CHAPTER - VII

CONCLUSION, SUGGESTIONS AND RECOMMENDATIONS

Trafficking in human beings is a global phenomenon, which has gained momentum in recent years. The reasons for the increase in this phenomenon is multiple and complex. Trafficking in general seems to have taken advantage of the globalization of the world economy that led to increased movement of people, money, goods and services to extend to its own international reach. It feeds on poverty, despair, war, crisis, ignorance and women's unequal status in most societies.

The Constitution of India, the fundamental law of the land, forbids trafficking in persons. Article 23 of the Constitution specifically prohibits “traffic in human beings and begar and other similar forms of forced labour”. Article 24 further prohibits employment of children below 14 years of age in factories, mines or other hazardous employment. Other fundamental rights enshrined in the Constitution relevant to trafficking are Article 14 relating to equality before law, Article 15 that deals with prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, Article 21 pertaining to protection of life and personal liberty and Article 22 concerning protection from arrest and detention except under certain conditions.

The Directive Principles of State Policy articulated in the Constitution are also significant, particularly Article 39 which categorically states that men and women should have the right to an adequate means of livelihood and equal pay for equal work; that men, women and children should not be forced by economic necessity to enter unsuitable avocations; and that children and youth should be protected against exploitation. Further, Article 39A directs that the legal system should ensure that opportunities for securing justice are not denied to any citizen because of economic or other disabilities. In addition to this, Article 43 states that all workers should have a living wage and there should be appropriate conditions of work so as to ensure a decent standard of life.

The commitment to address the problem of trafficking in human beings is also reflected in various laws/legislations and policy documents of the Government of
India. The **Indian Penal Code, 1860** contains more than 20 provisions that are relevant to trafficking and impose criminal penalties for offences like kidnapping, abduction, buying or selling a person for slavery/labour, buying or selling a minor for prostitution, importing/procuring a minor girl, rape, etc.

The **Immoral Traffic (Prevention) Act, 1956 (ITPA)**, initially enacted as the ‘Suppression of Immoral Traffic in Women and Girls Act, 1956, is the main legislative tool for preventing and combating trafficking in human beings in India. However, till date, its prime objective has been to inhibit/abolish traffic in women and girls for the purpose of prostitution as an organized means of living. The Act criminalizes the procurers, traffickers and profiteers of the trade but in no way does it define ‘trafficking’ *per se* in human beings. The other relevant Acts which address the issue of trafficking in India are the Karnataka *Devdasi* (Prohibition of Dedication) Act, 1982; Child Labour (Prohibition and Regulation) Act, 1986; Andhra Pradesh *Devdasi* (Prohibiting Dedication) Act, 1989; Information Technology Act, 2000; the Goa Children’s Act, 2003; and the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006. Beside these, there are also certain other collateral laws having relevance to trafficking. These are the Indian Evidence Act, 1872; Child Marriage Restraint Act, 1929; Young Persons (Harmful Publications) Act, 1956; Probation of Offenders Act, 1958; Criminal Procedure Code, 1973; Bonded Labour System (Abolition) Act, 1976; Indecent Representation of Women (Prohibition) Act, 1986; and the Transplantation of Human Organs Act, 1994.

**Integrated Plan of Action to Prevent and Combat Human Trafficking with Special Focus on Children and Women**

The initiatives and activities undertaken by various stake holders to prevent and combat trafficking in Human Beings have come out with their own recommendations and Plans of Action. The result being that we all are working in isolation rather collectively on the same issue. In order that these recommendations /Plans of Action are properly acted upon, the Ministry of Women and Child Development, Ministry of Home Affairs, National Human Rights Commission and National Commission for Women have decided to work in unison and draw up an **Integrated Plan of Action to Prevent and Combat Human Trafficking with Special Focus on Children and Women**. It brings an uniform action on the part of
all concerned so that trafficking is eliminated from its roots. The Integrated Plan of Action outlined below consists of action points grouped under:

- Ensuring Human Rights Perspective for the Victims of Trafficking
- Preventing Trafficking
- Emerging Areas of Concern in Trafficking – Their Patterns and Trends
- Identification of Traffickers and Trafficked Victims
- Special Measures for Identification and Protection of Trafficked Child Victims
- Rescue of Trafficked Victims Especially in Brothel-Based and Street-Based Prostitution with Special Focus on Child Victims
- Rehabilitation, Reintegration and Repatriation of Trafficked Victims with Special Focus on Child Victims
- Cross-Border Trafficking: National and Regional Cooperation and Coordination
- Legal Framework and Law Enforcement
- Witness Protection and Support to Victims
- Training, Sensitization, Education and Awareness
- Methodology for Translating the Action Points into Action

The ultimate objective of the Integrated Plan of Action is to mainstream and reintegrate all victims of trafficking in society.

The Researcher keeping in view the above findings makes the following suggestions and recommendations.

1. Violations of human rights are both a cause and a consequence of human trafficking. Accordingly, it is essential to place the protection of human rights
at the center of any measures taken to prevent and end trafficking. Anti-trafficking measures in no way should adversely affect the human rights and dignity of persons who have been trafficked. The overall machinery deployed by the Central Government/State Governments/Union Territories should take steps to ensure that measures adopted for the purpose of preventing and combating human trafficking do not have an adverse impact on the rights and dignity of trafficked persons and develop standard minimum guidelines for all officials and service providers with regard to pre-rescue, rescue and post-rescue operations including rehabilitation, reintegration and repatriation of trafficked victims. These guidelines should be gender-responsive and should also provide further referral to other service providers in order to prevent revictimization. These could be prepared in the form of information kits/booklets/handbooks/do’s and don’ts or be made part of the rules issued under the concerned law and should specify the accountability of the agencies concerned in providing services. This would enable all officials and service providers - judicial officers, prosecutors, lawyers, law enforcement officials, medical and psychosocial professionals, functionaries manning homes/agencies of different kinds and others, to discharge their functions and duties effectively.

They should ensure that trafficked children, including girl children, are dealt with separately from adult trafficked persons in terms of laws, policies, programmes and interventions. The best interest of the child should be of prime consideration in all actions concerning trafficked children. Steps are to be initiated to ensure that children who are victims of trafficking are not subjected to criminal procedures or sanctions for offences related to their situation as trafficked persons.

2. Effective prevention strategies should be based on existing experience and accurate information analysing the factors that generate demand and supply for exploitative commercial sexual services.

The Government should empower the vulnerable sections living in remote corners of country by extending to them various welfare, development and anti-poverty schemes of the Government of India, such as, Swadhar, Swayamsidha, Swa-Shakti, Swawlamban, Balika Samridhi Yojana, Support to
Training and Employment Programme for Women (STEP), Kishori Shakti Yojana, etc. This would provide scope for ample economic opportunities for the women and other traditionally disadvantaged groups in their native place itself so as to reduce their vulnerability to trafficking.

Improving children's access to schools and increasing the level of school attendance especially of those affected or dependants including the girl children especially in remote and backward parts of the country have to be taken care. Efforts should also be made to incorporate sex-education and gender sensitive concerns in the school curriculum, both at the primary and secondary levels.

Generating awareness and spreading legal literacy on economic rights, particularly for women and adolescent girls should be taken up. Presently, there seems to be insufficient knowledge and information among the people to make informed decisions that affect their lives. This would not only enable them to know about their rights but also inform them about the risks of illegal migration (e.g. exploitation, debt bondage and health and security issues, including exposure to HIV/AIDS) as well as avenues available for legal, non-exploitative migration.

Giving focused attention to the adolescents, who are both potential victims and clients. It would be useful if appropriate information and value clarification is given to them on issues related to ‘sexuality’ and ‘reproductive health’. This exercise would be beneficial in view of the growing evidence of increased pre-marital sexual activity among adolescents and the looming threat of HIV/AIDS within this group.

Strengthening the capacity of law enforcement agencies to arrest and prosecute those involved in trafficking. This would include ensuring that law enforcement agencies comply with their legal obligations.

Devising necessary mechanisms for concerted coordination between the judiciary, police, Government institutions and Non-Governmental organizations/civil society groups with regard to prevention and combating strategies has to be made. This kind of a Government-public network would
involve and make the Non-Governmental organizations/community responsible to act as watchdogs and informants on traffickers and exploiters.

Adopting measures to reduce vulnerability by ensuring that appropriate legal documentation for birth, citizenship and marriage is provided and made available to all persons.

Setting up of a national database/web portal under the aegis of National Crime Records Bureau has to be done. The main purpose of this kind of a mechanism is to create a help desk in providing information on missing persons including women and children, alert notice on suspected traffickers, anti-trafficking networks, do’s and don’ts to be followed while dealing with victims of trafficking, etc.

Addressing culturally sanctioned practices like the system of devadasis, jogins, bhavins, etc. which provide a pretext for trafficking of women and children for sexual exploitation.

Giving adequate publicity through print and electronic media including child and women ‘helplines’ across the country about the problem of trafficking and its ramifications are to be kept in place.

3. India is a country of vast dimensions. The formidable challenge is the enormity of the problem, both in number of trafficked persons and increasing number of locations. Of late, there is an expanding market for commercial sexual exploitation through non-brothel based modalities where the trafficked persons are made to pose as attendants, masseurs and as bartenders. Child pornography is another area that requires concerted attention. Sex tourism is also growing whereby India is emerging as a major tourist destination. Central/ State Governments, where appropriate, Non-Governmental organizations and the civil society at large should consider:

i. Evolving a comprehensive integrated approach for prevention and protection of trafficked victims, especially children of both sexes who are pushed into non-brothel based prostitution. Simultaneously, there
is also need to evolve a strategy to prosecute all those who indulge in exploitation of these kinds.

ii. Strengthening/Amending existing laws on trafficking related to non-brothel based prostitution.

iii. Spreading awareness about non-brothel based prostitution by organizing campaigns, training/sensitization programmes for staff and other functionaries in the hotel and tourism sector as well as children in schools, adolescents and youth groups.

iv. Giving special attention to vulnerable areas like massage parlours, escort services, party hostesses, attendants, companions, etc. so as to prevent linkage between trafficking and non-brothel based prostitution.

v. Developing and distributing brochures and flyers in international/domestic flights for addressing the international/domestic tourists on the legal repercussions of non-brothel based prostitution. Besides, in-flight videos/films could also be prepared for showing on national and international flights.

vi. Developing and distributing different kinds of awareness material like posters, hoardings, etc. on trafficking linked to non-brothel based prostitution.

4. Trafficking means much more than the organized movement of persons for profit. The critical additional factor that distinguishes trafficking from other kinds of clandestine movement of persons is the presence of force, coercion and/or deception throughout or at some stage in the process – such deception, force or coercion being used for the purpose of exploitation. It is therefore very essential to keep a watch on all kinds of movements. Besides, the Central Governments, State Governments and Union Territory Administrations should not only identify and target the traffickers only but also those who are involved in controlling and exploiting trafficked victims. For example, those who are recruiters, transporters, those who transfer and/or maintain trafficked persons in exploitative situations, those involved in
related crimes and those who profit either directly or indirectly from trafficking, its component acts and related offences.

5. The physical, psychological and psychosocial harm suffered by trafficked children and their increased vulnerability to exploitation require that they be dealt with separately from adult trafficked persons in terms of laws, policies, programmes and interventions. The best interests of the child must be a primary consideration in all actions concerning trafficked children, whether undertaken by courts of law, Government authorities, legislative bodies or Non-Governmental organizations. Children who are victims of trafficking should be provided with appropriate assistance and protection and full account should be taken of their special rights and needs.

6. The process of trafficking cannot be broken without giving proper attention to the rights and needs of those who have been trafficked. Appropriate measures need to be specifically devised for trafficked victims, especially in brothel-based and street-based prostitution, including children who have been trapped in this without discrimination. The Government should take effective measures for planning and devising a rescue strategy specifying victim-friendly provisions and structures for trafficked victims who have been forced into brothel-based and street-based prostitution. It creates a specialized cell for rescuing them at the Centre/State/Block/District/Village level. This kind of paraphernalia would also facilitate in coordinating with other relevant departments and Non-Governmental organizations (intra and inter) for rescuing trafficked victims caught in brothel-based and street-based prostitution including children who have been trapped. It creates a confidential database on traffickers including probable traffickers, brothel owners, madams, gharwals, etc. at all levels. It cultivates a network of informants who will provide specific information about trafficked women victims including child victims below 18 years who want to be rescued from brothels. Government should ensure that rescue team should consist of both men and women police officers and representatives of Non-Governmental organizations/local inhabitants. Each member of the rescue team should be told about his/her role in the rescue operation and how the same is to be
executed. They should also be told to maintain confidentiality and secrecy of the entire rescue operation.

7 The rehabilitation, reintegration and repatriation of victims of trafficking being a long process must be planned, taking into account the specific short and long-term needs of individual victims. Efforts must be non-punitive and aimed at protecting the rights of the victims. The Government should take steps

i. Taking into account the specific short and long-term needs of each individual victim based on their age, education, skills, etc., the rehabilitation, reintegration and repatriation package for victims of trafficking should be worked out.

ii. Keeping in view the paucity of Government run institutions as well as the deteriorating conditions of these institutions, there is need to identify names of fit persons and fit institutions for providing safe custody to victims of trafficking. This list should be made available to the police, courts, Non-Governmental organizations and civil society at large for information.

iii. Providing access to legal, medical and counselling services to all trafficked victims in order to restore their self-confidence and self-esteem. Special provision should be provided to those who have contracted HIV/AIDS.

iv. Enabling victims of trafficking to access both formal and non-formal education structures. Formal education should be made available to those victims who are still within the school going age, while non-formal education should be made accessible to adults.

v. Providing gender sensitive market driven vocational training in partnership with Non-Governmental organizations to all rescued victims who are not interested in education. Government and non-Governmental organizations should also work together to develop partnership with public and private sector employers in order to provide training/facilitate work placement as part of the reintegration process. Due care should be taken to give ample choice to victims so that rehabilitation and reintegration becomes a holistic process, which respects their human rights.
vi. Involving the community in the rehabilitation, reintegration and repatriation process of trafficked victims. This means involving the families of victims and the community by enhancing their awareness about trafficking in general and the impact of trafficking on the individual.

vii. Monitoring the rehabilitation, reintegration and repatriation of rescued victims with the help of Non-Governmental organizations.

viii. Making available to rescued victims various developmental and anti-poverty schemes meant for the general population, both in the rehabilitation and reintegration phase.

ix. Upgrading the conditions and capacities of institutions/homes run by the Government and an increase in the number of such institutions/homes not only in the cities, but also at the district and taluk levels, are of utmost necessity.

x. Recruiting adequate number of trained counselors and social workers in institutions/homes run by the Government independently or in collaboration with Non-Governmental organizations.

xi. Appointing trained social workers and counselors at police stations, courts and homes/institutions of different kinds meant for accommodating victims of trafficking.

xii. Anti-trafficking cells/units should be set up at the Centre, State, Block District and Village levels to facilitate and monitor the process of rescue, rehabilitation, reintegration and repatriation.

8. Trafficking is a regional and global phenomenon. Enormous trafficking takes place not only within the country but also across borders, especially between the neighbouring countries. A coherent approach is therefore required to tackle the problem of cross-border trafficking which cannot be dealt with at the national level alone. A strengthened national response can often result in the operations of traffickers moving elsewhere. International, multilateral and bilateral cooperation can play an important role in preventing and combating trafficking activities.
9. The lack of specific and/or adequate legislation on trafficking at the national level has been identified as one of the major obstacles in the fight against trafficking. There is an urgent need to harmonize legal definitions, procedures and cooperation at the national and regional levels in accordance with international standards. The development of an appropriate legal framework that is consistent with relevant international instruments and standards will also play an important role in the prevention of trafficking and related exploitation. Moreover, a strong legal framework would also ensure an effective law enforcement response. As of now, individuals are reluctant or unable to report traffickers or to serve as witnesses because they lack confidence in the police and the judicial system and/or because of the absence of any effective protection mechanisms. These problems are compounded when law enforcement officials are involved or complicit in trafficking. Strong measures therefore need to be taken to ensure that such involvement is investigated, prosecuted and punished. Law enforcement officials must also be sensitized to the paramount requirement of ensuring the safety of trafficked victims. The Government of India having ratified the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the two Optional Protocols to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts; and on the Sale of Children, Child Prostitution and Child Pornography and having signed the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime, 2000, should consider:

i. Amending or adopting national legislation in accordance with international standards in order to address all forms of trafficking and these should also be criminalized. Along with this, the content of domestic trafficking legislation should also strictly criminalize traffickers, including agents or middlemen, brothel owners and managers, as well as institutional networks that are used in the crime of trafficking.
ii. Enacting legislation to provide for the administrative, civil and, where appropriate, criminal liability of legal persons for trafficking offences in addition to the liability of natural persons. The Government should also review current laws, administrative controls and conditions relating to the licensing and operation of businesses that may serve as cover for trafficking such as marriage bureaus, employment agencies, travel agencies, hotels and escort services.

iii. Making legislative provision for effective and proportional criminal penalties (including custodial penalties giving rise to extradition in the case of individuals). Where appropriate, legislation should provide for additional penalties to be applied to persons found guilty of trafficking in aggravating circumstances, including offences involving trafficking in children or offences committed or involving complicity by State officials.

iv. Making legislative provision for confiscation of the instruments and proceeds of trafficking and related offences. Where possible, the legislation should specify that the confiscated proceeds of trafficking would be used for the benefit of victims of trafficking. Consideration should be given to the establishment of a Compensation Fund for victims of trafficking and the use of confiscated assets should finance such a fund.

v. Ensuring that legislation prevents trafficked persons from being prosecuted detained or punished for they are victims of situation beyond their control. Likewise, it should be ensured that protection of trafficked victims is built into the anti-trafficking legislation itself. The protection offered in no way should be made conditional upon the willingness of the trafficked victim to cooperate in the legal proceedings.

vi. Providing legislative protection for trafficked victims who voluntarily agree to cooperate with law enforcement authorities.
vii. Legal reform should also incorporate a gender and rights-based perspective, having regard to the fact that women are, in most cases, marginalized. For example, property and inheritance laws and procedures should be reviewed and adjusted to ensure that they do not include provisions which have a discriminatory impact on women and their livelihood options.

viii. Making effective provision for trafficked victims whereby they are given legal information and assistance in a language they understand as well as appropriate other supportive measures. The Government should ensure that entitlement to such information, assistance and support is not discretionary but is available as a right for all persons who have been identified as trafficked.

ix. Ensuring that the right of trafficking victims to pursue civil claims against alleged traffickers is enshrined in law.

ox. The services of nodal officers – one representing the police department dealing with investigation, detection, prosecution and prevention of trafficking and the other representing the welfare agencies dealing with rescue, rehabilitation and economic/social empowerment of the victims and those at risk – appointed by the State Governments/Union Territories at the behest of NHRC should be utilized for all purposes.

xi. Ensuring that law enforcement personnel of all ranks are provided with adequate training in the investigation and prosecution of cases of trafficking.

xii. Establishing specialist Anti-Trafficking Units (comprising both women and men) in order to promote competence and professionalism. Besides, law enforcement authorities should be provided with adequate investigative powers and techniques to enable effective investigation and prosecution of suspected traffickers.

xiii. Guaranteeing that traffickers are and will remain the focus of anti-trafficking strategies and that law enforcement efforts do not place