CHAPTER - II

IMMORAL TRAFFICKING – HISTORICAL BACKGROUND, DEFINITION AND DIMENSIONS

 Trafficking in human beings, more so in women and children, is one of the fastest growing forms of criminal activity, next only to drugs and weapons trade, generating unaccountable profits annually. The reasons for the increase in this global phenomenon are multiple and complex, affecting rich and poor countries alike. India is no exception to this. The source areas or points of origin are often the more deprived places, regions or countries, and the points of destination are often although not always urban conglomerates within or across borders. For all those who view trafficking in economic terms, it is the real or perceived differential between the economic status of source and destination area that is important. In practice, however, human beings may be and are trafficked from one poor area to another poor area as well for reasons best known to the traffickers, a fact that has been corroborated by research studies and documentation across the world. The fact that the process of trafficking is designed and manipulated by traffickers for their own ends for which they employ all kinds of means, it would, therefore, be wrong to assume that human beings are always trafficked from undeveloped to more developed places, as this is not always so. This, to a large extent, also signifies that trafficking primarily is a human rights issue for it violates the fundamental human rights of all those who are trafficked.

2.1 Classification of Traffickers: Traffickers may be classified into two. They are (a) primary traffickers (b) secondary traffickers.

(a) Primary Traffickers: The following are primary traffickers

i. Crime syndicates

ii. Master operators

iii. Trafficking Gangs or Networks

iv. Brothel Owners or Madams

v. Tourists and Travel Agencies
vi. Employment Agents

(b) Secondary Traffickers:

i. Parents or relatives or neighbours and friends

ii. Local or influential leaders

2.2 Techniques of Trafficking:-

The following are techniques generally used by the traffickers.

i. Local influence or Local contacts

ii. Sale by parents or relatives or acquaintances

iii. Deception of parents or girls through false promises of employment

iv. Lure of money or opportunities

v. Debt Bondage by pimps or procurers after being lured, where the trafficked is coerced to pay for the exposure in kind.

vi. Kidnapping or abduction

vii. Fraudulent documents or passports

viii. Bribery or other incentives

ix. Transportation: depending upon the region, by foot, bus, trains, waterways, etc

2.3 Trends in Trafficking:

As of now, there are no reliable estimates on trafficking. The difficulty of coming up with accurate figures related to trafficking stems from two inter-related factors:

1. Trafficking as a process is largely hidden and has become an organized crime.

2. There is a nexus of criminal syndicates with those in power.
Nevertheless, some estimates can be made on the dimensions of the problem. The United States State Department estimates that around 1 to 2 million people are trafficked each year worldwide 50,000 to the United States\textsuperscript{26}. Trafficking affects virtually every country in the world. The largest number of victims comes from Asia, with over 2,25,000 victims each year from South East and over 1,50,000 from South Asia\textsuperscript{27}. The former Soviet Union is now believed to be the largest new source of trafficking for prostitution and sex industry, with over 1,00,000 trafficked each year from that region. An additional 75,000 or more are trafficked from Eastern Europe. Over 1,00,000 come from Latin America and the Caribbean, and over 50,000 victims are from Africa\textsuperscript{5}. Most of the victims are sent to Asia, the Middle East, Western Europe and North America.

\subsection*{2.4 Regional Trends - Asia and the Pacific:}

An estimated 2,25,000 victims are trafficked from South East Asia annually according to the US Department of States. The growth of sex tourism in this region is one of the main contributing factors for the large-scale child prostitution that occurs in many countries. Thailand, Cambodia, and the Philippines are popular travel destinations for "sex tourism", including pedophiles from Europe, North America, Japan and Australia.

Japan is the largest market for Asian women trafficked for sex, where some 1,50,000 non-Japanese women are involved. Half are from Philippines and 40 per cent are from Thailand\textsuperscript{28}. There exists a racist hierarchy among the sex industry with the top being occupied by independent and well paid prostitutes who are Japanese or Western women, followed by bonded slaves of whom the best are the white women from Eastern Europe and at the bottom being women from South East Asia. Victims are also trafficked in increasing numbers to newly industrialized countries and regions, including Taiwan, Malaysia, Hong Kong and Thailand. Cross-border trafficking is prevalent in the Mekong region of Thailand, Myanmar, Laos, Cambodia, Vietnam and the Southern Yunan province of China. Vietnamese women are trafficked to China and Cambodia; women and children from Myanmar to Thailand.

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\textsuperscript{27} \textit{Ibid.} p 1.
\textsuperscript{28} \url{http://www.uri.edu/arts/sci/wms/hughes/catw}
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Victims from South East Asia, especially China, Myanmar, Philippines, Thailand, Cambodia and Vietnam are also sent to Western Europe, United States, Australia and the Middle East. In South Asia, the US Department of State estimates that some 1, 50,000 victims are trafficked annually. Sri Lanka and India are the favoured destinations of sex tourists from other parts of the world. Bangladesh and Nepal serve as the supply zone whereas India and Pakistan serve as destination countries. Estimates of the number of Nepalese girls and young women lured or abducted to India for sexual exploitation each year ranges from 5,000 to 10,000. The total number of Nepalese working as prostitutes in India ranges from 40,000 to 2, 00,000. More than 15,000 women and children are believed to be trafficked out of Bangladesh every year. Over 4,000 women and children are trafficked from Bangladesh to Pakistan each year. Also, according to the Amnesty International, Afghan women have been sold into prostitution in Pakistan.

Some 7,000 Nepalese women and children are trafficked for prostitution to the Asia Pacific, especially Hong Kong. A rough estimate shows that about 2, 00,000 Bangladeshi women and children have been trafficked to the United Arab Emirates (UAE). India is a source, transit, and destination country, receiving women and children from Bangladesh, Nepal, Bhutan, Sri Lanka and Pakistan and sending them to Europe and Middle East.

Australia has been a prime source of sex tourists in Asia. The Philippines, Thailand, South Korea, Sri Lanka and Hong Kong are some of the primary Asian destinations for organized sex tours from Australia. Indonesia and Taiwan are secondary destinations. To counter attack this problem, Australia has been active in review of extraterritorial legislation and public awareness campaigns aimed at travelers.

International criminal organizations traffic hundreds of Thai women yearly to Australia. Therefore, Australia plans to introduce tougher Laws including long jail terms to curb the increased trafficking of Asian women to Australia for prostitution.

30. Supra note 6.
31. Ibid.
32. Ibid.
33. Coalition Against Trafficking in Women - Asia Pacific, Trafficking in Women and Prostitution in Asia Pacific. (www.catw-ap.org)
2.5 **Europe:**

The former Soviet Union and Central and Eastern Europe have replaced Asia as the main source of trafficked women to Western Europe. Victims come from Russia, Ukraine, and other East European countries. With the economic and political turmoil after the collapse of the Soviet Union, trafficking from the region has escalated from a minor problem before 1991 into a major crisis. As criminal organizations have grown, especially in Russia, they have gravitated to this lucrative business. Russian organized crime groups and other including Albanian, Estonian, Chechen, Serb and Italian groups are involved in human trafficking in Europe. Russian criminal groups reportedly are also gaining control of prostitution in Israel, and other parts of United States.\(^{13}\)

Around 1, 75,000 who are trafficked annually are from the former Soviet Union and Eastern Europe. In addition, several Central and East European countries are reported to be the source, receiving, and transit countries. The conflicts in Bosnia and Kosovo provided new opportunities for traffickers in the former Yugoslavia and the Balkans. Traffickers have targeted refugee women who fled Kosovo. According to the Women's Commission for Refugee Women and Children, Albanian traffickers have smuggled thousands of Kosovo women into Italy by boat for the sex trade.\(^{14}\)

An estimated 70 per cent of Russian and East European victims are believed to be sent to West European countries especially Germany, Italy, France, Switzerland, Netherlands, Greece, Austria and England. Another 15 per cent are sent to the Middle East especially Israel and Saudi Arabia and the Far East especially Japan and Thailand. About 5,000 or 3 per cent are sent to United States or Canada. The remainders are sent to Central European countries, especially Poland, Hungary and the Czech Republic.\(^{34}\) The Western European countries are also destination points for victims from other parts of the world including Africa, Ghana, and Nigeria, Morocco, and Latin American countries viz., Brazil, Colombia, South East Asian countries viz., Dominican Republic, Philippines and Thailand.\(^{35}\)

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\(^{34}\) Ibid.

2.6 Middle East:

The sexual exploitation of women and children in the Middle East involves the import of women from other regions. The exploitation of Middle Eastern women and children tends to have less of a commercial dimension.

Women and children, mostly from Asian countries viz., Thailand, Indonesia, Bangladesh, Philippines are trafficked as prostitutes, brides, camel jockeys, and domestic help to the Middle East. Women from the former Soviet Union are sent to Israel. According to Israel Women's Network, every year well-organized criminal groups bring several hundred to 2,000 women from Russian and the former Soviet Union to Israel.

2.7 Latin America and the Caribbean:

Estimates of the number of Latin America and Caribbean women and children trafficked for sexual exploitation each year is over 1,00,000. Impoverished children are particularly vulnerable to trafficking. The Organization of American States estimates that more than two million children are sexually exploited in Latin America.

The presence of sex tourism from Europe, North America, and Australia has significantly contributed to the trafficking of women and children. A growing number of sex tourists are going to Latin America, partly as a result of recent restrictions placed on sex tourism in Thailand, Sri Lanka, and other Asian countries. Favoring sex tourism destinations are Brazil, the Dominican Republic, Mexico, Honduras, Costa Rica, Trinidad and Tobago and Argentina.

Brazil has one of the worst child prostitution problems in the world. More than 50,000 women from the Dominican Republic reportedly have been trafficked abroad.

Victims from Latin America and the Caribbean are trafficked to Western Europe and the United States. The Central American countries and Mexico are also transit countries for trafficking to the United States.

36 Supra note 3, p. 7
2.8 Africa:

In Africa, over 50,000 victims are believed to be trafficked annually according to the US Department of States. Although the extent of trafficking is not well documented like elsewhere, poverty and low status of women are major contributing factors. In addition, wars and civil strife engulfing countries like Sudan and Rwanda, as well as the indifference of some Government's make women and children vulnerable to trafficking\(^{38}\)

Trafficking in children for labour is a serious problem in Togo and Benin as well as Botswana, Zaire, Somalia, Ethiopia, Zambia, Nigeria, Algeria. Victims are trafficked to Nigeria, Gabon, Ghana and South Africa. Africans especially women from Nigeria are trafficked to Western Europe and the Middle East.

2.9 North America:

Between 45,000 to 50,000 women and children are trafficked to the United States each year\(^{39}\). Most come from South East Asia and the former Soviet Union. About half are forced into sweatshop labour and domestic servitude. The rest are forced in prostitution and the sex industry. The United States and Canada are the major destinations for young children kidnapped and trafficked for adoption by childless couples unwilling to wait for legitimate child adoption procedures and agencies. The largest source country is Mexico.

American men along with Europeans are reportedly the most numerous sex tourists in Central America (Costa Rica, Honduras), South East Asia (the Philippines, Thailand) and South Asia (India, Sri Lanka). Many companies operating in a number of large cities reportedly specialize in sex tours\(^{40}\).

2.10 Historical Background of Trafficking:

In order to understand the phenomenon of 'trafficking in persons', and to obtain a clear and unambiguous definition it is of utmost importance to trace the historical

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38. Supra note 3, p. 8.
39. Testimony of Frank E. Loy, Under Secretary of State for Global Affairs, before the sub-committee on Near Eastern and South Asian Affairs, Senate Foreign Relation Committee, 22 February, 2000 in Francis T. Miko, Trafficking in Women and Children: The US and International Response,
development of the concept of 'trafficking'. The problem of trafficking can be traced back to the time of Greek City states. Its history is full of attempts on the part of the States to regulate, control and to limit certain sections of the society and certain kind of activities like prostitution. The Greek State and following it others regulated prostitution but in spite of the best efforts of the State and of other social agencies, prostitution has retained itself in large towns since the last 2,500 years proves how deep-rooted it is in human social life.

Social, economic and moral changes in society, which necessarily influence different aspects of social life, have affected this institution as well. The Abolitionist Movement that set in at the end of the 19th Century brought with it a system of State regulation of prostitution. It was the spread of venereal diseases that the demand of its total abolition started to be heard. Apart from this, the inquiries conducted by various social organizations at the end of the 19th century revealed that women were more often than not forced into this profession and did not embrace it willingly as was the misconception hitherto. The Governments sought to introduce severe legislation and also aimed at its strict enforcement. The elusive nature of trafficking was due to the fact that the various acts for carrying it out constituted a crime were never all committed in just one country. It involved the enticing away of girls from one country on some deceitful pretext, to another for her complete exploitation.

The earliest understanding of term "trafficking" comes from UN instruments. The term "traffic" was first used to refer to the so-called 'white slave trade' in women around 1900. The trafficking and voluntary migration of white women from Europe to Arab and Eastern States as concubines or prostitutes was of particular concern to European middle-class men, women and Government. The result was the creation of an international agreement for suppression of the 'white slave trade' in 1904. At this time, traffic meant the movement of women for an immoral purpose i.e. prostitution. Initially, this definition required the crossing of country borders, but by 1910 it changed to acknowledge traffic in women could occur within national boundaries. Traffic in women was seen as related to slavery but also to be closely linked to prostitution.

The link between trafficking and prostitution solidified even more in the following decades, most clearly in the adoption of the 1949 Convention for the
Suppression of the Traffic in Persons and of the Exploitation of Prostitution of Others. This Convention would be analyzed in detail in Chapter 3. This early confusion of recognizing trafficking with prostitution is still seen in the anti-trafficking activism of some individuals, organizations and Governments today.

Unfortunately, Governments of some destination countries also continue to conflate trafficking with undocumented migration particularly with prostitution. These responses do not bring out the entire gamut of the problem on the contrary harm the interest of women. These Governments generally adopt stricter immigration policies particularly to combat the movement of young women; under the guise of combating 'illegal trafficking in persons'. From the foregoing account one can thus see that at different points of time in history, the then prevailing concept of trafficking has

- ignored the human rights of trafficked persons;
- been used by moralists and abolitionists to dictate to women in prostitution;
- been used by Governments to restrict the movements of women.

2.11 Definition of Trafficking:

In the past two decades the most important developments in the work to address trafficking have been in obtaining clarity on these issues, and evolving a definition of "trafficking in persons" which would be in accordance with human rights principles and be globally acceptable. The development of modern definition of trafficking is necessary in order to develop strategies which would also work towards real enhancement of the rights of the people involved, and be effective in preventing trafficking. But before coming to the Human Rights Definition of Trafficking let us trace the series of events that led to the evolving of the aforementioned definition.

A dictionary definition of trafficking describes it as "an illegal trade in a commodity" in the case of trafficking in persons, the commodity is human beings.

43 Lin Chew, Addressing Trafficking in Persons in the Human Rights Framework, paper presented for the Technical Consultative Meeting on Anti-Trafficking Programmes in South Asia, Kathmandu, Nepal, September 2001. (The Technical Consultative Meeting was organized by Population Council, Path and UNIFEM.)
The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949 defines trafficking within the context of prostitution as:

**Article 1:** The Parties to the present Convention agree to punish any person who, to gratify the passions of another:

1. Procures, entices or leads away, for the purposes of prostitution, another person, even with the consent of that person;

2. Exploits the prostitution of another person, even with the consent of that person.

As this definition was limited to exploitation for the purpose of prostitution it was expanded by Article 6 of the Convention on the Elimination of All Forms of Discrimination Against Women 1979, to include other forms of exploitation of women such as deception of migrant women and mail-order brides or false marriages, and the new forms of sexual exploitation such as sex tourism and forced domestic labour recruited from developing countries to developed countries. This view has been further widened to include forced labour, clandestine employment and false adoption by General Assembly Resolution 48/166.

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, 2000, supplementing the UN Convention against Transnational Organized Crime defines Trafficking in Article 3 as:

**Article 3:** (a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of 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.

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44. See General Recommendation 19 made by the Committee on the Elimination of Discrimination Against Women, paras 13-16.

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

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

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) “Child” shall mean any person under eighteen years of age.

The definition indicates three stages in the crime of trafficking:

1. An action consisting of recruitment, transportation, transfer, harbouring or receipt of persons.

2. By means of threat or use of force or other forms of coercion, abduction, abuse of power, or position of vulnerability.

3. For the purpose of exploitation.

While the above three stages would be critical in case of trafficking in adult persons, only the first and the third stage would be crucial in case of trafficking in children.

This definition, though, contains all the human rights elements, is essentially a "crime prevention" definition and its crime prevention focuses detracts from the concern of the basic rights of the victims. Also it fails to distinguish clearly a trafficked person from a smuggled migrant or where smuggled migration ends and trafficking begins. Therefore in order to fill these gaps a comprehensive human rights definition is required. The Special Rapporteur on Violence Against Women, Radhika
Coomaraswamy, has given one such definition. In her report⁴⁶, she elaborated the need for new and unambiguous definition of trafficking that is based on respect and defense of the human rights of all persons.

She proposed a definition of trafficking, which should have following elements:

i) the lack of consent;

ii) the brokering of human beings;

iii) the transport; and

iv) the exploitative or servile conditions of the work or relationship

Thus, any definition of trafficking must capture these elements. The definition, which Coomaraswamy proposed and which was accepted by the Commission on Human Rights, is:

"Trafficking in persons means the recruitment, transportation, purchase, sale, transfer, harbouring or receipt of persons:

(i) by threat or use of violence, abduction, force, fraud, deception or coercion (including the abuse of authority), or debt bondage, for the purpose of:

(ii) placing or holding such person, whether for pay or not, in forced labour or slavery-like practices, in a community other than the one in which such person lived at the time of the original act described in (i)"

It comes out from the definition that it covers all persons involved in the trafficking chain: those at the beginning of the chain, who provides or sells the trafficked person, and those at the end of the chain, who receives or purchases the trafficked person, hold the trafficked person in forced labour and profit from that labour. Criminalizing the activities of all parties involved throughout the process of trafficking would facilitate efforts to prevent trafficking and punish traffickers.

The Global Alliance against Trafficking in Women (GAATW), the International Human Rights Law Group and the Foundation against Trafficking in Women, in conjunction with other NGOs worldwide, developed a definition of trafficking based on their collective experience. This definition is given in Human Rights Standards for Treatment of Trafficked Persons (HRS)\textsuperscript{47} in Chapter 2 as: "All acts and attempted acts involved in the recruitment, transportation within or across borders, purchase, sale, transfer, receipt or harbouring of a person involving the use of deception, coercion (including the use or threat of force or the abuse of authority) or debt bondage for the purpose of placing or holding such person, whether for pay or not, in involuntary servitude (domestic, sexual or reproductive), in forced or bonded labour, or in slavery-like conditions, in a community other than the one in which such person lived at the time of the original deception, coercion or debt bondage". \textsuperscript{48}

The Human Rights Standards for treatment of trafficked persons (HRS) definition focuses on clearly identifiable elements of the crime, in order to distinguish cases of trafficking from other acts, such as undocumented migration. These elements are:

i) acts or attempted acts;

ii) recruitment;

iii) transportation, which can be via legal or illegal channels of migration;

iv) purchase, sale, transfer, receipt or harbouring of a person;

v) deception, i.e. being tricked into vulnerable situations;

vi) coercion (including the use or threat of force or the abuse of authority);

vii) debt bondage;

viii) Servitude (domestic, sexual or reproductive), in forced or bonded labour, or in slavery like conditions.


\textsuperscript{48} Ibid.
ix) Transportation to community other than the one in which such person lived at the time of the original deception, coercion or debt bondage.\textsuperscript{49}

The above definition clearly brings out various stages involved in trafficking and at the same times differentiates trafficking from migration. A comparison of this definition with the definition given in the UN Protocol on Trafficking brings to fore the fact that all these elements mentioned above are explicitly or conceptually included within the definition given in the Protocol. Hence, the Protocol definition can be taken as standard definition and human rights standards can be read into it. The definition used in the Protocol not only covers all sectors where trafficking labour is used, but also includes issues of consent and places greater responsibility on States to punish those responsible for trafficking, including consumers of trafficked labour.

2.12 Nature and Scope of Trafficking:

Trafficking in persons especially women and children has become an important issue transcending borders, affecting countries all over the world. It is a growing phenomenon involving transnational organized crime syndicates. Women and children have been trafficked for prostitution, forced marriage and other forms of sexual exploitation such as sex tourism, and pornography, as domestic workers, labourers in sweat shops and on construction sites, as beggars, as male order brides, as camel jockeys and for organ trade. The increasing use of new information technologies, in particular, the Internet, has altogether added a new dimension to the problem faced. Poverty and economic deprivation - the gap between the rich and the poor within countries and between different regions has especially made women more vulnerable to trafficking. Lured by hope of an improvement in economic circumstances of them and their families, they are often unwittingly duped and coerced into exploitative slave-like situations. Trafficking, therefore, is regarded as a contemporary form of slavery and a gross violation of basic human rights of trafficked persons.

Trafficking is a highly complex process involving many actors - victims, survivors, their families, communities and other third parties that recruit, transport,
harbour and use the labour of trafficked victims. Given its complex nature it has generally been found that trafficking is essentially a gender and age specific phenomenon affecting women and children rather than men. There are undoubtedly instances of trafficking of men as well. However trafficking in men is in no way approximates the dimensions of trafficking in women and children. Men are generally smuggled or illegally transported, whereas women and children are trafficked. Further trafficking has to be seen as part of the process of international migration as trafficking involves movement of people. Lopsided globalization of the late twentieth century has added to the problem by freeing the movement of capital but restricting the movement of labour, by following restrictive migration policies. This has created extensive opportunities for illegal migration, networks and trafficking to flourish. Trafficking also poses a serious public health concerns. The victims of trafficking are most vulnerable to HIV / AIDS leading many organizations to address the trafficking issue while working on prevention of HIV / AIDS.

2.13 Trafficking, Migration and Refugee Problem:

Trafficking in people and smuggling of migrants have both become major topics of international Governments’ attention. As facts of transnational crime they strike at the very heart of national sovereignty, which was described as the 'dark side' of globalization. With the increase in the Government’s efforts to control irregular migration, a growing sophistication of trafficking and smuggling networks have been witnessed. Irregular migration is now an issue of pre-border, border and post-border control, as well as major focus of international attempts to fight organized crime syndicates.

It is because of increase in control of irregular migration and trafficking, that there are very few legal possibilities for refugees to enter a Western country, especially European Union and they are so required to attempt even more clandestine forms of entry. John Morrison therefore, contends "as international policy currently stands, if European Governments were ever successful in stopping organized illegal

51. Jyoti Sanghera, Trafficking of Women and Children in South Asia: Taking Stock and Moving Ahead , project sponsored by the UNICEF and Save the Children Alliance, Delhi, 1999, p.7.
migration at source or in transit countries, they would have ended European asylum policy as we know it\textsuperscript{53}.

Thus one sees that in contemporary discourse, human trafficking has come to be integrally interwoven with migration, mainly illegal, clandestine border crossing, and the smuggling of human beings that in turn has reduced options for refugees fleeing persecution. The implications of these assumptions are:

i) Equating trafficking with migration leads to simplistic and unrealistic solutions, which generally attempts to put restrictions on movement of those who are vulnerable to trafficking. This conflation results in paternalistic approach, which reinforces gender biases - quite specifically, that women and girls need constant male protection from harm and therefore must not be allowed their right to movement or right to live in any manner they choose\textsuperscript{54}.

ii) Curbing migration makes trafficking go more invisible and leads to exacerbation of the conditions of the victims of trafficking.

iii) Equating migration with trafficking, also rules outs voluntary migration. This logic results in viewing all consensual migrating females as trafficked\textsuperscript{55}.

iv) Strict adherence to above policy leads to "presumptive refoulment" of smuggled and renders their right to asylum null and void.

Therefore, while viewing trafficking one must bear in mind that it does not become an offence because of movement \textit{per se} but because of brokering, fraud, coercion and exploitative conditions of work\textsuperscript{56}. At the same time while dealing with irregular migration and trafficking, rights of refugees, who may take recourse to irregular migration or who may become victim of trafficking, need to be protected. Also one needs to make a clear distinction between trafficking and smuggling.

\textsuperscript{53} Ibid.
\textsuperscript{54} Supra note 25, pp. 2-3.
\textsuperscript{55} Ibid.
\textsuperscript{56} Ibid.
Human trafficking involves deceiving or coercing someone to move either within a country or abroad, through legal or illegal channels and enslave him or her. Smuggling is about assisting someone for a fee to cross a border illegally.

2.14 Freedom of Sex:

Sexual freedom means the abolition of prostitution both in and out of marriage, means the emancipation of woman and her coming into control of her own body, means the end of her pecuniary dependence upon man... means the abrogation of forced pregnancy, of anti-natal murder of undesired children and the birth of love children only.

Sexual freedom does not only include the right for gay couples to marry or the right to cross-dress in public, but our right to have the kind of sex we want in our private bedrooms, the freedom to express our ideas online and in the media and the freedom to be who we are without threat are imprisonment. The law deals with the regulation by law of sexual activity. Sex laws vary from place to place, and have varied over time, and unlawful sexual acts in a jurisdiction are also called sex crimes.

Some laws regulating sexual activity are intended to protect one or all participants, while others are intended to proscribe a morally, socially or religiously repugnant activity. For example, a law may proscribe unprotected sex if one person knows that he or she has a sexual disease or to protect a minor; or it may proscribe non-consensual sex, or because of a relationship between the participants, etc. In general, laws may proscribe acts which are considered either sexual abuse or behavior that societies consider to be inappropriate and against the social norms. Sexual abuse is unwanted sexual contact between two or more adults or two or more minors, and, depending on laws with regard to age of consent, sexual contact between an adult and a minor.

2.15 Trafficking as work, profession and trade:

Women works as prostitute individually for lively hood is generally considered as work and the person who has done this work is sex worker. Call girls are come under this category.
**Profession:** Prostitution in the families of some castes is a common thing. The girls of such caste are initiated into prostitution immediately after her puberty with great pomp and ceremony. All the family members will involve in this profession as a custom.

**Trade:** The sex industry also called as sex trade consists of businesses which either directly or indirectly provide sex related products and services are adult entertainment. The industry include activities involving direct provision of sex related services such as prostitution and sex related pastimes such as pornography, sex oriented men’s magazines, sex movies, sex toys and fetish and BDSM paraphernalia. Sex channels for television and pre-paid sex movies for *on demand*, are part of the sex industry, as are adult movie theaters, sex shops, and strip clubs. Commercial Sex workers come under this category.

The Immoral Traffic (Prevention) Act, 1956 does not prohibit prostitution, but does prohibit prostitution relative activities such as keeping a brothel or allowing premises to be used as brothel, living on the earnings of prostitution and procuring, inducing or taking woman or a girl for the purpose of prostitution. The Act introduced several initiatives including setting of protective home to provide protection, service to victims, education and vocational training to the trafficked persons. It also provides for the appointment of special police officer to investigate trafficking offences and for the setting special courts. It also provides for rehabilitation of the victims of trafficking.

**2.16 Factors Contributing to Vulnerability to Trafficking:**

In order to tackle the problem of trafficking holistically, it is important to have a complete understanding of the factors responsible for trafficking. These factors need to be seen at global, regional and local levels and also as pull or push factors. Some of these factors have been generalized below:

**A. Economic Vulnerability**

With globalization, price competition is increasing thereby increasing the demand for cheap labour required for keeping the cost of production low. This has caused a rapid growth of the informal labour sectors such as street vending and of
unregulated work in factories. In most instances, workers have become more vulnerable and subject to abusive working conditions, because these marginalized and unregulated areas of work are not visible and thus are not subject to labour Laws and regulations. These factors are on the pull side.

On the push side, globalization results in breaking down the traditional family structure. Each member of the family has become "a separate and independent unit of labour to be plugged into the modern labour market". Further, structural economic changes like break down of rural economy, natural disasters, agro-climatic variation and shrinking employment opportunities drive poor communities with no economic alternatives to leave for areas where their chances might be improved. These migrants are generally at high risk of being trafficked.

B. Gender Vulnerability

As the Special Rapporteur on Violence against Women puts, "the root causes of migration and trafficking greatly overlap. The lack of rights afforded to women serves as the primary causative factor at the root of both woman's migration and trafficking in women. By failing to protect and promote women's civil, political and social rights Governments create situations in which trafficking flourishes".

The push factors here can be seen in feminization of poverty where majority of poor women are excluded from access to resources, low status of women in society, lack of education for girls, the expectation to perform certain roles and to be solely responsible for children and the discrimination against women in political participation, sexuality, religion, customs and social practices. On the pull side can be seen the traditional sexual division of labour on the one hand, and the growing demand for reproductive services in the globalized market, whereby women and girls are increasingly being pulled as service providers. They service a vast array of personalized reproductive services in the entertainment and sex industry, domestic work and the marriage market.

57 Supra note 2, p.5.
58 Supra note 30, p. 54.
59 Supra note 2, p.5.
C. Vulnerability to Migration

It is said that traffickers "fish in the stream of migration". Therefore, the entire spectrum of migrants, involuntary re-settlers, refugees, internally displaced persons, illegal migrants etc., are at high risk of being trafficked, particularly women. There is an increasing presence of women and children in contemporary migration because of unequal societal and family burden on them. With the increasing responsibility to look after their families, women move out to look for work opportunities. But, because of lack of education and job opportunities these women are pulled into sex industry, domestic work and marriage market. This leads to what is called feminization of migration.

D. Restrictive Migration Policy

Despite the growing need for all forms of migrant labour, the immigration Laws of countries of destination fail to satisfy the demand. Therefore, there exists a massive contradiction between the demand for labour and its supply. This leads to situations where the migrant labourers in need of work fall into the trap of traffickers and migrant smugglers. Further, the total identification of trafficking with irregular migration has led to more stringent border control and immigration policy.

E. Development Vulnerability

Due to faulty development strategies, a divide is created between the developed and developing world, a divide that is replicated at local, regional, national and global levels. Increasing number of people from the less developed part becomes "commodity for consumption" for the developed part. The underdeveloped part serves as supply zone and developed as demand zone. Further, the promotion of sex tourism as a development strategy is also a contributing factor to trafficking for the purpose of prostitution. There is a connection between the influx of relatively wealthy foreigners seeking sex with women from developing countries and the movement of women into the sex industry to meet that demand. Therefore, trafficking in women and children is clearly both a human rights and a developmental issue.
F. Political Vulnerability

The political and economic backgrounds of the countries often exacerbate the vulnerability of women and children. The combination of the deteriorating economic and political situation in Myanmar spurs an outflow of trafficked women into Thailand. Thai officials eager for cheap labour or personal profit facilitate this flow.\(^{60}\)

The transition from communism to capitalism in Eastern Europe has increased the trafficking of women into Western Europe. In the past women were trafficked into Western Europe from Southern countries such as Colombia, the Dominican Republic, Ghana, Thailand, Zaire and the Philippines.\(^{61}\) Now the trade has turned to Eastern Europe as primary source of women.\(^{62}\) The economic political factors also work within a country leading to intra-country trafficking.

G. Armed Conflict Vulnerability and Insurgency

In situations of armed conflict, women and children are especially vulnerable to sexual abuse and forced domestic services by armed forces. Also, armed conflicts lead to wide scale displacement and migration. These streams of displaced people provide traffickers easy opportunity to lure, abduct or coerce people for trafficking. This can be seen in the fact that the conflicts in Bosnia and Kosovo provided opportunities for traffickers in the former Yugoslavia and the Balkans. Traffickers had targeted refugee women who fled Kosovo. Armed conflicts also lead to abduction of children for recruitment as soldiers. According to the report of the US State Department on Trafficking in Persons, the LTTE, abduct, and hold children against their will for purposes of forced labour, military conscription and in some cases sexual exploitation.\(^{63}\) Such patterns have been seen particularly in African countries such as Kenya, Angola, Sudan and Uganda. Generally, street children are easy targets because their disappearance is not likely to be noticed or reported by anyone.\(^{64}\)

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H. Religious and Cultural Vulnerability

In some countries like India and Nepal, religious and traditional customs in the term of Devadasi or Devki system provide legitimization to trafficking and slavery like practices. Such violence, legal and illegal is then considered a normal private family matter and accepted by society as a normal cultural practice.

I. Information Technology Vulnerability

As a pull factor, information technology, particularly Internet, has been increasingly used to market women and children for the purposes of pornography, prostitution and matrimony. The coalition against Trafficking research on the use of the Internet for global sexual exploitation for women and children reveals that websites for men enjoy brisk business selling comprehensive sex related information about every country in the world. The World Wide Web includes the world sex guide, which is a virtual grocery store where men, women and girls in over 80 countries can be selected for sex tourism. These websites provide detailed information on sex tours including where to find prostitutes, hotel prices, taxi fares and the sex acts that can be bought.

The impact of Internet on the sexual exploitation of vulnerable groups is unprecedented. As Internet is a medium virtually without mediators or borders, illegal or harmful acts committed on it entail fewer risks. It is infinitely more economical, accessible to procure women and children. Men can completely objectify and classify women and children according to colour, firmness of skin and compliance to men. Through, Internet, the dehumanization of women as sexual objects has reached unimaginable levels.

J. Vulnerability to Authority Complicity

The UN Special Rapporteur on Violence against Women, Ms. Radhika Coomaraswamy, notes trafficked women have reported high levels of Government participation and complicity. Officials accept bribes from traffickers in return for allowing traffickers to cross-borders and also in some cases officials may be directly involved in the process. For example, there are reports of direct involvement of both Burmese and Thai officials in the trafficking of Burmese women to Thailand. Women
reported instances of being transported into Thailand by policemen in uniform, armed and often, police and care clients of the brothels\textsuperscript{65}.

**K. Vulnerability to Growth in Tourism**

Tourism industry has grown worldwide and especially in developing countries, as a part and parcel of globalization. Tourists come to the developing countries from different parts of the World for easy and cheap sexual gratification especially with children. American men along with Europeans are reportedly the most numerous sex tourists in Central America (Costa Rica, Honduras), South East Asia (India, Sri Lanka)\textsuperscript{50}. Not only is it the perverse psyche that makes them use children as objects of sex, but it is also the scare of AIDS that generates a demand for virgin girls.

**L. Vulnerability to Adoption**

With birth rates falling in many of the developed worlds, adoption from developing countries with higher fertility rates is common. The need for children has put pressure on sending countries to respond quickly to the growing demand often without having the necessary infrastructure and mechanisms to proceed properly. This situation has led to abuses and creation of an international market for adoptable children. Trafficking of children for the purpose of adoption is continuously increasing, and in some countries it is reported that the fees charged by intermediaries to handle adoptions range from $5,000 to $30,000 per child\textsuperscript{66}.

**2.17 Consequences of Trafficking:**

Trafficking is detrimental to the individual who is trafficked as well as for the country involved, be it a sending, receiving and / or transit country. The magnitude of the consequences can be gauged by viewing trafficking as:

A. Problem of crime

B. Migration problem

C. Labour problem

D. Human Rights problem.

\textsuperscript{65} *Ibid.*

\textsuperscript{66} HAQUE, Child Trafficking in India, HAQUE, Centre for Child Rights, New Delhi, September 2001, p.25.
A. Trafficking as a Problem of Crime

There are manifold crimes committed both in the process of trafficking and in the commission of end purposes for which people are trafficked. The very definition of trafficking as given in the UN Protocol talks about crimes such as threat or use of force, coercion, abduction, kidnapping, fraud and deception being committed. Similarly, the end purposes of trafficking are generally recognized as offences by most of the countries. These include slavery and forced labour; debt bondage; forced prostitution; child sexual abuse; removal of organs and illegal adoption. Further, many crimes are committed when a trafficked person is prepared to be absorbed for the above mentioned end purposes. This process can be best elucidated by examples of women who are trafficked into forced prostitution. Such women may either be sold outright to a brothel owner or sold at an auction. After being sold, many women undergo what is known as 'breaking in' period. 'Breaking in may be done either through physical means such as repeated rapes, gang rapes, electric shocks, solitary confinement and beating by brothel guards. One common tactic in India involves both physical and psychological means. Certain brothel staff treats the victim abusively, telling her repeatedly that she is dirty or defiled, while another staff member consoles her and tells her that she is a part of the family.

Once a woman or girl is "broken in", she is forced to work for long hours without breaks. She is not allowed to go out and refusal to serve a customer tends to result in beatings or other kinds of abuse. Further, she is denied access to contraception, and has no control over her body. This has led to prevalence of sexually transmitted diseases in trafficked women particularly the fatal HIV virus. Thus, one finds that many crimes such as assault, battering, rape, sale of human beings; Unlawful detention, total confinement, torture etc are committed when a person is initiated into a "chosen field".

Also, looking at the trafficking from the perspectives of sending, receiving and transit countries, one finds that most of them have Laws against these crimes. However, few traffickers are ever prosecuted or punished for any of the crimes listed above. More commonly, traffickers are punished under migration-related Laws that

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68 Human Rights Watch, "Nepali Women and Girls Trafficked to India", The Human Rights Watch
are less serious offences, and carry less severe sentences. Additionally, traffickers who traffic women into the sex industry are prosecuted under Laws relating to prostitution rather than Laws relating to real and serious harm done to the victims. As a result traffickers are not deterred and carry on their work with impunity.

**B. Trafficking as a Migration Problem**

The conflation of trafficking with migration has brought forth many undesirable consequences. This is largely due to the fact that as a part of the globalization process, the demand for cheap and irregular labour has risen leading to increase in irregular migration, which provide traffickers with a market for services, such as fraudulent documents, transportation, aided border crossings, and accommodations. But, instead of looking at this problem holistically, the developed countries in particular have put in place immigration policies that restrict free movement of labour, particularly of those who are most vulnerable to trafficking, i.e. women and children. Thus, woman's right to migration is violated. Further, when they are thrown into the clutches of traffickers and left with no legal means to migrate, they take the help of smugglers or traffickers for transportation. The curbing of migration makes trafficking go underground, making these groups more vulnerable to abuses. Also, if the immigration officials catch them they are treated as violators of immigration Laws and not as victims of crime and exploitation.

**C. Trafficking as a Labour Problem**

Trafficking is essentially a labour problem, for it is done for placing or holding a person, whether for payment or not, in forced labour or slavery-like practices which may be in the form of forced prostitution or working in a sweat shop, in a community other than the one in which such person lived at the time of being trafficked. Most of these people have to work without pay or on a low pay in bad conditions of work, with poor health and safety measures. They have to work for long hours without breaks and generally physically confined from outside contact. Their passports are confiscated, because of the money spent by traffickers on their transportation is added on to their costs, most of them end up being in debt bondage. Thus viewing trafficking as labour problem brings to light many gross violations of labour rights of trafficked persons.
D. Trafficking as a Human Rights Problem

When viewed from the human rights perspective, all the above three mentioned groups of violation of rights are automatically covered. Human dignity is the quintessence of human rights. Trafficking of human being is trade or commercial dealing. This makes trafficking a depraved violation of several human rights. "Treating human being as a commodity or chattel, which is a necessary incident of trafficking, the worst indignity heaved at the individual".70 Thus, the consequences of trafficking are violation of human rights of trafficked persons. These human rights are violated not only by the traffickers but also by the State that in the first place has lent vulnerability to certain groups. Further, trafficked persons are vulnerable to arrest, detention and deportation because destination countries are unwilling to recognize they are victims of crimes. Destination countries view them as undocumented migrants who entered illegally and / or worked illegally. They often do not have the chance to lodge complaints, seek damages, assess whether it is safe to return home, collect their belongings or apply for asylum. Thus, from the perusal of the consequences of trafficking one can conclude that human rights perspective provides a bird's eye view into the problem of trafficking. Therefore, in the next section a general discussion on human rights and various human rights issues involved in the process of trafficking would be taken up.

2.18 Human Rights:

Human rights are inalienable rights of every human being without which one cannot function as a person, having free will and intellect. These are rights necessary for being human and hence are universal, inalienable and indivisible. They are based on fundamental principles of respect for human dignity, equality and non-discrimination. Initially, there was confusion surrounding these rights around the belief that certain sets of rights, say civil and political rights have precedence over another sets of rights, say economic, social and cultural rights. The 1993 Vienna Declaration adopted by the UN World Conference on Human Rights dispelled this confusion by concluding that:

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"All human rights are universal, indivisible and inter dependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms".  

Thus universality, inalienability and indivisibility are basic principles of human rights.

*Universality* means that human rights belong to everyone, everywhere, and they are same for all people irrespective of age, race, class, gender, ethnicity, language, colour or castes. These need to be upheld and protected at all times.

*Inalienability* means all rights belong to all people’s right from the time of birth. A person is born with these rights and these rights cannot be taken away from him/her. *Indivisibility* means all human rights are related to each other; consequently rights are interrelated and interdependent. No sets of rights have precedence over other and they together provide wholesome existence to a person.

But, despite the declaration of above-mentioned tenets of human rights Law, there exists category of groups such as women, children, ethnic minorities, etc. whose rights are violated more often than those of others. In other words they are generally deprived of their rights because they belong to particular category whose rights are not recognized. This leads us to a discussion of rights of women and children within human rights discourse for these are the groups, who are most vulnerable to trafficking.

### 2.19. Women's Rights are Human Rights

Equality on the basis of sex is at the heart of all instruments on human rights. Article 1 of the United Nations Charter sets out three main purposes of the UN the last of which includes, "defining and protecting the rights and freedoms of every
individual regardless of race, sex, language or religion". Similarly, the Universal Declaration on Human Rights (UDHR), 1948, includes the proclamation that all human rights and freedoms are to be enjoyed equally by women and men without distinction of any kind. But, despite the existence of numerous human rights instruments proclaiming principles of equality and non-discrimination, women are denied these so called "protected" rights. Therefore, over the last two decades the phrase 'women's right as human rights' has been used to explore, assert and redress the gap between stated international commitment to equality for women and the actual experience of women. Saying 'women's rights are human rights' is not claiming special rights for women. On the contrary, it is a call to recognize that women have same basic human rights as men. But international human rights Law fails to recognize women even when they suffer the same human rights abuses as men. Also, it fails to recognize the specific gender dimension of abuse that characterizes the denial of rights to women. The public - private constitution of human rights law whereby State action is required before there is human rights violation and whereby private actors are beyond its scope has been critiqued as gendered. Research has exposed the public / private divide with regard to domestic violence, violence of war, and dowry deaths to name a few. A second critique has focused on the hierarchy of rights (though removed in theory, is actually practiced) where civil and political rights enjoy a central position as violations within the human rights system. In contrast, social, economic and cultural rights, and group rights are more difficult to enforce and less accepted as judicable minimum standards. Given that women's advancement is clearly linked to social, economic and cultural status, the lesser the status of women in the society, the lesser is the protection given to women's rights.

A third critique has been the denial of rights to women on the ground they will attack 'cultural', 'personal' or 'religious' views. The charge of cultural relativism has been leveled in an attempt to diminish state accountability. Theocratic States for example have challenged the universality of human rights asserting that rights must

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74. Supra note 26, p. 12.
76. Supra note 53, p. 21.
be seen as culturally relative and secondly to local, customary or traditional standards. This challenge seeks to decrease the scope of normative standards generally, and is particularly undermining women's rights which so often conflict with patriarchal religious structures as is reflected in many reservations to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979.

Therefore, to ensure women enjoy all rights, these above-mentioned obstacles need to be overcome. Trafficking of women and girls is directly linked to the failure of Governments to accord women the same basic rights as men. Women who have been denied the right to education and legal rights are consequently denied the right to education and legal rights are consequently also denied the right to control their lives. Unskilled are unable to be economically independent, such women are especially vulnerable to trafficking.

2.20. Women’s reproductive health and human rights:

The issues rose in Beijing and Cairo regarding women’s reproductive health and sexuality are human rights of all women which include human right to the highest attainable standards of physical and mental health, including reproductive and sexual health. These rights broadly are:

1. Human right to equality in marriage including the right to decide on the number and spacing of children.
2. Human right to access to education, in particular, relating to family planning.
3. Human right to access to adequate social services including safe, effective, affordable and acceptable methods of family planning and other methods of choice for regulation of fertility and safe health care for pregnancy and childbirth.
4. Human right to privacy.
5. Human right to freedom from discrimination and discriminatory practices including female genital mutilation, parental gender selection, and female infanticide.
6. Human right to freedom from coercion and violence, sexual exploitation, and forced prostitution.
7. Human right to full and equal partnership in family and society.
8. Human right to full respect for inherent dignity of the person.

9. Human right to full and equal participation in all aspects of public life and decision-making.

10. Human right to adequate standard of living.

2.21. Children and Human Rights

Since human rights are inalienable rights, which start at the time of birth, children are equally entitled to human rights in the same way as adults do. Children are the future; therefore, their special needs must be accommodated within the human rights discourse. Keeping this in view, on 20 November 1989, the international community extended the mantle of human rights protection to children when it adopted the United Nations Convention on the Rights of the Child. This is the first international legal instrument, which guarantees human rights for children. The Convention makes States, which accept the Convention, legally accountable for their actions towards children. The guiding spirit of the Convention is the "best interest of the child".

Positive and forward-looking in its approach, the Convention calls on States, that ratify it to create the conditions in which children may take an active and creative part in the social and political life of their countries.

A child is defined in the Convention as a person under the age of eighteen, unless the national Laws fix an earlier age of majority.

Encompassing the whole range of human rights - civil, political, economic, social and cultural - the Convention recognizes that the enjoyment of one right cannot be separated from the enjoyment of others.

It demonstrates that the freedom a child needs to develop his / her intellectual, moral and spiritual capacities calls for, among other things, a healthy and safe environment and access to medical care, and minimum standards of food, clothing and shelter.
The Convention charts new territory. It establishes the right of a child to be an actor in his/her own development, to express opinions and to have them taken into account in the making of decisions relating to his/her life.

In a number of other areas, some of them sensitive, the Convention goes well beyond existing legal standards and practices. These include its provisions on the right to life, survival and development; the right to a name and nationality from birth; regarding adoption; the rights of disabled and refugee children as well as those in conflict with the Law. It also enlarges the legal coverage of human rights by protecting children from all forms of exploitation, by dealing with the question of children of minority and indigenous groups and by dealing with the problems of drug abuse and neglect. The Convention acknowledges the primary role of the family and parents in the care and protection of children, and the obligation of the State to help them in carrying out these duties. Finally, it brings together in one up-to-date global perspective the rights of the child expressed in many internationals treaties and declarations over the past 40 years.

The Convention sets up the Committee on the Rights of the Child, a Committee of ten experts which will generate a permanent dialogue involving all parties concerned with the promotion of children's rights. State Parties will submit reports to the Committee on how they are carrying out the Convention and on difficulties they face in doing so.

A deep analysis of the causes and consequences of trafficking has revealed a need for a comprehensive human rights approach to tackle the problem. Only a human rights perspective can include within its realm all the dimensions of the problem. This perspective not only punishes the perpetrators of crimes but also protects the victims from human rights abuses by both State and non-State actors. It pins down responsibility on the state to protect and respect the rights of all and especially of vulnerable groups. A further discussion on State responsibility and International Human Rights Law in the next Chapter would lay a basis for the emergence of international legal regime on traffic.
2.22 Trafficking in Human beings and Prostitution:

Prostitution and traffic in human beings for the purpose of prostitution constitute an affront to the dignity of human beings. The UN in 1949 consolidated in a single Convention a series of treaties which were adopted under the auspices of the League of Nations. These were international Convention for the Suppression of Traffic in Women and Children, 1921; and International Convention for the Suppression of the Traffic in Women of Full Age, 1933 – for abolishing “white slave trade”. The Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitutes or others, 1949 aims at punishing any person who procures or entices another person for the purpose of prostitution. The person who keeps, manages or finances a brothel or lets out or rents a building or place for the purpose of prostitution is also punishable. The States Parties agree to take necessary steps to end the menace of prostitution. This Convention is in force from 25 July 1951. Article 6 of the Convention on Elimination of All Forms of Discrimination against Women, 1979 also contains a provision for suppression of all forms of traffic in women and their exploitation and prostitution.

Article 23(I) of the Constitution of India also prohibits traffic in human beings and its practice is punishable under the Immoral Traffic (Prevention) Act, 1956.

G.R. Scott in the book "A History of Prostitution" has defined the prostitution. According to Scott, "An individual (male or female) who for some kind of new (monetary or otherwise) or for some other personnel satisfaction and as a part or full time profession, engages in normal or abnormal sexual intercourse with various persons who may be of the same sex or the opposite sex is the prostitute". It is clear with the definition that not only heterosexuality but homosexuality also constitutes the prostitution. Prostitution as occupation is not only restricted to females but male prostitution is also prevalent for commercialization and monetary benefit.

Prostitution is anti-social behavior because in our society marriage institution has occupied a very strong and respectful custom. Prostitution is a violent and ugly form of individual disorganization.
It is a well known fact that prostitution is mostly adopted by women. In modern era of consumerism they are labeled as "hospitality girls" in business conglomerates "call girls" in common parlance and "pleasure girls" in hotels. Their age ranging from 14 to 42 years, are engaged in this profession.

As per Section 2(f) of Immoral Traffic (Prevention) Act, 1956 'prostitution' means the sexual exploitation or abuse of persons for commercial purposes, and the expression 'prostitute' shall be constructed accordingly. And, according to Section 372 of Indian Penal Code, 1860 prostitution is "the act of a female offering her bodies for promiscuous sexual intercourse for hire, whether in money or in kind." In its most general sense prostitution is the setting one's self to sale or devoting to infamous purposes what is in one's power. In its more restricted and legal sense, it is the practice of a female offering her body to an indiscriminate intercourse with men as distinguished from sexual intercourse confined to one man, or as sometimes stated, common lewdness of a woman for gain; the act of permitting a common and indiscriminate sexual intercourse for hire.

A prostitute is a female given to indiscriminate lewdness; a strumpet. A 'public prostitute' is a woman who is a prostitute by profession and whose trade is to let out her body on hire to all visitors or to all visitors of a specified class. When a woman rests content with one lover for years though she may have changed her lovers at intervals of some years, she is not a public prostitute.

A woman is not a prostitute who indulges in illicit sexual intercourse with only one man, hence a man cannot be guilty of enticing a female away from her home for the purpose of prostitution where the proof shows that he enticed her away for the purpose of having intercourse with her himself and not to induce her to have intercourse, indiscriminately with other men. The most usual motive for indiscriminate sexual intercourse being the money paid therefore, prostitution is sometimes defined to be indiscriminate sexual commerce for gain. If, however, a woman submits to indiscriminate sexual intercourse, which she invites or solicits by word or act or any device, and without profit, she is as much a prostitute as one who does so solely for hire. Her vocation may be known from the manner in which she plies it, and not from the pecuniary charges and compensation gained.
According to Mr. Geoffrey, "Prostitution is the practice of habitual or intermittent sexual union, more or less promiscuous, for mercenary inducement."

According to Elliot and Merrill, "Prosecution is an illicit sex union on a promiscuous and mercenary basis with accompanying emotional indifference."

2.23 Main features of Prostitution

1. Woman selling her body for consideration of cash or kind.

2. Sexual union of male and female outside marriage.

3. Emotional indifference of woman towards the male customer.

2.24 Factors that lead women to prostitution (causes of Prostitution):

a. Personal Factors:

(i) Many girls from rural communities are exploited by the offers of employment and making heroines in films in urban areas.

(ii) Certain girls have inordinate sex urge and crave for sex stimulation for its own sake besides earning money.

(iii) Desire for easy and luxurious life with modern facilities.

(iv) Desire for revenge.

(v) Hatred for marriage and free from control of husbands.

(vi) Personality disorders.

(vii) Illiteracy and bad company.

b. Family Factors:

(i) Unhappy family and marital life due to neglect and ill-treatment of women and girls in the family.

(ii) Dowry menace.

(iii) Divorce and desertion.
(iv) Broken homes. Absence of the bread-winner due to diverse, desertion or deaths.

(v) As a hereditary profession of the family.

c. Social or community Factors:

(i) Overcrowding slums and bad environment in urban areas with rapid industrialisation.

(ii) Poverty and unemployment.

(iii) Influence of obscene and cheap cinemas and sex literature and wall posters of advertisements.

(iv) Kidnapping and rape.

(v) The custom of polygamy and polyandry among certain communities.

(vi) Effects of customs like child marriage, prohibition of widow remarriage, ill-treatment of wives by husbands or in-Laws.

(vii) Religious factors like Devadasi system, i.e., dedicating the girls to temples.

(viii) Exploitation of women belonging to lower castes.

(ix) Existence of 'tolerated' or 'red-light area' in towns and cities to satisfy the sexual appetite of men.

d. Economic factors.

Economic factor plays an important role in determining the causation of prostitution. A female prostitute adopts prostitution to fulfill her livelihood. Lack of money or lack of sources of high income, often leads women towards this vice. A call girl, to fulfill their desires for cosmetics, fashionable attire, or to lead luxurious life easily searches this short cut to earn money. Bonger was right when he propounded economic factors as main cause of crime. According
to Prof. H. Gongerat and Cranckar, "often prostitute, eight at least, were in the first instance seduced and deserted and then through inability to get employment and consequent poverty, went from fall to fall. Only two tenths of the prostitutes adopts the trade through vice, laziness or love of luxury and even there are products of environmental and upbringing. Feeble mindedness, which leads, to incapacity for entering into successful competition with normal woman, is another source of prostitution."

Poverty and under privilege class women easily adopt this way of earning. Lender's has stated, "the foundation of prostitution is hunger". Madras Vigilance Association has stated, "The profession of prostitution is carried in most cases for the sake of livelihood". The pernicious system has its root cause in the poverty of people of the region which is perpetually hit by draught, and lack of resources of livelihood. Young women folk of landless peasants sell themselves because their men folk cannot support them. The mirage of prosperity and a life of ease in far off cities impel young wives to desert their husband and parents to sell their daughters.

e. Biological factors.

Biological lusts or overactive glands leads to woman to satisfy her sex hunger through this immoral sex act, G.M.Hall¹ described the main causation it is claimed lies in the temperament of the individual. Hall stated that there are certain 'girls' or women possessing tendencies which make them particularly prone to turn to prostitution in the absence of strong inhibition, social or personnel. More definitely such tendencies are found among individuals possessing a certain combination of characteristics or individuals temporarily or permanently "over sexed" by reason of glandular functions.

New experience enjoyment and impotency 6f husbands are also the factors of prostitution, American Social Hygiene Association has drawn attention that "prostitution" satisfies the craving for
variety, for perverse gratification, for mysterious and provoking surroundings, for intercourse free from entangling cares and civilized pretence".

f. Industrialization and Urbanization.

Industrialization and urbanization are the two aspects of the same coin. One affects another. Industrialization gives rise improper proportion between male and female and over population of urban areas generates improper living conditions. Slums and chawls are the byproducts of these twine processes. Working class is directly affected as Whitely Commission has rightly stated that, "These inequalities gives rise to a number of grave problems.

In the first place, it leads to an increase of prostitution and a subsequent spread of venereal diseases, first in city and latter in villages with return of migratory labourer to his home. In the second place, the effect on home life is disastrous a premium is put on the formation of irregular unions. The very knowledge of this too often completes the vicious circle. Many men hesitate to bring their wives into the industrial cities, where the atmosphere is so alien to that of village with its code of moral restraints. We believe that every effort should be made to overcome these difficulties and bring about a healthier sex proportion in industrial life" (The Whitely Commissions Report).

Radha Kamal Mukherjee, in his 'Indian working class' seriously narrated that "In fact, in thousands of slums of the Indian Industrial centres, manhood is unutilized, womanhood dishonoured and childhood poisoned at its very source". (P. 319)

g. Psychological factors.

Feeble mindedness is a major defect of personality disorder. Defective girls or feeble-mindedness leads them towards sexual offences. They easily engages themselves in sexual offences without a
thought of future consequences, to satisfy their own sexual drives, to
please a casual acquaintance; to encourage male attention or as
payment for a good time. Slowly they engage in purely commercial
prostitution.

h. Religious factors.

Religion is the root cause of prostitution. The Devdasi system,
which has become a euphemism for recruitment of prostitutes in
Belgaum district, exists. Very much, parents dedicate their girls at
Yellamma Temple of Saundatti. The Devdasi system gives an open
license for flesh trading in religious garh.

A well known religious sanction, little known but long
practiced Basavi System a kin to the Devdasi System is still prevalent
in. the southern districts of Andhra Pradesh. The Basavis are distinct
from Devdasi or dancing girls of the temple as they can participate in
certain-religious rituals and enjoy all special Status.

Prof. D.P. Mukherjee of Calcutta University conducted a study
of unfold the life and status of Basavis. Basavis are the wives of the-
local deities but their contacts "with more than one consort" are not
considered derogatory. The Basavi system which was introduced 800
years ago among the Okkilga and Gomati castes, when the
Veerasaivism was at its height in Karnataka, gradually spread to
Vaishnavism and to adjoining Andhra region.

A female child was dedicated to local deity as Basavi usually
to propitiate the goddess for a male child, or to save the family from
diseases or an impending calamity. The Basavi is if evidence now in
Chittoor, Anantapur, Kurnool, Nellore and Krishna districts of Andhra
Pradesh. The Basavis are respected by the villagers. Basavis are
categorized into three types on the basis of their sexual relations.
Under the system the girl could be dedicated any time from birth to
eight years of age but ceremony of public dedication takes place
around the twelfth year.
Some Basavis remained all alone throughout their life serving the deity to whom they were dedicated. They usually abstained from sex life, while some of the Basavis lived in their parents houses with a single sex partner. Basavis were more liberal in their sex relation. This age old practice of Basavis is the dominant cause of prostitution.

The Government introduced the Suppression of Immoral Traffic Act, 1957, to end the age old immoral custom.

However, with the Law itself riddled with loopholes, the move merely resulted in the flesh trade finding new ways to operate. The red light areas did thin out, but not the practitioners and clientele. It encouraged the emergence of a smart and mercenary breed of females who sell their bodies to seek material relief.

Prostitution has become an organized crime, well planned and effective mean to earn many. From the traditional red light areas, the happening has shifted to "love nests", in hotels and apartments, with hotels receptionists, porters, taxi drivers, sophisticated ladies living alone Or With near relatives, sometimes keep effective business front Boutiques and beauty parlours have also mushroomed in the city as Covers for the call girls rackets.

In the past prostitution was for a large part a hereditary profession. Most women were then pressured into prostitution by rigid social norms such as the ill-treatment of widows, caste inequality and sex exploitation of lower status women by the rich Upper castes. India's major flesh markets are the port cities of Bombay and Calcutta. The partition of India and the influx of refugees into Calcutta have made the situation worse. Girls who are the product of broken homes, domestic tensions and parental neglect have become excuses to seek fulfillment outside.

It is difficult to put an end to this type of profession. Lacks of rehabilitative programmes for professional prostitutes have encouraged the flesh trades to flourish.