place. (4) Whoever,— (a) fails to comply with an order issued under this section, within the period specified therein, or whilst an order prohibiting him from re-entering a place without permission is in force, re-enters the place without such permission, or (b) knowing that any 1 [person] has, under this section, been required to removehimself from the place and has not obtained the requisite permission to re-enter it, harbours or conceals such 1 [person] in the place, shall be punishable with fine which may extend to two hundred rupees not in the case of a continuing offence with an additional fine which may extend to twenty rupees for every day after the first during which he has persisted in the offence.” *available at [https://tcw.nic.in/Acts/Immoral\\_Traffic\\_Prevention\\_Act\\_\(ITPA\)\\_1956.pdf](https://tcw.nic.in/Acts/Immoral_Traffic_Prevention_Act_(ITPA)_1956.pdf)* (last visited on October 5, 2019).

This chapter also carried out a detail analysis of Immoral Trafficking Prevention Act (ITP Act 1956). As far as the result of hypothesis pertaining to the provisions contained in the legislation (ITP Act 1956) fulfil the international obligations cast upon India, in terms of various international conventions, treaties, recommendations, regulations and laws is concerned the current study reveals that ITPA fails to adopt a comprehensive human rights approach.



## **CHAPTER VI**

### **HUMAN RIGHT PERSPECTIVE OF ANTI-HUMAN TRAFFICKING LAWS**

#### **6.1. Introduction**

Human rights and human trafficking are intricately inter twined. This chapter examines how far the anti-trafficking measures/organisations focus on the human rights of the very women they advocate for. It seeks to understand how far besides preventing and combating trafficking, efforts are also made to rehabilitate and support the victims.

It is also pertinent to look at the conditions of trafficked persons in general and women in particular from the perspective of human dignity and human rights. This chapter also tends to look at how trafficking affect human dignity and human rights? How far has law enforcement and rehabilitation system helped in restoring the dignity of trafficked persons specially the rescued ones?. Further, this chapter delves into different international instruments that acts as the main source of obligation for the signatory states and provide basis for the laws on human trafficking.

#### **6.2. Human rights and Human trafficking: Tracing the Linkages**

The linkage between human rights and human trafficking is a complex and at times contradictory one. On the one hand, Human Rights relates to life, freedom against discrimination on the basis of race and sex. On the other hand, human trafficking ignores human rights in multiple ways, not only that at times it poses hindrance to live life without any discrimination and exploitation.

### ***6.2.1. Human Rights approach to human trafficking***

A human rights-based approach provides a conceptual framework to address trafficking that is, “*normatively based* on international human rights standards and that is *operationally directed* to promoting and protecting human rights. Such an approach requires analysis of the ways in which human rights violations arise throughout the trafficking cycle, as well as of States’ obligations under international human rights law. It seeks to both identify and redress the discriminatory practices and unjust distribution of power that underlie trafficking, that maintain impunity for traffickers and that deny justice to their victims”<sup>1</sup>.

Further, human rights-based approach to trafficking, “*identifies rights holders* (for example, trafficked persons, individuals at risk of being trafficked, individuals accused or convicted of trafficking-related offences), their entitlements and the corresponding *duty bearers* (usually States) and their obligations. This approach works towards strengthening the capacities of rights holders to secure their rights and of duty bearers to meet their obligations; and Core principles and standards derived from international human rights law (such as equality and non-discrimination, universality of all rights, and the rule of law) should guide all aspects of the response at all stages”<sup>2</sup>.

Further, the role of regional, National and international (organs) should be integrated so that the response and practical mechanism to deal with human trafficking should be same from different organs and different levels and this would also minimize confusion.

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<sup>1</sup> United Nations, *Human Rights and Human Trafficking*, (New York and Geneva, United Nations, 2014), available at: [https://www.ohchr.org/documents/publications/fs36\\_en.pdf](https://www.ohchr.org/documents/publications/fs36_en.pdf) (last visited on October 5, 2019). Pg.8.

<sup>2</sup> Ibid..

Further, in dealing with human trafficking, Human Rights approach should be given preference as it provides human insight about the origin of the crime which in turn helps in dealing with human trafficking in a more effective way. It has also been noticed that the laws are not balanced and just to deal with human trafficking which creates a lot of issues in dealing with human trafficking at the practical level.

Most importantly, the identification of the traffickers and the rehabilitation of victims is the key area which has to be properly done with human rights approach so that victim is prevented from the pain and agony of re-trafficking and exploitation. Some of the core principles of human rights have been- equality and non discrimination. If human trafficking is approached from these core principles they would help in dealing with human trafficking in a more humane way.

### ***6.2.2. Trafficking as a violation of human rights***

While analyzing the conditions under which victims fall prey to trafficking, it has been noticed that debt bondage creates some vulnerable positions and promotes trafficking. Because when a person is in debt that person is vulnerable to exploitation in many ways including trafficking.

Further, besides debt bondage, forced labour is also prohibited by human right laws. International Labour Organization (ILO) defines forced labour as: “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself [herself] voluntarily”<sup>3</sup>

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<sup>3</sup> United Nations, *Human Rights and Human Trafficking*, (New York and Geneva, United Nations, 2014), available at: [https://www.ohchr.org/documents/publications/fs36\\_en.pdf](https://www.ohchr.org/documents/publications/fs36_en.pdf) (last visited on October 5, 2019). Pg.5.

Two prominent human rights treaties—the Convention on the Elimination of All Forms of Discrimination against Women (Art. 6) states that, “ Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”<sup>4</sup> and the Convention on the Rights of the Child (Art. 35) states that, “States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.”<sup>5</sup>

The human rights of trafficked persons get exploited in various ways. Persons with disabilities are forced into begging, sexual exploitation, slavery bonded labour. Whereas, women and girls are forced into gender-specific exploitations like prostitution, domestic service, flesh trade etc. Girls with minor age are subject to severe emotional and physical trauma.

### **6.3. Human Dignity and Human Rights of Trafficked Person**

It is contended that as long as human dignity is tied to human being, then one’s own dignity cannot be separated from the dignity that belongs to other. To treat one human being as without dignity is potentially to deny the dignity of every human being, even one’s own, and so one may even say that an assault on the dignity of one is an assault on the dignity of all. Therefore, if the dignity of a section of trafficked beings continue to be violated then it is not just assault on their dignity rather it is an assault on dignity of all.

Unfortunately the effect of the state action in addressing the menace of immoral trafficking of women has shown little positive result in dismantling patriarchal power

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<sup>4</sup> Convention on the Elimination of All Forms of Discrimination against Women, *available at*: <https://www.ohchr.org/documents/professionalinterest/cedaw.pdf> (last visited on October 5, 2019).

<sup>5</sup> Convention on the Rights of the Child, *available at*: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (last visited on October 5, 2019).

structure and assumptions on which the law enforcement agencies operate. As a result physical, psychological and symbolic atrocities on trafficked beings continue to occur in unabated manner. The functioning of law enforcement agencies within such type of power structure defeats the constitutional aim of protecting rights and dignity of every citizen and it is needless to mention it includes the victims of commercial sexual exploitation as well. Trafficking has been conceived by scholars as a type of ‘slavery’<sup>6</sup> which leads to infringement of human rights and forces one to live a sub-human life.

In post-independent India, consisted and consorted efforts were made by the Government of India through various inclusive policies to restore the dignity and safeguard the human rights of women. Despite the provision for equal participation and empowerment, exclusion and discrimination of the hitherto excluded groups continued; especially the marginalized section of society like the women in patriarchal society so there was need to address issues of restoring the dignity and safeguarding the human rights of women in a more direct manner.

Constitution of India emphatically asserts that,

We, the people of India, having solemnly resolved to constitute India into a Sovereign, Socialist, Secular, Democratic, Republic and to secure to all its citizens: Justice ... Liberty...Equality ... to promote among them all Fraternity assuring the *dignity* of the individual and the unity and integrity of the Nation.

Excerpts from Preamble to the Constitution of India.  
26<sup>th</sup> November, 1949. (emphasis ours)

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<sup>6</sup> Gunjan Kinnu, *From Bondage to Freedom: An Analysis of International Legal Regime on Human Trafficking*, National Human Rights Commission Publication, (2006), p. 1

The framers of Indian Constitution were visionary and realized that fraternity, in a true spirit, can only result by assuring the dignity of the individual. Human dignity is shared and one's own dignity cannot be separated from the dignity that belongs to other. Dignity, I would argue, is not either respect for autonomy or equity, but the ground of both concepts. Dignity is the answer to the more fundamental questions: 'Why should I respect people's autonomy?' and 'Why should I treat people with equity?' Therefore, dignity is the ground of rights, not a synonym for rights<sup>7</sup>. As Ronald Dworkin has noted, the very idea of human rights depends upon 'the vague but powerful idea of human dignity'<sup>8</sup>. "Human dignity is the rock on which the superstructure of human rights is built"<sup>9</sup>, it is "the ground of rights"<sup>10</sup>, it is "the basis on which one can claim rights from others"<sup>11</sup>. Human dignity is something very inherent and fundamental to the humane and just society. But historically the concept of dignity has been reserved for few elites and masses were deprived of this right. It is essential to look into the question: who are the victims of the immoral trafficking? They are mostly women and in the Indian context, historically women have been oppressed and deprived of dignity and human rights.

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<sup>7</sup> This idea can be found in the writings of Ronald Dworkin. *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1977); Jeff Malpas and Norelle Lickiss. *Perspectives on Human Dignity: A Conversation* (Dordrecht, Netherlands, Springer, 2007); D. P. Sulmasy. 2007: "Human Dignity and Human Worth", in Jeff Malpas and Norelle Lickiss (eds.) *Perspectives on Human Dignity: A Conversation* 10-18 (Dordrecht, Netherlands, Springer).; J. Waldron. *Dignity, rank and rights*, the 2009 Tanner Lectures at UC Berkeley, NYU School of Law, Public Law Research Paper No. 09-50, available at <http://ssrn.com/abstract=1461220> (last visited on April 13<sup>th</sup> 2018); and Oliver Sensen "Human dignity in historical perspective: the contemporary and traditional paradigms." 10(1) *European Journal of Political Theory*.71-91 (2011).

<sup>8</sup> Ronald Dworkin. *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1977);

<sup>9</sup> Deryck Beyellefeld and Roger Brownsword. *Human Dignity in Bioethics and Biolaw*, 13 (Oxford , Oxford University Press, 2001);

<sup>10</sup> J. Waldron. *Dignity, rank and rights*, the 2009 Tanner Lectures at UC Berkeley, NYU School of Law, Public Law Research Paper No. 09-50, available at <http://ssrn.com/abstract=1461220> (last visited on April 13<sup>th</sup> 2018), p.2

<sup>11</sup> Oliver Sensen "Human dignity in historical perspective: the contemporary and traditional paradigms." 10(1) *European Journal of Political Theory*.73 (2011).

Human dignity has a long history. It has been recognized in various religions and has served as the basis for a variety of philosophical outlooks. The essential nature of the concept is sharply debated. Some see it as a paramount constitutional value and a central constitutional right. Others see it as a concept void of any content and having no constitutional use. However there is an agreement on the fact that at the center of human dignity are the sanctity and liberty of life. At its foundation are the autonomy of the individual will, the freedom of choice, and the freedom of man to act as a free creature. As philosopher George Kateb has argued, human dignity connotes the fact that human beings are different from, and more special than, any other creatures in the universe. According to him, “The human species is indeed something special, that it possesses valuable, commendable uniqueness or distinctiveness that is unlike the uniqueness of any other species. It has higher dignity than all other species, or a qualitatively different dignity from all of them. The higher dignity is theoretically founded on humanity’s partial discontinuity with nature. Humanity is not only natural, whereas all other species are only natural”<sup>12</sup>.

Human dignity is something very inherent and fundamental to the humane and just society, but historically the concept of dignity has been reserved for few elites and masses were deprived of this right. So there was felt a greater need for the constitutionalisation of human dignity in terms of human rights, which are to be considered as fundamental rights of all human beings and could not be violated. Human dignity as a constitutional value reflects society understands of woman’s humanity within the society.

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<sup>12</sup> George Kateb. *Human Dignity* 1 (Cambridge, MA, Harvard University Press, 2011).

Human Rights are natural right and are recognized for the personal development of a human being. Aharon Barak argued that, “Most central of all human rights is the right to dignity. It is the source from which all other human rights are derived. Dignity unites the other human rights into a whole”<sup>13</sup>. Human rights cover a broad spectrum of ideas and concepts, which are predominantly rooted in western political thought. It is directed to remove all hurdles blocking the development of a human being and creating a suitable environment for the personal development of all human beings. Human Rights are the moral claims which are inalienable and inherent to all individuals by virtue of their being humans alone. These rights being the birth right are therefore inherent in all the individuals as they are consonant with their freedom and dignity and are conducive to physical, moral, social and spiritual welfare. They are also necessary as they provided suitable conditions for the material and moral uplift of the people<sup>14</sup>. According to the “Universal Declaration of Human Rights” (UNDHR)<sup>15</sup>, human rights constitute both civil and political rights and economic, social and cultural rights. Therefore human rights are recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family, which is the foundation of freedom, justice and peace in the world. The preamble of UNDHR rightly acknowledged that human rights required to be protected by the rule of law “if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny, oppression and deprivation”<sup>16</sup>. Some basic rights therefore need to be secured to them in order to ensure dignified human existence. The

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<sup>13</sup> Quoted in Erin Daly. *Dignity Rights: Courts, Constitutions, and the Worth of the Human Person* (Philadelphia, University of Pennsylvania Press, 2013).

<sup>14</sup> H.O. Agarwal. *Human Rights* (Allahabad: Central Law Publications, 2006).

<sup>15</sup> *The Universal Declaration of Human Rights* available at <http://www.un.org/en/documents/udhr> (last accessed on April 15<sup>th</sup> 2015).

<sup>16</sup> Ibid.



International Covenant on Civil and Political Rights and many academic and legal commentators see dignity as the grounds for universal human rights. The “inherent dignity” of human beings and their “inalienable rights” seem to be axioms; self-evident truths, which require no further justification<sup>17</sup>. As outlined above the Constitution of India seeks ‘to promote among them all [India’s citizens]; Fraternity assuring the dignity of the individual and the unity and integrity of the nation’. Human dignity is taken, then, as a supreme value that bestows moral justification upon the concrete instructions specified in the document. In other words, the articles in a constitution are meant to articulate and specify the belief in human dignity and what it requires<sup>18</sup>. To conclude this point, it is apparent that human dignity is the foundation and justification for rights and duties legislation: because of human dignity, human beings have rights and duties.

#### **6.4. Obligations of States**

Treaties are the main source of obligation for the state. By virtue of being a signatory to the treaty the states are obligated to follow the law. These obligations are enforceable in the International Court of Justice, the International Criminal Court or the European Court of Human rights etc.

#### **Treaties and other instruments particularly relevant to trafficking**

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000 (Trafficking Protocol)

<sup>17</sup> D. Schroeder. “Human Rights and Human Dignity - An Appeal to Separate the Conjoined Twins” 15 (3) *Ethical Theory and Moral Practice*, 324 (2012).

<sup>18</sup> Doron Shultziner. “Human Dignity: Functions and Meanings”, in Jeff Malpas and Norelle Lickiss (eds.) *Perspectives on Human Dignity: A Conversation*, 75 (Dordrecht, Netherlands, Springer, 2007).

Convention on the Elimination of All Forms of Discrimination against Women, 1979

Convention on the Rights of the Child, 1989

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2000

United Nations Convention against Transnational Organized Crime, 2000

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990

International Covenant on Civil and Political Rights, 1966

International Covenant on Economic, Social and Cultural Rights, 1966

Council of Europe, Convention on Action against Trafficking in Human Beings, 2005 (European Trafficking Convention)

Charter of Fundamental Rights in the European Union, 2000, article 5, and Directive 2011/36/EU of the European Parliament and Council on preventing and combating trafficking in human beings and protecting its victims, 2011

South Asian Association for Regional Cooperation, Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002

*Human Rights and Human Trafficking Report*<sup>19</sup>

Many aspects are included or involved in trafficking as it is a complex issue. Treaties dealing with slavery, bonded labour, forced labour, sexual exploitation, migrant workers etc all come within trafficking. Moreover, other sources of international law such as “custom, general principles and the decisions of international tribunals, can also be relevant when determining exactly what is required of States in their response to trafficking. The prohibition on slavery is widely recognized to be part of *customary* international law, binding on all States irrespective of whether they have actually become a party to one or more treaties that specifically prohibit slavery. A *general principle of*

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<sup>19</sup> United Nations, *Human Rights and Human Trafficking*, (New York and Geneva, United Nations, 2014), available at: [https://www.ohchr.org/documents/publications/fs36\\_en.pdf](https://www.ohchr.org/documents/publications/fs36_en.pdf) (last visited on October 5, 2019). Pg.10.

*law* is one that is common to all major legal systems of law and thereby part of international law. A general principle of law relevant to trafficking is that someone should not be held responsible for a crime he or she was compelled to commit.”<sup>20</sup>

In a seminal judgment in *Rantsev v. Cyprus and Russia*, the European Court of Human Rights in 2009 international legal framework around trafficking was decided. It highlighted human cost of sex tourism in Europe<sup>21</sup>. Soft laws are laws that do not impose obligation upon the state directly or strictly. They are more of customised law. These laws have the role only to identify the law framework and just to develop the customary law to deal with different aspects of trafficking. “Soft law can also provide insight into the substantive content of more general legal norms that are contained in treaties. For example, the Trafficking Protocol requires States to take some measures to provide victims of trafficking with access to remedies. Soft law materials, such as the Recommended Principles and Guidelines, as well as reports of the United Nations Special Rapporteur on trafficking, are key resources in determining the actions required by States to fulfill this particular obligation”<sup>22</sup>.

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<sup>20</sup> Ibid. pg.8.

<sup>21</sup> In an analysis of the judgment of *Rantsev v. Cyprus and Russia*, Jean Allain writes that, “That human cost is brought into sharp relief with the fate of Oxana Rantseva, a 21-year-old woman from Russia, who stepped off a plane in Cyprus in 2001 and less than a fortnight later was dead. As important as this case is for taking aim at the exploitive nature of the sex industry and the willingness of States to turn a blind eye to it, Rantsev brings with it questions regarding the very ability of the Court to adjudicate over issues emanating from Article 4 of the European Convention on Human Rights (ECHR). With the determination of the Court that obligations emanating from Article 4 of the ECHR come into play because trafficking is based on slavery, the Court reveals itself as not having truly engaged with the legal distinctions that exist between these two concepts”. For further analysis refer Jean Allain, “Rantsev v Cyprus and Russia: The European Court of Human Rights and Trafficking as Slavery” 10(3) *Human Rights Law Review* 546-557 (2010) available at <https://www.corteidh.or.cr/tablas/r26537.pdf> (last visited on May 08, 2019).

<sup>22</sup> United Nations, *Human Rights and Human Trafficking*, (New York and Geneva, United Nations, 2014), available at: [https://www.ohchr.org/documents/publications/fs36\\_en.pdf](https://www.ohchr.org/documents/publications/fs36_en.pdf) (last visited on October 5, 2019). Pg.11.

**Some important non-treaty instruments relevant to trafficking**

Recommended Principles and Guidelines on Human Rights and Human Trafficking  
(Recommended Principles and Guidelines)

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of  
Gross Violations of International Human Rights Law and Serious Violations of  
International Humanitarian Law (Basic Principles and Guidelines on the Right to a  
Remedy and Reparation)

UNICEF Guidelines on the Protection of Child Victims of Trafficking (UNICEF  
Guidelines)

Criminal Justice Responses to Trafficking in Persons: ASEAN Practitioner Guidelines

UNHCR Guidelines on international protection: The application of article 1A(2) of the  
1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of  
trafficking and persons at risk of being trafficked (UNHCR Trafficking Guidelines)

*Human Rights and Human Trafficking Report*<sup>23</sup>

So while analyzing the obligations of state we come across two dimensions of state's obligation: one obligation is in terms of prevention of human trafficking and prosecution of perpetrators of this heinous crime and other, in terms identification, protection and rehabilitation of victims of human trafficking.

While we have discussed about the former that is state obligation in terms of prevention of human trafficking and prosecution of perpetrators of this heinous crime by formulating appropriate laws in consonance with the international obligations.

The second obligation of state in terms identification, protection and rehabilitation of victims of human trafficking mainly pertains to: providing immediate protection and support; providing legal assistance, including temporary residency, and not criminalizing

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<sup>23</sup> Ibid.

the victims<sup>24</sup>. It has often been noticed that human trafficking victims are in shadows and hardly visible in the eyes of legal enforcement agencies. Sometimes this invisibility stems from the prejudicial approach of law enforcement agencies towards the victims of human trafficking by harping on their weaker identity such as illegal immigrant, prostitutions etc. In such a scenario the victims shy away from approaching the law enforcement agencies. Whereas, United Nations in its guidelines on human trafficking and human rights clearly mentions that “a failure to identify a trafficked person correctly is likely to result in a further denial of that person’s rights”<sup>25</sup>. Further, if victims of trafficking is identified as illegal immigrant or as criminal involved in prostitution then her ability to access to her rights is immensely diminished. State needs to take meaningful measures to train officials involved in accurately identifying the victims of trafficking without putting them at disadvantage because of their weaker identity. In absence of such measures from the state, victims are not able to take proper legal remedy although they have a right to legal remedy. Further, due to lack of proper rehabilitation persistent exploitation is another drawback.

Reasonable protection of the victims requires, “Moving the trafficked person out of the place of exploitation to a place of safety; attending to the immediate medical needs of the trafficked person; assessing whether the trafficked person is under a particular risk of intimidation or retaliation”<sup>26</sup>. Further, state is obligated to protect victims of human trafficking from further harm. This obligation of state is clearly spelt and defined in wider terms in the European Court of Human Rights judgment of *Rantsev v. Cyprus and Russia*, where it has been laid out that, “if State authorities were aware, or ought to have been

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<sup>24</sup> Ibid.pg.19.

<sup>25</sup> Ibid. pg.19.

<sup>26</sup> Ibid.pg.20.

aware, of a risk of trafficking, a failure to take appropriate measures within the scope of their powers to remove the individual from that situation or risk is a violation of that person's rights"<sup>27</sup>. Further, obligation of state also lies in protecting the privacy of the victims of human trafficking, "There should be no public disclosure of the identity of trafficking victims and their privacy should be respected and protected to the extent possible, while taking into account the right of any accused person to a fair trial."<sup>28</sup>

### **6.5. Legal Assistance and Involvement**

State is also obligated to facilitate conditions in which victims are able to participate in an informed manner in the free and fair legal proceedings.

United Nations in its Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power defines "Victims" in a broad sense as:

1. "'Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.
2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and

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<sup>27</sup> Ibid.pg.20.

<sup>28</sup> Ibid.pg.21.

persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

3. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability”<sup>29</sup>.

Further, the Declaration lays down certain guidelines for judicial and administrative system to support victims of crime, which includes victims of human trafficking as well.

“a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;

(b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;

(c) Providing proper assistance to victims throughout the legal process;

(d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

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<sup>29</sup> United Nations, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Adopted by General Assembly resolution 40/34 of 29 November 1985) available at: <https://www.ohchr.org/en/professionalinterest/pages/victimsofcrimeandabuseofpower.aspx> (last visited on January 8, 2022), para 1,2,&3

(e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims”<sup>30</sup>.

## **6.6. International Legal Instruments**

The term human trafficking has been variedly conceived and interpreted. Some of the conceptions of trafficking since ancient times prevailed directly or indirectly in the following forms: Slavery; Prostitution; Organized Crime; Migration; and Human rights. There are gamut of International legal instruments dealing with the issues of slavery, prostitution and human trafficking.

### ***6.6.1. The Abolition of Slavery and Slave Trade, 1815***

The Vienna convention is the first step against slavery and slave trade. It was started first in 1815 during the Congress period in Vienna. The Eight powers which signed the Vienna Declaration are Austria, France, Portugal, Prussia, Spain, Sweden and U.K. The main objective of this convention is to totally abolish the slavery which is very prevalent in society. But this convention is not able to establish a general consent between the members of the declaration therefore; it fails to fulfill the objective. After this convention many more International instrument came but they are also not able to make any mark as there are Law of Sea. Law of land came into effect in 1885 which is called as General Act of Berlin. It is a anti-slavery act which is effective only in Congo-basin region only. As a result this region also became a transit point of slave trade.

### ***6.6.2. International Agreement for the Suppression of the White Slave Traffic, 1904***<sup>31</sup>

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<sup>30</sup> Ibid.

<sup>31</sup> International Agreement For The Suppression Of The White Slave Traffick 1904, Available at <http://www1.umn.edu/humanrts/instrtree/whiteslavetraffic1904.html>XA.ccQSScd (last visited on 16.07.2016)



This international agreement is made for the women who has suffered lot of torture, humiliation, and not able to get any type of social security and involved in many criminal offence. The contracting states have laws regarding immoral practices of women as sending them to foreign countries for illegal activity. In that case authorities have to work on sharing the information between states so that it helps in prohibiting trafficking activities.

The surveillance over the transport route that is railway, ships or air route is very important to help in check over the illegal practices, slave trade, prostitution etc of women in which they are transported inter-state and outside the country. The role of the Diplomats consulate, foreign representatives and Ambassador is very indispensable in the case so that communication between countries related to issues of human trafficking can be easily done.

Victims of immoral trafficking should be properly rehabilitated through a proper charitable institution. In that case the desire of a victim girl which is trafficked has to be taken into consideration. Further, the agreement states that, “The Contracting Governments undertake, within legal limits, to exercise supervision, as far as possible, over the offices or agencies engaged in finding employment for women or girls abroad”<sup>32</sup>. “Non-signatory states can adhere to the present Agreement. For this purpose they shall notify their intention, through the diplomatic channel, to the French government, who shall acquaint all the contracting States”<sup>33</sup>. “The present agreement shall come into force six months after the exchange of ratifications. If one of the contracting parties denounces it, this denunciation shall only have effect as regards that

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<sup>32</sup> *Id.* Article 6.

<sup>33</sup> *Id.* Article 7.

party, and that only twelve months after the date of denunciation”<sup>34</sup>. “The present agreement shall be ratified, and the ratifications shall be exchanged, at Paris, with the least possible delay”<sup>35</sup>. Thus, we see that the International anti-slavery conventions have immensely added to the initiatives taken for controlling the menace of trafficking by enforcing various mechanisms.

### ***6.6.3. International Convention for the Suppression of the White Slave Traffic, 1910***

The main objective of this convention relates to the exploitation/torture of a human being. The background of this convention reveals how twelve countries ratified this convention and it also highlights how the menace of human trafficking gained momentum in wake of stagnant and sluggish economic condition of Europe. The main provisions of the International Convention for the Suppression of the White Slave Traffic, 1910<sup>36</sup> are: “Whoever, in order to gratify the passions of another person, has procured, enticed, or led away, even with her consent, a woman or girl under age, for immoral purposes, shall be punished, notwithstanding that the various acts constituting the offence may have been committed in different countries”<sup>37</sup>.

It also mentions that, “Whoever, in order to gratify the passions of another person, has, by fraud, or by means of violence, threats, abuse of authority, or any other method of compulsion, procured, enticed, or led away a woman or girl over age, for immoral

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<sup>34</sup> *Id.* Article 8.

<sup>35</sup> *Id.* Article 9.

<sup>36</sup> International Convention for the Suppression of the White Slave Traffic, 1910, Available at : <http://www1.umn.edu/humanrts/instree/whiteslavetraffic1910.html> (last visited on 16.07.2016)

<sup>37</sup> *Id.* Article 1.

purposes, shall also be punished, notwithstanding that the various acts constituting the offence may have been committed in different countries”<sup>38</sup>.

Further, the convention states that, “The contracting parties whose legislation may not at present be sufficient to deal with the offences contemplated by the two preceding Articles (i.e. Articles 1&2) engage to take or to propose to their respective legislatures the necessary steps to punish these offences according to their gravity”<sup>39</sup>. The analysis of this convention for the suppression of the White traffic is that it develop a moral condemnation which work around the life of a prostitute. It was a big public movement against the human trafficking and slavery which led to the international instrument to get momentum against human trafficking and to criminalize these practices.

#### ***6.6.4. International Convention for the Suppression of Traffic in Women and Children, 1921***

It is a multilateral treaty that addressed mostly the problem related to trafficking of women and children both. It is more related to the women which is transported or carried out from one country to another for immoral purposes. Various provisions of International Convention for the Suppression of Traffic in Women and Children, 1921<sup>40</sup> are as follows: “The high contracting parties agree, in case they have not already taken licensing and supervision of employment agencies and offices, to prescribe such

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<sup>38</sup> *Id.* Article 2.

<sup>39</sup> *Id.* Article 3.

<sup>40</sup> International Convention for the Suppression of Traffic in Women and Children, 1921, available at : <http://www1.umn.edu/humanrts/instree/women-traffic.html> (last visited on 21.09.2017)

regulations as are required to ensure the protection of women and children seeking employment in another country”<sup>41</sup>.

This convention also states that, “To undertake in connection with immigration and emigration adopt such administrative and legislative measures as are required to check the traffic in women and children. In particular, they undertake to make such regulations as are required for the protection of women and children travelling on emigrant ships, not only at the points of departure and arrival, but also during the journey and to arrange for the exhibition, in railway stations and imports of notices warning women and children of the traffic and indicating the places where they can obtain accommodation and assistance”<sup>42</sup>. The convention of 1921 is an anti-trafficking movement which got official recognition to fight this problem. However, league of nation requested to submit a report on slave trade to discuss but it was not provided by the member states consequently the slavery convention of 1926 came into being.

#### ***6.6.5. The Slavery Convention, 1926***

This convention is made for the suppression of slavery and forced labour in any form. This convention made rules and principle which aimed at suppression of slave practices and forced labour. The major drawback of this convention is that there is no authority to enforce such laws and to supervise the action of the enforcement agencies. So this convention became an illusion and nothing to offer in reality as such.

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<sup>41</sup> *Id.* Article 6.

<sup>42</sup> *Id.* Article 7.

The Slavery Convention, 1926<sup>43</sup> defines slavery as: “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”<sup>44</sup>. Further, the convention defines “salve trade” as: “all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves”<sup>45</sup>. It also highlights that, “The parties agreed to prevent and suppress the slave trade and to progressively 38 bring about, the complete elimination of slavery in all its forms”<sup>46</sup>. “The parties shall prevent the embarkation, disembarkation and transport of slaves in their territorial waters and on vessels flying their flags”<sup>47</sup>. The convention also provides that, “State parties shall assist one another to succeed in the abolition of slavery and slave trade”<sup>48</sup>. “The parties undertook to promulgate severe penalties for slave trading, slaveholding, and enslavement”<sup>49</sup>.

#### **6.6.6. The Forced Labour Convention, 1930**

The main objective of this convention is to prohibit forced labour in all respect and in all sector of working area whatever it may be. It is one of the eight International labour

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<sup>43</sup> The Slavery Convention, 1926, available at : <http://www.ohchr.org/EN/ProfessionalInterest/Pages/SlaveryConvention.aspx> (last visited on 21.09.2017).

<sup>44</sup> *Id.* Article 1.

<sup>45</sup> *Ibid.*

<sup>46</sup> *Id.* Article 2.

<sup>47</sup> *Id.* Article 3.

<sup>48</sup> *Id.* Article 4.

<sup>49</sup> *Id.* Article 5.

organization. According to the Forced Labour Convention, 1930<sup>50</sup> 'forced or compulsory labour' means: "all work or service which is exacted from any person under the menace of any penalty and for which said person has not offered himself voluntarily"<sup>51</sup>. However, the convention makes an exception that following shall not constitute as forced labour: it does not include any work or service related to military law or of military character; normal service or obligation of the civilians does not come under the forced labour; any work or service done by a person (as a criminal) in the form of punishment under the court of law; in case of emergency or calamity like fire, flood, famine, earthquake, epidemic or any disease caused by plants or insects or animals, any work or service done in this regard doesn't come under the forced labour; any community service which is very much dedicated to a particular community and for their interest does not come under the forced labour. In this regard the member/representative of a community has to be consulted<sup>52</sup>.

Further, the convention makes a provision that any authority competent to exact forced shall satisfy following things, before deciding to take recourse to such labour<sup>53</sup>:

- (a) "that the work to be done or the service to be rendered is of important direct interest for the community called upon to do work or render the service"<sup>54</sup>;
- (b) "that the work or service is of present or imminent necessity"<sup>55</sup>;

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<sup>50</sup> The Forced Labour Convention, 1930, available at : [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::PI2100\\_A1\\_ILO\\_CODE.C029](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::PI2100_A1_ILO_CODE.C029) (last visited on 21.09.2017).

<sup>51</sup> *Id.* Article 2(1).

<sup>52</sup> *Id.* Article 2(2)(a) to Article 2 (2) (e).

<sup>53</sup> *Id.* Article 9.

<sup>54</sup> *Id.* Article 9(a).

<sup>55</sup> *Id.* Article 9(b).

(c) “that it has been impossible to obtain voluntary labour for carrying out the work or rendering the service by the offer of rates of wages and conditions of labour not less favourable than those prevailing in the area concerned for similar work or service”<sup>56</sup>

(d) ; “that the work or service will not lay too heavy a burden upon the present population, having regard to the labour available and its capacity to undertake the work”<sup>57</sup>;

The convention also mentions that, “Forced or compulsory labour exacted as a tax and forced or compulsory labour to was for the execution of public works by chiefs who exercise administrative functions shall be progressively abolished”<sup>58</sup>.

It is further mentioned that, “Meanwhile, where forced or compulsory labour is exacted as a tax, and where recourse is had to forced or compulsory labour for the execution of public works by chiefs who exercise administrative functions, the authority concerned shall first satisfy itself:”<sup>59</sup>

a. “that the work to be done or the service to be rendered is of important direct interest for the community called upon to do the work or render the service”<sup>60</sup>;

b. “that the work or the service is of present or imminent necessity”<sup>61</sup>;

c. “that the work or service will not lay too heavy a burden upon the present population, having regard to the labour available and its capacity to undertake the work”<sup>62</sup>;

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<sup>56</sup> *Id.* Article 9(c).

<sup>57</sup> *Id.* Article 9 (d).

<sup>58</sup> *Id.* Article 10(1).

<sup>59</sup> *Id.* Article 10(2).

<sup>60</sup> *Id.* Article 10(2) (a).

<sup>61</sup> *Id.* Article 10(2) (b).

<sup>62</sup> *Id.* Article 10(2) (c).

d. “that the work or service will not entail the removal of the workers from their place of habitual residence”<sup>63</sup>;

e. “that the execution of the work or the rendering of the service will be directed in accordance with the exigencies of religion, social life and agriculture”<sup>64</sup>.

#### ***6.6.7. The International Convention for the Suppression of the Traffic in Women of Full Age, 1933***

The International Convention for the Suppression of the Traffic in Women of Full Age <sup>65</sup> deals with suppression of trafficking of women and girls. It obligates the signatory states to “prohibit, prevent, prosecute and/or punish” those involved in immoral trafficking. When a woman is procured or forcefully carried away without her consent/ with consent to another place or country for immoral purposes, the perpetrators of such offence shall be punished.

The information regarding the person involved such as family background, description of identity, photographs has to be taken into account. The documents related to the criminals shall be sent to the higher authorities or to a particular country concerned without any delay.

#### ***6.6.8. Universal Declaration of Human Rights, 1948***<sup>66</sup>

The “Universal Declaration of Human Rights” (UDHR) has been instrumental in many ways. It is the first declaration to recognize that, “We are all born free and equal”<sup>67</sup>.

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<sup>63</sup> *Id.* Article 10(2) (d).

<sup>64</sup> *Id.* Article 10(2) (e).

<sup>65</sup> The International Convention for the Suppression of the Traffic in Women of Full Age, 1933, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/TraffidnPersons.aspx>, (last visited on 21.09.2017).

<sup>66</sup> Universal Declaration of Human Rights, 1948, Available at <http://www.un.org/en/documents/udhr/>, (last visited on 21.09.2017).



Therefore, it considers that dignity and equality of all members of the human family is the foundation of freedom, justice and peace in the world.

UDHR provides that, “No one shall be held in slavery or servitude; slavery and slave trade should be prohibited in all forms”<sup>68</sup>. Further it mandates: “that everyone has the right to freedom of movement and residence in any state”<sup>69</sup>.

#### ***6.6.9. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949***<sup>70</sup>

The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949<sup>71</sup> extended the scope of previous conventions and consolidated the provisions further.

The preamble for the first time links trafficking with the dignity and worth of individual. It mentions that “Whereas prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community”<sup>72</sup>. Further, the Convention mentions that the signatory parties to this convention, “...agree to punish any person who, to gratify the passions of another: Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person”<sup>73</sup>; “Exploits the prostitution of another person, even with the consent of that

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<sup>67</sup> Universal Declaration of Human Rights, 1948, Article 1

<sup>68</sup> *Id.* Article 4.

<sup>69</sup> *Id.* Article 13(1).

<sup>70</sup> The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949, available at <https://previous.ohchr.org/EN/ProfessionalInterest/Pages/TrafficInPersons.aspx>, (last visited on 30.09.2017).

<sup>72</sup> *Ibid.*

<sup>73</sup> *Id.* Article 1(1).

person”<sup>74</sup>. The signatory parties also agree to punish those who: “Keeps or manages, or knowingly finances or takes part in the financing of a brothel”<sup>75</sup>; “Knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others”<sup>76</sup>. Further, the signatory states undertake, “in accordance with the conditions laid down by domestic law, to have declarations taken from aliens who are prostitutes, in order to establish their identity and civil status and to discover who has caused them to leave their State. The information obtained shall be communicated to the authorities of the State of origin of the said persons with a view to their eventual repatriation”<sup>77</sup>. The convention goes on to mention that, “Pending the completion of arrangements for the repatriation of destitute victims of international traffic in persons for the purpose of prostitution, to make suitable provisions for their temporary care and maintenance”<sup>78</sup>.

#### ***6.6.10. Convention on the Elimination of All Forms of Discrimination Against Women, 1979***

The Convention on the Elimination of All Forms of Discrimination Against Women, 1979<sup>79</sup> is a significant international legal instrument. This instrument aims at addressing the discrimination against women. The convention operationalises ‘discrimination against women’ as: “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of

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<sup>74</sup> *Id.* Article 1(2).

<sup>75</sup> *Id.* Article 2(1).

<sup>76</sup> *Id.* Article 2(2).

<sup>77</sup> *Id.* Article 18.

<sup>78</sup> *Id.* Article 19(1).

<sup>79</sup> The Convention on the Elimination of All Forms of Discrimination against Women, 1979, available at <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/cedaw.pdf>, (last visited on 30.09.2017).

human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”<sup>80</sup>.

Further, the convention condemns discrimination against women in all its form, and in order to fulfill this, undertakes: “ To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle”<sup>81</sup>; “To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women”<sup>82</sup>; “To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination”<sup>83</sup>; “To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation”<sup>84</sup>; “To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise”<sup>85</sup>; “To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women”<sup>86</sup>; “To repeal all national penal provisions which constitute discrimination against women”<sup>87</sup>.

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<sup>80</sup> *Id.* Article 1

<sup>81</sup> *Id.* Article 2(a)

<sup>82</sup> *Id.* Article 2(b)

<sup>83</sup> *Id.* Article 2(c)

<sup>84</sup> *Id.* Article 2(d)

<sup>85</sup> *Id.* Article 2(e)

<sup>86</sup> *Id.* Article 2(f)

<sup>87</sup> *Id.* Article 2(g)

Emphasizing on the human rights of women, the convention states that, “States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men”<sup>88</sup>. The convention emphatically asserts that, “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”<sup>89</sup>. Therefore, Convention on the Elimination of All Forms of Discrimination against Women clearly addresses the issue of immoral trafficking of women for commercial sexual exploitation.

***6.6.11. The United Nations Convention against Transnational Organised Crime, 2000 and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000***<sup>90</sup>

The Protocol entered into force on 25 December 2003. This protocol establishes the first common international definition of "trafficking in persons". It is “expected to standardize terminology, laws and practices of countries in this area of the law”<sup>91</sup>. The key definition, "trafficking in persons", is intended to include “a range of cases where human beings are exploited by organized criminal groups, particularly where there is an element of duress involved and a transnational aspect, such as the movement of people across

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<sup>88</sup> *Id.* Article 3

<sup>89</sup> *Id.* Article 6

<sup>90</sup> United Nations, *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*. (New York, United Nations, 2000), available at: <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx> (last visited on November 3, 2018).

<sup>91</sup> *Ibid.*

borders”<sup>92</sup>. According to the definition, “the consent of the victim is irrelevant where illicit means are established, although criminal law defenses are preserved”<sup>93</sup>.

The Protocol contains “a series of general protection and support measures for victims. These include a list of social support benefits such as counseling, housing, education, medical and psychological assistance and an opportunity for victims to obtain legal status allowing them to remain in the country of the receiving Party, either temporarily or permanently”<sup>94</sup>. This convention marked a paradigm shift in the understanding and addressing of human trafficking.

### **6.7. Summing Up**

The need of the hour is to replace the existing law rooted in the patriarchal mindset and operates on taken for granted cultural arbitraries of male worldview with a gender sensitive legal system. The legal system which operates with taken for granted moral assumption and places the victims of commercial sexual exploitation in a disadvantageous position should focus on the plight of victims and violation of her basic human rights. Human dignity is inherent and fundamental to the humane and just society.

Invoking the Constitution of India, the importance of dignity has been brought in the centre stage. Therefore, it is apparent that human dignity is the foundation and justification for rights. But dignity of a section of trafficked beings continues to be violated then it is not just assault on their dignity rather it is an assault on dignity of all. In order to address the menace of trafficking treaties and non-treaty instruments are the

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<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid.

main source of obligation for the state. By virtue of being a signatory to the treaty the states are obligated to follow the law.

## **CHAPTER VII**

### **CONCLUSION AND SUGGESTIONS**

North-East India, over the years, has been the site of immoral trafficking of women. The study has highlighted with the help of secondary data and analysis that India is a major source; destination and transit point for immoral trafficking of women and girl child for commercial sexual exploitation. Within India, North East India has emerged as a major source and transit point for sex trafficking. Within North East India, the source states are Assam, Nagaland, Manipur and to some extent Sikkim. Despite being a hub for immoral trafficking, there were hardly any academic literatures focusing on the Northeast India. This study is a much needed contribution in that direction.

Researcher engaged with the conceptual enigma around human trafficking and unraveled the intricacies involved in understanding human trafficking through the conceptual conduit of Slavery; Prostitution; Organized Crime; Migration; and Human rights. Navigating through the discourse, this study argues that immoral trafficking can at best be described as "slavery-like practice"; whereas, while dealing with the inter-linkage between immoral trafficking and prostitution, this study cautions to take the "criminalization and moralizing tenancies of the abolitionist discourse" with a pinch of salt as this has been used more to police women specially sex workers than to protect them from sexual exploitation.

In order to prevent immoral trafficking this study argues that a comprehensive approach is required. Effective legislation and extensive police surveillance is required to control traffickers, promoters/profiteers and purchasers of trafficking victims. Further,

information and increasing awareness among the purchasers of trafficking victims and profiteers from trafficking would also go a long way in curbing human trafficking.

While analyzing the failure of state machinery in combating trafficking, the prime reason which emerged is the lack of conceptual clarity among the police personnel involved like constable, head constable, assistant sub- inspectors, sub- inspectors etc. hardly have much knowledge about human trafficking and the associated provisions of Immoral Trafficking Prevention Act. Another important reason identified for poor enforcement of anti-trafficking provisions is inadequate police-to-population ratio in India.

Policies and projects planned for addressing of immoral trafficking of women or helping trafficked women in other parts of India may not be effective in the context of North East given its different socio-cultural context. The unfortunate aspect is that despite various socio-legal measures the accessibility of the trafficker to the prospective victim has not witnessed any significant dent. Similar cases have been reported in other metropolitan cities like Delhi where northeast students are portrayed in “sexist” ways. This imaginative geography of northeast is produced and reproduced through texts, images and discourses where an imaginative perception of Northeast India in general and women of Northeast India in particular is created, that is, further circulated to create a knowledge that provides lens for everyone to look at Northeast. Such stereotyping creates a false image which prompts the anti-social elements to approach women from northeast.

Further, unstable situation emanating out of terrorism, insurgency, and ethnic violence breeds insecurity and anxiety among the people of the region in general and internally displaced persons (IDPs) in particular. Traffickers capitalize on the fear, insecurity and



anxiety of population inhabiting in this region inflicted with insurgency and ethnic violence. Traffickers offer these people in distress a better future and exploit their vulnerabilities. This study found that the consequences of immoral trafficking are all the more appalling. Victim's life after trafficking is never the same, even after being rescued the stigma, indignation and suffering remains.

While mapping the magnitude of human trafficking in the states of Northeast India, this study found that human trafficking is more of hidden and structural crime. Hidden in the sense because the process of trafficking is very complex and inter connected. Structural because it is a more organized crime as lot of money is involved in the form of flesh trade. Further, On the one hand, the geopolitical positioning of north east region sharing 98 percent of Northeast India borders internationally with China, Bhutan, Myanmar and Bangladesh, places the region at high risk of cross-border trafficking. On the other hand, the internal situation of the states of North East region like poverty, terrorism, insurgency, and ethnic violence creates necessitating and facilitating conditions available for trafficking within the countries as well as across border human trafficking.

An analysis of data from 2012 to 2020 reveal that that Assam is reported to have the highest number of human trafficking cases. Whereas, Sikkim, Tripura and Arunachal Pradesh are reported to have least number of human trafficking cases. It is pertinent to mention that less number of cases being reported doesn't mean that the state is not having immoral trafficking. For example, Tripura being a land locked state surrounded by Bangladesh from three sides is poised for cross border human trafficking. The existential experience suggest that the problem persist but the record show otherwise. In terms of

performance of states with respect to combating human trafficking, Category one (best performing states) are Meghalaya, Sikkim. Category two state is Mizoram. Category three states are Manipur, Assam; and Category four states (least performing) are: Nagaland, Tripura.

Therefore, the study found that the hypothesis: Meghalaya model in Northeast India is effective and comprehensive model in combating trafficking of women and rescuing and rehabilitating victims of human trafficking is true. In order to effectively tackle the menace of immoral human trafficking, the states of North East India can borrow best practices from the state of Meghalaya. Meghalaya model demonstrates in an exemplary manner how there is a hope amidst despair. It is conventional wisdom that crisis is the time when astute forces come together to join hand and deal with the challenge. Meghalaya model reveals how various stakeholders capable of intervening like law enforcement agency, media, the judiciary/government, NGOs, CBOs, and faith-based organizations have joined hands in rescuing and rehabilitating human trafficked victims. This synergized effort enables government and citizen groups to jointly implement 'the "five Ps" prevention, protection, press, policing, and prosecution, and the "four Rs" rescue, repatriation, rehabilitation, and reintegration'<sup>1</sup>. Most importantly, Meghalaya being a North East states with similar ethnic, social and geographical disposition would inspire other states of Northeast India in a meaningful way to tackle immoral human trafficking in an effective way.

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<sup>1</sup> Hasina Kharbhih. 'Human Trafficking Scenario in Northeast India,' in Veerendra Mishra (ed). *Human Trafficking: The Stakeholders' Perspective*, 353 (Sage, New Delhi, 2013).

As far as the legal system is concerned, the low conviction rate itself speaks in volume about the lackluster legal enforcement system in the country in general and North East India in particular. It is appalling to notice the confounding scale of victimization of young women in sex trafficking in the contemporary times. Yet woefully the measures taken to combat human trafficking are insufficient and misdirected. Some of the salient reasons for this are: Firstly, laws against human trafficking are inadequate and shoddily implemented. Secondly, the institutions designed and dedicated to combat the menace of human trafficking are financially starved and lacks proper inter and intra-agency coordination. Thirdly, despite numerous studies and reports, a systematic business and economic analysis of the industry, conducted to identify strategic points of intervention, has not yet been undertaken<sup>2</sup>.

The study reveals there is a yawning gap between what the law of the land promises and what it delivers. The lacunae in the law enforcement and the modality of rescue and rehabilitation at times work against the victims. Such lacunae are exploited by the trafficking syndicate to not only push more people into trafficking but it also facilitates the traffickers in re-trafficking the rescued victims and survivors of commercial sexual exploitation into the trafficking cycle. Such instances of re-trafficking of rescued people is not only shameful for the system but it is also demoralizing and detrimental for the spirit of those victims who are mustering courage to come out of the vicious cycle of commercial sexual exploitation and live their dream of living life with dignity.

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<sup>2</sup> Siddharth Kara, *Sex Trafficking: Inside the Business of Modern Slavery* 3 (Columbia University Press, New York, 2009).

Study reveals that many times the accused are not prosecuted and punished because of violation of the vital provisions of the act. For example, under section 13 of ITPA mandates that cases be investigated by a “special police officer” (SPO), If the police do not meet this requirement, any eventual legal proceedings will be vitiated, as it happened in *In re Kuppammal*, A.I.R. (1959) the Madras High Court quashed charges against the accused on the ground that an officer below the designated rank had conducted the investigation.

Conducting a Warrantless Arrest and Search under Sections 14 and 15 of ITPA- An SPO’s role in the investigation is fundamentally important. Due to lack of proper adherence to this section of ITPA, courts have quashed FIR, as it happened in *Delhi vs. Ram Singh*, for example, the Supreme Court upheld a lower court’s decision to quash a chargesheet on the basis that neither an SPO nor his qualified subordinate officers were present to lead the investigation. In *K. Radhakrishnan vs. State of Kerala*, in which the Kerala High Court quashed a First Information Report (FIR) when an officer other than the SPO conducted the investigation stating. The Kerala High Court quashed proceedings in *Mohammed Ali vs. S. I. of Police*, 2005 because a warrantless search had been conducted by a subordinate officer, even though this search had been conducted on the specific orders of the SPO. Similarly, The Juvenile Justice (Care and Protection of Children) Act, 2000 is the primary legal framework for juvenile justice in India. The implementation of Juvenile Justice (Care and Protection of Children) Act, 2000 is a very serious concern and the Supreme Court of India has expressed concern over the implementation of this law in- *Sampurna Behrua Versus Union of India* and *Bachpan Bachao Andolan Versus Union of India*.

This study also analyzed the human rights implications of immoral trafficking. Human rights and human trafficking are intricately linked with each other. However, the finding of this study reveals that the effect of the state action in addressing the menace of immoral trafficking of women has shown little positive result in dismantling patriarchal power structure and assumptions on which the law enforcement agencies operate. As a result physical, psychological and symbolic atrocities on trafficked beings continue to occur in unabated manner. The assertion of this research work is that as long as human dignity is tied to human being, then one's own dignity cannot be separated from the dignity that belongs to other. To treat one human being as without dignity is potentially to deny the dignity of every human being, even one's own, and so one may even say that an assault on the dignity of one is an assault on the dignity of all. Further, by virtue of being signatory to various international instruments, states are obligated to frame laws and take effective measures to tackle the menace of human trafficking.

### **Recommendation and suggestions**

Rightly pointed out by Veerendra Mishra that, "human trafficking is the victimization of humans by humans...on both sides of the game are humans"<sup>3</sup>. Further, the potential target of this heinous crime belongs to all gender, caste, class, region and ethnicity. Given such a risk potential probably the only thing which can mitigate this crime is mass awareness about the trafficking process and the potential danger, preventive steps and support system. The use of various social media platforms and modes of information and

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<sup>3</sup> Veerendra Mishra, *Combating Human Trafficking: Gaps in Policy and Law*. 270 (New Delhi, Sage, 2015).

technology can also be used extensively in generating awareness among the masses. In the hot spots of human trafficking special efforts must be made amongst the vulnerable group like children and adolescent girls by making them aware about the menace of human trafficking by organising awareness and sensitization camps in the schools.

Further, besides the urgency of the three organs of state: legislature, executive and judiciary to work in tandem, the need is also to coordinate and collaborate with civil society including the non-governmental organisations in combating human trafficking effectively. All three organs of state have their respective roles in combating the menace of human trafficking: legislature is expected to legislate such laws which empowers the law enforcement agencies and protects people from human trafficking, executive is supposed to execute the law legislated by the legislature in letter and spirit. Judiciary is expected to adjudicate and punish the perpetrators of human trafficking. The role of civil society and NGOs is highly significant in terms of providing *voice to the voiceless* victims of human trafficking. Victims of human trafficking due to their marginal position, fear, indignity and humiliation are not in a position to cooperate fully in terms of investigation.

The recommendations and suggestions for combating trafficking can be clubbed under three broad sub-heads which also denote three important phases or process in the endeavor to ameliorate the menace of immoral human trafficking of women and girl child. In line with effective result from three pronged focus in other regions on

combating human trafficking<sup>4</sup>, the same may be borrowed in case of dealing with the menace of trafficking in Northeast Region. Firstly, Preventive measures; Secondly, Protection of the victims of immoral human trafficking; and thirdly, Prosecution of the accused involved in the heinous crime of immoral human trafficking of women and girl child. In other words, combating immoral human trafficking requires a comprehensive approach.

### ***Preventive measures to combat human trafficking***

There are various structural and cultural dislocations in the society which necessitates (push) and facilitates (pull) women and girl child into immoral trafficking. In order to combat trafficking we need to address these cultural and structural dislocations in a meaningful way. North-East India, over the years, has been the site of various political and ethnic conflicts. The everyday struggles and experiences acts as a push factor for moving outside the region for a better future. Traffickers exploit these dreams of better future and trick them into commercial sexual exploitation. Though numerous efforts to address trafficking have been made by the state and civil society organization in terms of policies and projects, the result has not been substantial. In order to effectively the cultural and structural dislocations in the North East region the policy makers and planners needs to take into account the context in which particular groups of women are placed and take into account the rich diversity among various regions in North East India. Policies and projects planned for addressing trafficking or helping trafficked

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<sup>4</sup> Ibid.

women in other parts of India may not be effective in the context of NE given its different socio-cultural context. Therefore policies needs to be based on appropriate and thorough information and understanding of NE society and women within that society.

The study noticed a strong correlation between gendered norms of society and trafficking of women. Any law is meaningful unless societal values support it. Unfortunately in a patriarchal society women are marginalized and at times subjected to violence. In NE India specially Assam and Tripura there are inhumane and archaic practices like With-hunting. Women in other states of NE are also subjected to gender based violence. In order to address the vulnerability of women gender sensitivity needs to be inculcated in the society. However, in case of North East India already there are communities specially the tribal communities which emphasise on gender equality. North East has been uniquely known for having matrilineal communities like Khasis, Garo and Jaintia tribes where lineage is passed through the female line and females are in the position of authority. The egalitarian and empowering practices from the NE region need to be shared and promoted in other regions as well.

The study revealed that in states like Tripura and Assam, the immigrants from the neighbouring country specially Bangladesh are exploited because of criminalization of migration. Restrictive immigration policy leads to metering and encourages the practices of non-admission like immigrants from Bangladesh in these regions of Northeast India. The migrants without proper documentation are trapped in the vicious cycle of immoral trafficking. Humanitarian approach should be taken towards these migrants and they must be repatriated without falling into the trap of traffickers. One of the biggest hurdle in



tackling cross border trafficking is the issue of jurisdiction. However, fortunately SAARC has mandated for formation of a task force which has a mandate to deal with the menace of trafficking across the border. A successful initiative has been of active collaboration between NGOs across border. SEVA is an NGO in Gorakhpur district of Uttar Pradesh, this district placed near the Indo-Nepal border. This awareness has been very effective in preventing human trafficking. Similar initiatives can be taken up in the border districts of North Eastern states which share international border with neighbouring countries.

Beside the aforesaid proactive preventive measures, the researcher also proposes reactive preventive measures like rescue and rehabilitation of victims. The focus should be on safeguarding the human rights and dignity of the victims after rescue and prevent them from stigmatization and re-trafficking. In order to do so, states of Northeast region can borrow from the Tamil Nadu model of involving the grass root Panchayats in an effort to tackle the menace of human trafficking as well as rehabilitate them in their native places. Further, given the low police to population ratio, the cooperation and collaboration between Governmental and Non-Governmental Organization can go a long way in effectively combating human trafficking.

### ***Protection of the victims of immoral human trafficking***

The stage of protection comes after the victims have been rescued. The rescue is generally conducted by raiding the places of commercial sexual exploitation. Unfortunately, besides shattering the dignity and human rights of victims by perpetrators of trafficking, several human rights violations takes place at the hand of law enforcement

agencies. The sweeping manner in which the raids are conducted violates several rights of accused. In the absence of clear cut manual of 'Dos' and 'Dont's' for the raiding party, they are at their own liberty to interpret the rules. For example, if during the raid on activities pertaining to commercial sexual exploitation, police finds a pimp taking or negotiating money then women after rescue is treated as victim but if the women concerned herself takes or negotiates money then they are considered to be culprit of running brothel. There is a pertinent need to conduct legal awareness among the stakeholders so that the victims of Human Trafficking are dealt in a humane way and their human right protected. Many times due to lack of awareness law enforcement officials press Section 18 of ITPA on the victims of commercial sexual exploitation which places the victims on a receiving end.

Therefore, there is pertinent need clearly lay out law for victim protection in the cases pertaining to immoral trafficking. Even third world countries like Kenya have Victim protection laws. Such law is not only important for the protection and welfare of victim who suffered unimaginable torment in the process of commercial sexual exploitation but it is also important for prosecuting the culprits. Studies have revealed that most of the culprits get away because of lack of cooperation of victims. In absence of proper protection, victims are intimidated, coerced from making statement and testifying or are re-trafficked in the trafficking cycle. Therefore, any meaningful measure of protecting the victim includes measures to protect any form of violation of human rights of victim. Further, protection also needs to be extended to the whistleblowers who muster courage at their hand to take risk and expose human trafficking.

## **Re-trafficking and Rehabilitation**

There are mainly two main approaches to tackle human trafficking. 'Accused oriented' approach and 'Victim Oriented' approach. This study finds that the 'Victim Oriented' approach is more humane and focuses on protecting the human rights of victims of human trafficking. The study suggests that there were cases where both the victims and survivors were re-trafficked. Therefore, it is imperative that rehabilitation programmes needs to be connected with the lived experiences of victims and survivors of commercial sexual exploitation to prevent them from re-entering into the trafficking cycle. There should be fund earmarked for rehabilitation of trafficking victims. They should be truly empowered financially and psychologically to resist the pressure of trafficking syndicate for re-entering into the trafficking cycle. In order to ensure this rehabilitation measures can ensure that the rescued persons from commercial sexual exploitation are provided with psychological and legal counseling by well trained personnel who can understand and appreciate the conditions of rescued people. Further, they need to be imparted market and job oriented skills to gain meaningful livelihood options for living with dignity.

## ***Prosecution of the accused***

Prosecution of accused of immoral trafficking can be ensured by improving the law enforcement. Recommendation of police reform commissions for separation of investigative and law and order wings can be implemented for better enforcement of anti-trafficking laws. In crimes like human trafficking a dedicated coordination between different states is very essential. Beside sophisticated data base on victims and perpetrators of human trafficking there should be a robust mechanism of inter-district

(within the states of North East India), inter-state (between the eight states of North East India), and inter country intelligence sharing (countries like Bangladesh, Nepal, sharing borders with the states of North East India). One of the best practices in his regard is that of Andhra Pradesh. Andhra Pradesh Model of Government and Non-Government Organisation (GO--NGO) collaboration in managing rescue homes and operation of the coordination committee at district and state level can be followed by the North Eastern states for combating human trafficking. Andhra Pradesh and Tamil Nadu are two states which follow in spirit Section 13(3) of ITPA of notifying NGOs<sup>5</sup>. Various NGOs like Save the Children, STOP, Sanlaap, Stree , Shakti Vahini and agencies of United Nations have come together to address the menace of human trafficking.

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<sup>5</sup> Sankar Sen and Jayashree Ahuja, *Trafficking in Women and Children: Myths and Realities*, (New Delhi, Concept Publishing, 2009)

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