"Men can co-exist on condition that they recognize each other
as being all equally, though differently, human, but they
can also co-exist by denying each other a comparable
degree of humanity and thus establishing a system
of subordination”.

- Claude Levi Strauss

Trafficking is a term used to describe the illegal trade across borders of goods – especially contraband, such as drugs – for profit. Over the last few decades, the concept has been expanded to cover the illegal transport of human beings, in particular women and children, for the purpose of selling them or exploiting their labour. Trafficking in human beings is a highly lucrative industry. It has been identified as the fastest growing criminal industry in the world. It is a well established international phenomenon of recent times. Among the organized crimes, trafficking in human beings stands as the third largest category in terms of profit after drugs and arms smuggling. Human trafficking is a multidimensional form of exploitation which violates basic and inalienable rights of the trafficked victims.

One of the fastest growing areas of international criminal activity, trafficking in persons especially women and children has become a serious concern almost for all countries, regardless of whether they are countries of origin, transit or destination. It is a growing phenomenon involving transnational organized crime syndicates. Women and children have been trafficked for commercial sexual exploitation, forced marriages, illegal adoptions, organ trade, sex tourism and pornography, as domestic workers, labourers in sweat shops and on construction sites, as beggars, and for camel

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4 Aparna Srivastava, Human Trafficking with Special Reference to Delhi, A William Carey Study and Research Centre and Joint Women’s Programme Publication, (2006), p.1
jockeys. The increasing use of new information technology, 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 human trafficking. Lured by the hope of an improvement in their economic circumstances, 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.5

Human trafficking is a highly complex process involving many actors-victims, survivors, their families, communities, and 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 mostly women and children rather than men. There are undoubtedly instances of trafficking of men as well. However, trafficking in men 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 facing the movement of capital but restricting the movement of labour, by following respective migration policies. This has created extensive opportunities for illegal migrations, networks and trafficking to flourish. Trafficking also poses serious public health concerns. The victims of trafficking are most vulnerable to HIV/AIDS leading many organizations to address human trafficking issue while working on prevention of HIV/AIDS.6

Thus, the hypothesis of this research study rests on the presumption that human trafficking is an epidemic and the existing International and National laws do not have the teeth to curb this growing criminality. Also human trafficking is prevalent worldwide and the main reasons are said to be commercial sexual exploitation, organ trade, bonded labour, and begging. To end this menace, a

6 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, New Delhi, (1999), p.7
A comprehensive socio-legal study is required in order to strengthen existing legal setup so that there would be an end to this grave form of human exploitation.

1.1 Relevance of the Study

Trafficking of human beings is an extensive problem in the modern world. It has been estimated that millions of people, the majority of whom are women and children, are trafficked worldwide each year. Virtually all states are affected by the menace of human trafficking. The traffickers are believed to make billions annually from human trafficking business. This study will address the emerging dimensions of human trafficking with a critical evaluation of International and National legal frameworks. The focus, however, will be on the problem of human trafficking in India. This study will help the government and the civil society to take adequate measures to curb this rising social problem and also to prevent the grave violation of basic rights of hundreds of human beings.

Moreover, this study highlights the thin line of distinction between migration, smuggling, and trafficking. Many persons, who migrate willingly for various reasons, are lured into trafficking and exploited beyond limits. The present study also analyses the problem as being deeply rooted in the socio-economic, political, and cultural context of our society.

1.2 Research Hypothesis:

The research hypothesis is as follows:

- Human trafficking is an epidemic and the existing International and National laws do not have the teeth to curb this growing menace.

- Human trafficking is prevalent worldwide and the main reasons are said to be commercial sexual exploitation, organ trade, bonded labour, and begging.

1.3 Objectives of the Study

- To find out the dimensions, factors, implications, and responses related to human trafficking worldwide with the focus on India. Besides this, the study will look into various other facets of trafficking, viz. the role of law enforcement agencies and NGO’s in detecting and curbing trafficking and to
look into other forms of trafficking i.e. trafficking for domestic work, beggary, organ theft etc.

• To reflect on the laws and supporting mechanisms that presently exist so as to assess the situation and the conditions adequately and to study different impacts like social, psychological and economic on the lives of the trafficked victims focussing on their health, life style, and sustenance.

• To understand the victim's needs and aspirations for bringing a change in the current conditions and to suggest interventions to improve their lives in the given constraints and provide them with some opportunities for a better life.

• To understand various mechanisms through which women and children are pushed into commercial sexual exploitation and to understand the nexus of trafficking and the pimps along with the gaps in the legal structure, which are to a great extent responsible in maintaining and promoting sex trade.

• To make the masses aware of the magnitude of the problem and redeem their existence as a part of civil society to change the existing scenario.

1.4 Analysis of Literature

Most of the literature available on human trafficking consists of reports, conferences, and workshops conducted by International and National NGO's. Compared to the literature available at the state-level, national and regional level studies are fewer in number. The recent importance accorded to human trafficking on the international agenda is responsible for the rising numbers of research studies on human trafficking in India. Apart from reports, conferences and workshops, literature is also available in the form of a number of books, articles, conventions, protocols, magazines, journals, judgments, news papers, and websites.

Analyzing the theme of study, the existing secondary sources are broadly divided into four categories. The first category comprises of books which exclusively deal with the human trafficking especially women and children. The second category deals with articles which relate specifically to the problem of human trafficking. In the third category various judgments of the Supreme Court and High Courts which deal with the problem of human trafficking are reviewed. In the fourth and last
category, various national and international reports, conventions, concerning human trafficking are dealt with.

In the First Category of secondary sources, Trafficking in Women and Children by P.M. Nair, Sankar Sen. presents the research findings of Action Research on Trafficking in Women and Children in India (ARTWAC) that involved the United Nations Development Fund for Women (UNIFEM), the National Human Right Commission (NHRC) and the Institute of Social Science (ISS). Through a human rights perspective, the first section of this book analyses the data generated by Action Research on Trafficking in Women and Children in India and gives detailed recommendation for better judicial interventions, law enforcement and community participation in anti-trafficking strategies. The second section contains a rich collection of case studies, giving an on-ground picture of how traffickers have little or no respect for the rights of trafficking victims.

A former investment banker Siddharth Kara in his book Sex Trafficking: Inside the Business and Modern Slavery tries to explain human trafficking from a business/economic point of view. According to the author, he put himself at considerable personal risk when he was nearly attacked by a gang of pimps in Mumbai. The author penetrates seedy underworlds and forced labour markets to meet the women and children in the “dungeon of human disgrace” in Asia, Europe and US. He highlights ubiquitous and disturbing trends, the heavy involvement of law enforcement agencies and personnel in human trafficking and slavery.

The author has also taken into consideration various cultural factors (giving reference of Thai women) which are responsible for trafficking including slavery, forced agricultural work, begging and organ harvesting.

Tom Obokata in Trafficking of Human Beings: From a Human Rights Perspective makes an attempt to provide an overview of the global human

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8 Ibid.
10 Ibid.
11 Ibid.
trafficking system. According to the author, it has been estimated that between 600,000 and 800,000 people, the majority of whom are women and children are trafficked each year worldwide. The author in this book has taken into consideration the importance of various United National documents including United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and United Nations Convention against Transnational Organized Crime, 2000.13

The author attempts to establish a human rights framework to analyse and address the act by identifying applicable human rights norms and principles from the beginning to the end of the trafficking process, such as the rights to life, work, health, as well as freedom from torture and slavery. Author then articulates key obligations under international human rights law, including the obligation to prohibit trafficking, punish trafficking, protect victims, and to address the cause and the consequences of the practice.14

Author Anna M. Troubnikoff in Trafficking in Women and Children,15 writes about the magnitude of the problem of human trafficking especially women and children. Author says trafficking in people for prostitution and forced labour is one of the fastest growing areas of international criminal activity. Author says overwhelming majority of those trafficked are women and children between 700,000 and 4 million people are believed to be trafficked each year. Author further says trafficking is now considered to be the third largest source of profit for organized crime behind only drugs and weapons. The author writes that the menace of human trafficking is prevalent all over the world and also examines what the respective countries have done as far as perusing a possible anti-trafficking strategy is concerned.16

Likewise Human Trafficking: With Special Reference to Delhi by Aparna Srivastava17 is the latest work of the joint women’s programme on the problem of human trafficking. This study was initiated with the support of UNIFEM, under its regional South Asia Anti Trafficking Programme and the USAID. The author

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13 Ibid.
14 Ibid.
16 Ibid.
17 Aparna Srivastava, Human Trafficking: With special reference to Delhi, NHRC, New Delhi, (2009)
highlighted the Devadasi problem and enabled the Karnataka Government to draft and pass the bill - The Karnataka (Devadasi Prohibition of Dedication) Act, 1981. The author has considered, within its ambit, not only the plight of women in prostitution but also various other purposes for which trafficking of women and children takes place, like begging and forced labour.18

The author attempts to gauge the magnitude of the problem of human trafficking and also makes a mention of inter and intra country trafficking. The author in chapter five highlights the rights of the trafficked persons. In the concluding chapter the author puts certain recommendations to curb the menace of human trafficking at three different stages viz, prevention, recovery/rescue and rehabilitation of the victims.19

Obi N.I. Ebbe and Dilip K. Das20 in Global Trafficking in Women and Children says that Human trafficking is a global disease in which the scope, prevalence, diversity and complexity in human trading has been transformed. The authors say that this global disease has historical parallels with the movement of people as commodities during the colonial slave trade.21

This book, however, is much more than just a reflection. Although a mirror could provide us with a glimpse of something we might have not seen or might have forgotten, the depiction of things might be rather flat and one sided. The authors' work acts as a kaleidoscope: it gathers knowledge and experience from forty three countries on several continents, allowing us to analyse the similarities and differences of the country's history and current events that would predetermine the conditions for the trafficking phenomenon in each particular area. This international collection of works offers readers a multifaceted approach to the problem drawing on the practice of the countries that have a longer history of battling trafficking as an organized criminal activity.22

This book also provides a broad and consistent compilation of the control and prevention tools needed for combating this 21st century crime, from providing

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18 Ibid.
19 Ibid.
21 Ibid.
22 Ibid.
international to country specific laws and mechanisms to drawing comparisons and identifying the solutions that proved to be most successful.\textsuperscript{23}

The World of Prostitutes by S.K. Gosh\textsuperscript{24} consists of two volumes. The author devotes the first two chapters of volume I on the prostitution in ancient and modern world. While highlighting the historical perspective of prostitution the author has taken into consideration various countries. In the third chapter the author throws light on various issues relating to prostitution including sex tourism, impact of industrialization on prostitution, escort service, child prostitution, media and prostitution, call girls, inter-country adoption etc.\textsuperscript{25}


Analyzing the Dimensions: Trafficking and HIV/AIDS in South Asia by Roma Debabrata\textsuperscript{27} is a STOP (NGO) New Delhi based publication. The author in this book highlighted the trafficking and HIV/AIDS exploiting linkages in the South Asian region mostly Nepal, Bangladesh and India. The author also throws some light on the role of the state and civil society in the rescue, repatriation, rehabilitation and reintegration of victims of human trafficking. In the last and concluding chapter the author makes certain recommendations to tackle the problem of human trafficking.\textsuperscript{28}

Gunjan Kinnu in From Bondage to Freedom: An Analysis of International Legal Regime on Human Trafficking\textsuperscript{29} covers the whole gamut of the problem of

\textsuperscript{23} Ibid.
\textsuperscript{25} Ibid.
\textsuperscript{26} Ibid.
\textsuperscript{27} Roma Debabrata, \textit{Analysing the Dimensions: Trafficking and HIV/AIDS in South Asia}, STOP, New Delhi, (2002)
\textsuperscript{28} Ibid.
international human trafficking such as the dimensions and magnitude of the problem, analysis of the conventions and protocols on human trafficking and the human rights framework required for combating it. The author puts emphasis that human trafficking is the issue of human rights and should be dealt keeping this aspect in mind.³⁰

The author made a sharp critique of the Convention for the Suppression of the Traffic in Persons and the Exploitation of Prostitution of Others, 1949 by saying that the Convention seems more of an anti-prostitution instrument than as an anti-trafficking one. The author says that the Convention calls for the eradication of trafficking in persons without defining it and equates trafficking with prostitution and the movement of persons into prostitution. The author further highlights that the Convention ignores the plethora of end purposes for which trafficking takes place; therefore, the 1949 Convention denies protection to a large group of trafficking persons and hence becomes limited in its scope and reach.³¹

K.P. Yadav in Trafficking: An Emerging Social Problem³² examines the problem of trafficking of children for the purpose of commercial sexual exploitation and describes the framework within which this exploitation takes place. Additionally, the author includes a brief review of the various rescue and rehabilitation initiatives by the government as well as by the non-governmental sectors. The author has also reviewed of various national and international policies as well as laws of various countries pertaining to trafficking and commercial sexual exploitation.³³

The author has further highlighted that during the past few years there has been a growing awareness and concern from the Government of India, NGOs, Media and International Community about the increasing prevalence of trafficking for the purpose of commercial sexual exploitation of children in India.³⁴

In the concluding chapter the author aims to build upon the current state of knowledge in the area of human trafficking. Also the author aims to illustrate the

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³⁰ Ibid.
³¹ Ibid.
³³ Ibid.
³⁴ Ibid.
areas needing further study and the possibilities of replicating approaches in different contexts.\textsuperscript{35}

Mellissa Farley in Prostitution, Trafficking and Traumatic Stress\textsuperscript{36} offers the reader an analysis of prostitution and trafficking as organized interpersonal violence. The author extensively documents the violence that runs like a constant thread throughout all types of prostitution, including escort, brothel trafficking, strip club, pornography and street prostitution. The author says prostitutes are always subjected to verbal sexual harassment and often have a lengthy history of trauma, including childhood sexual abuse and emotional neglect, racism, economic discrimination, rape and other physical and sexual violence. This book is international in scope, as it contains cutting-edge contributions from criminal experts in the area of traumatic stress, from attorneys and advocates who work with the trafficked women, adolescents, and children and also prostituted women and men prostitutes. The author has devoted number of chapters in addressing the complexity of treating the psychological symptoms resulting from prostitution and trafficking. Other chapters in this book address that the survivors are in need for social support, substance abuse treatment, peer support and culturally relevant service.\textsuperscript{37}

Louise Shelley in Human Trafficking: A Global Perspective\textsuperscript{38} examines all forms of human trafficking globally, revealing the operations of the trafficking business and the nature of the traffickers. The author has used a historical and comparative perspective, which demonstrates that there is more than one business model of human trafficking and that there are enormous variations in human trafficking in different regions of the world. The author has done enormous empirical research including actual prosecuted cases diverse reports and field work and interviews over the last sixteen years in Asia, Latin America, Africa, Europe and the Former Socialist Countries. The author concludes that human trafficking will grow in the twenty first century as a result of economic and demographic inequalities in the world, the rise of conflicts and possible global climate change. He further says that

\textsuperscript{35} Ibid.
\textsuperscript{36} Melissa Farley, Prostitution, Trafficking and Traumatic Stress, Routledge, (2003)
\textsuperscript{37} Ibid.
coordinated efforts of government, civil society, the business community, multinational organizations and the media are needed to stem its growth.\textsuperscript{39}

Alex A. Aronowitz in Human Trafficking, Human Misery: The Global Trade in Human Beings\textsuperscript{40} says that virtually all countries in the world are affected by the scourge of human trafficking, either as a source, transit or destination country or a combination thereof. The author says patterns of trafficking vary across countries and regions and are in a constant state of flux. Countries have long focused on trafficking solely for the purpose of sexual exploitation, yet exploitation in agriculture, construction, fishing, manufacturing and the domestic and food service industries are prevalent in many countries. Here, the author takes a global perspective in examining the nefarious underworld of human trafficking, revealing the nature and extent of the harm caused by this hideous criminal practice.\textsuperscript{41}

Taking a victim - oriented approach, the author considers the criminals and criminal organizations that traffic and exploit their victims. She also focuses on the different groups of victims as well as the various forms of markets or trafficking many of which have been overlooked due to an emphasis on sex trafficking. The author further explores less frequently discussed forms of trafficking in organs, child soldiers, mail order brides, and adoption, as well as the use of internet in trafficking. Drawing from her field experience in various parts of the world, the author offers real-life context throughout the book through description of a number of cases with which she was involved or learned about it in her travels. The insightful analysis of the author has uncovered the true nature of human trafficking and illustrates the extent of its reach and harm.\textsuperscript{42}

Kathryn Cullen – DuPont in Human Trafficking\textsuperscript{43} provides a thorough and in-depth analysis of the complex problem of human trafficking - the official term for the modern day slave trade. In the first chapter of the book, the author provides an excellent overview of human trafficking from the global and U.S.A. perspectives. The author also does an excellent job of combining research with personal stories of

\textsuperscript{39} Ibid.
\textsuperscript{40} Alex A. Aronowitz, Human Trafficking, Human Misery: The Global Trade in Human Beings, Greenwood Publishing Group, (2009)
\textsuperscript{41} Ibid.
\textsuperscript{42} Ibid.
individuals who were victims of human trafficking. These personal stories reinforce the statistics and documents in the book. Anyone who uses this book for research will quickly learn that human trafficking goes beyond forcing women and children into prostitution; it also includes forced marriages, sweatshop labour, child military service, involuntary domestic servitude and involuntary organ harvests, among other things.44

The second part of the book provides documents from the United States and other countries pertaining to human trafficking. These include International Treaties, United Nations Resolutions, news articles and excerpts from US Trafficking in Persons Report. Also included is a substantial section on how to research human trafficking which provides maps, charts, an annotated bibliography and a list of organizations working to end human trafficking.

Author Silvia Scarpa in Trafficking in Human Beings: Modern Slavery45 observes that the international community has focused its attention on trafficking in person, which is surely one of the most worrying phenomenon of the 21st century. In part I, the author examines trafficking in persons in the light of the recent definition of the phenomenon given by the United Nations Trafficking Protocol and various other international legal instruments including treaties and soft law. Also analysed are trafficking causes and consequences and the most common forms of exploitation related to it.

Author in part II of the book, reviews the most important international Conventions against Slavery and Slave Trade and the Protocol to Prevent Suppress and Punish Trafficking in Persons, especially Women and Children. The author also analyses the most important policy documents setting the basic standards of protection of trafficked victims namely the United Nations High Commissioner for Human Right’s Recommended Principles and Guidelines on Human Rights and Human Trafficking and comments on the extension of the jus - cogens Principle of international law that prohibits slavery, to argue that trafficking in persons ought rightly to be considered as part of it.46

44 Ibid.
46 Ibid.
The author in part III of the book examines the Council of Europe and the European Union and their fight against trafficking in people, arguing that the focus has been placed mistakenly on the prosecution of traffickers rather than on the protection of trafficked victims.47

The author concludes with a recommendation to shift towards a more balanced approach to the phenomenon, and the overriding need to conduct further research on specific issues related to the spread of trafficking and the exploitation of its victims.48

Andrea Di Nicola in Prostitution and Human Trafficking: Focus on Clients49 examines that the trafficking of women for prostitution has been the subject of numerous studies. The author claims prostitution and human trafficking in the first book to focus on demand as a key factor in the equation. The author adopted a double approach: on the one hand, a virtual ethnography was developed that focused on the analysis of specialized forums on the web and that used an anonymous internet questionnaire as interview method. On the other hand, fieldwork allowed national research teams to collect interviews and data from likely clients of trafficked prostitutes, prostitutes themselves, from police officers involved and from national experts.50

The author while researching on this book aims to answer the following questions with an innovative approach. Who is the client of trafficked prostitution? What fuels the demand for trafficked prostitution as opposed to other forms? Which are the most effective policies for what type of prostitution? Author has explored the hidden world of human trafficking for prostitution and profiled its clients. In doing so the author has refuted some common stereotypes about clients while inspiring the elaboration of balanced guidelines for managing prostitution, protecting the victims and thus tackling its undesired trafficking components.51

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47 Ibid.
48 Ibid.
50 Ibid.
51 Ibid.
The author in the last part of the book recommended for organizations and policy makers involved in fighting organized crime in general and human trafficking in particular.\textsuperscript{52}

Author Kevin Bales in Ending Slavery: How We Free Today’s Slaves,\textsuperscript{53} provides a guide for eliminating the plague of slavery that continues to this day involving some 27 million slaves worldwide. The author provides its history, its methods, the lives of its victims around the world, and the conditions together guides to action at every level, from individual to the community to the United Nations, in a six-point plan that includes protecting, arming and cloning “The liberators” enacting and enforcing effective anti slavery legislation and perhaps most important helping freed slaves heal. Besides this the author considers practical matters, including fund raising, increasing awareness among the general public and convincing governments to pay attention.\textsuperscript{54}

A lecturer in Sociology in the University of Leicester, Julia O’Connell Davidson in Prostitution, Power and Freedom\textsuperscript{55} brings new insights to the ongoing debate among scholars, activists, and others on the controversial subject of prostitution. Sociologist Julia O’Connell Davidson’s concise, accessibly-written study is based on wide research from various corners of the world. The study employs a range of theoretical analyses and argues against simplistic explanations of the prostitution phenomenon, showing it to be a complex relationship where economics, power relations, gender, age, class, and "choice" intersect.\textsuperscript{56}

The author has conducted an impressive amount of research in nine countries, including conversations with male and female sex tourists, adult and child prostitutes, procurers, and clients. Through her research, O’Connell Davidson demonstrates the complexity of prostitution, arguing that it is not simply an effect of male oppression and violence or insatiable sexual needs, nor is it an unproblematic economic encounter. The book provides a sophisticated explanation of the economic and political inequalities underlying prostitution, but also shows that while prostitution

\textsuperscript{52} Ibid.
\textsuperscript{54} Ibid.
\textsuperscript{56} Ibid.
necessarily implies certain freedoms for the clients, the amount of freedom experienced by individual prostitutes varies greatly. This highly accessible book will be of great interest to those in gender and women's studies, sexuality and cultural studies, the sociology of work and organizations, and social policy. General readers will also appreciate having new ways of thinking about this age-old social phenomenon.\(^5^7\)

Traffic and Human Rights: European and Asia-Pacific Perspectives written by Leslie Holmes\(^5^8\) says human trafficking is widely considered to be the fastest growing branch of trafficking. As this important book reveals, it has moved rapidly up the agenda of states and international organizations since the early-1990s, not only because of this growth, but also as its implications for security and human rights have become clearer.

This fascinating study provides original research findings on human trafficking, with particular reference to Europe, South-East Asia and Australia. A major focus is on why and how many states and organizations act in ways that undermine trafficked victims' rights, as part of quadruple victimization. Author in this book compares and contrasts policies and suggests which seem to work best and why. The author in the conclusion advocates radical new approaches that most states and other formal organizations appear loath to introduce.\(^5^9\)

In the second category, review of various articles by the renounced jurists/academics relating to the problem of trafficking in persons especially women and children have been dealt.\(^6^0\)

Dr. Sangita Bhalla in her article on Global Fight against Human Trafficking: With Special Reference to India\(^6^1\) highlights the problem of human trafficking worldwide by giving special reference to India. The author in the introductory part of her article says that human trafficking is a persistent problem of the humanity - is global in its range and deadly in its effects. The author further says that in most of the

\(^{57}\) Ibid.


\(^{59}\) Ibid.

\(^{60}\) Ibid.

\(^{61}\) Dr. Sangita Bhalla, “Global Fight against Human Trafficking: With Special Reference to India”, *Panjab University Law Review*, (2007)
cases trafficking of young person takes place for the purpose of prostitution, domestic servitude etc. which is a gross violation of human rights of such victims.

The author highlights various causative factors responsible for increase of human trafficking which include migration, refugee problem, organized crime, technological advances inequality, HIV/AIDS and armed conflicts. The brief historical background of human trafficking from the late 18th century has also been mentioned.62


The writer while talking about the national initiative considers various SAARC Conventions, Immoral Trafficking (Prevention) Act 1956 and various Articles of Constitution of India viz. Articles, 14, 19, 21, 23 and 24.

The author of an article in the conclusion gives certain suggestions and recommendations to tackle the menace of human trafficking.64

The writers Kamaljeet Singh and Harish Verma in their article Trafficking of Women and Children in India: A Human Rights Perspective65 have highlighted the human rights perspective of human trafficking. The authors state that human rights violations are very much involved in trafficking but surprisingly the problem of trafficking for commercial sexual exploitation as yet is not viewed from a human rights perspective. The authors define trafficking as a planned or unplanned economic activity which involves displacement and movement of persons particularly women and children resulting in their exploitation for sexual and non sexual based purposes. Authors have also examined the importance of the UN Convention Against

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62 Ibid.
63 Ibid.
64 Ibid.
Transnational Organized Crime 2000, UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children 2000, to curb the growing organized crime of human trafficking.\textsuperscript{66}

Authors further highlight that all people are not vulnerable to human trafficking; Women and children are worst victims of trafficking because of their social and economic backwardness. The authors also make the diligent analysis of various annual reports published by National Crime Records Bureau, New Delhi. Regarding the pull and push factors contributing to the increase in human trafficking, authors examined various factors for increase in trafficking including a common myth in the minds of sex buyers that sex with a virgin cures HIV/AIDS and other transmitted diseases. On the push side authors said that low status of women and children mostly in India, unemployment, acute poverty, and environmental disasters are responsible for increase of human trafficking.\textsuperscript{67}

The authors also examined various national laws to protect human rights and to counter trafficking including Articles, 14, 15(3), 19, 23, 24, 39(e), 39(f), 42 and 46 of Indian Constitution; Sections 366A, 366B, 367, 372 and 373 of Indian Penal Code, 1860, and various provisions of the Immoral Traffic (Prevention) Act, 1956.

In the concluding remarks the authors state that trafficking violates various human rights of women and children but human rights aspects of trafficking have not been given proper attention. Therefore, the first and foremost requirement is to pay adequate attention not merely to the welfare perspective of the victims of trafficking but even to the human rights perspective of the problem.\textsuperscript{68}

Prof. Gur Iqbal Singh Sandhu, in his article namely Human Trafficking as Transnational Organized Crime: Problem and Perspective\textsuperscript{69} says that human trafficking is the largest illicit trade after arms and drugs trafficking. Looking at the global pattern the author says that Europe and Asia are the major destinations for victims of human trafficking. The author highlights that according to United Nations

\textsuperscript{66} Ibid.

\textsuperscript{67} Ibid.

\textsuperscript{68} Ibid.

Office on Drugs and Crime (UNODC) globally there are 127 countries of origin, 98 transit countries and 137 destination countries of trafficking.

The author has examined various international and national legal documents to curb the menace of trafficking including the United States Trafficking Victims Protection Act, 2006 (TVPA) and SAARC Convention on Prevention and Combating Trafficking in Women and Children Prostitution, 1997.\textsuperscript{70}

The most important part which the author has highlighted is the difference between trafficking in persons and smuggling of persons and also between voluntary sex workers and trafficking victims. The author like previous mentioned authors highlights various pull and push factors contributing to the increase of trafficking in person.\textsuperscript{71}

In the conclusion, the author says there is a requirement for stringent legislation, enforcement agencies with sharp teeth and international cooperation to end the illicit trade of human beings.

Sreyashi Dastidar in her article namely Never Too Young to be Sold\textsuperscript{72} starts with the words that concept of human trafficking is made especially difficult by the complicated and fluid nature of the crime. The author of the article says that only seven percent of Indian police personnel are known to have received any training in the human trafficking cases that they deal with. The author highlighted the problem of trafficking in women and children not only in India but also in Bangladesh and Nepal. According to the author of the article there are several States in India, viz, Andhra Pradesh, West Bengal, and Goa where anti-trafficking units have been formed within the police force.\textsuperscript{73}

The author concludes her article by saying that the NGOs should be encouraged to rescue and rehabilitate the victims of human trafficking.

\textsuperscript{70} Ibid.
\textsuperscript{71} Ibid.
\textsuperscript{72} Sreyashi Dastidar, “Never Too Young to be Sold”, Telegraph, (2007)
\textsuperscript{73} Ibid.
In another article, Ruchira Gupta in To Let / For Sale^{74} writes about the problem of trafficking at the international and national level. The author starts her article with the clear cut concept of slavery prior to 19th century and goes on to describe how slavery changed its colour to sex slavery.

The author highlights countries like Australia and Netherlands where prostitution has been legalized but still human trafficking has increased in number in such countries. The author says in Victoria, Australia and Amsterdam where prostitution has been legalized that illegal brothels increased by 300%, the sex workers in such illegal brothels are victims of trafficking from different countries.\textsuperscript{75}

The author after examining various legal documents concludes that human trafficking is not prevalent in the same magnitude in every country. The intensity is determined by the extent of inequality against women and the equation of masculinity with domination.\textsuperscript{76}

Aggression in Sexually Abused Trafficked Girls and Efficacy of Intervention an article by Sibnath Deb\textsuperscript{77}. The article is based on the empirical study done by the author in the state of West Bengal. The author highlights the incidence and severity of aggression among sexually abused girls who were trafficked and who were then further used for commercial sexual exploitation.

In addition, the writer says that the impact of counseling for minimizing aggression in these girls was investigated. According to author the group of 120 sexually abused trafficked Indian girls and a group of 120 non - sexually abused Indian girls, aged 13 to 18 years participated in the study. The sexually abused trafficked girls were purposively selected from four shelters located in and around Kolkata. The non - sexually abused girls were selected randomly from four schools situated near the shelters, and these girls were matched by age with the sexually abused trafficked girls. Researcher collected data by using a background information schedule and a standardized psychological test, that is, the aggression scale. Results revealed that 16.7% of the girls were first sexually abused between 6 and 9 years of

\textsuperscript{74} Ruchira Gupta, “To Let / For Sale”? ApneAap Worldwide, (2011), For details see: http://www.outlookindia.com/article/To-Let--For-Sale/263361, (Accesses on 27.06.2012)
\textsuperscript{75} Ibid.
\textsuperscript{76} Ibid.
age, 37.5% between 10 and 13 years of age, and 45.8% between 14 and 17 years of age.\textsuperscript{78}

Findings put forth by the researcher further revealed that 4.2% of the sexually abused trafficked girls demonstrated saturated aggression, and 26.7% were highly aggressive, that is, extremely frustrated and rebellious. Across age groups, the sexually abused trafficked girls suffered from more aggression, compared with the non-victimized girls. Author says psychological interventions, such as individual and group counseling, were found to have a positive impact on the sexually abused trafficked girls.\textsuperscript{79}

The writer concludes his research article by saying that these findings should motivate counselors to deal with sexually abused children. It is also hoped that authorities in welfare homes will understand the importance of counseling for sexually abused trafficked children, and will appoint more counselors for this purpose.\textsuperscript{80}

Writer S. Huda in his article Sex Trafficking in South Asia\textsuperscript{81} says that economic and social inequalities and political conflicts have led to the movement of persons within each country and across the borders in South Asia. According to the writer globalization has encouraged free mobility of capital, technology, experts and sex tourism. Illiteracy, dependency, violence, social stigma, cultural stereotypes, gender disparity and endemic poverty, among other factors, place women and children in powerless, non-negotiable situations that have contributed to the emergence and breeding of the cavernous problem of sex trafficking in the entire region. The writer examines that the alarming spread of sex trafficking has fuelled the spread of HIV infection in South Asia, posing a unique and serious threat to community health, poverty alleviation and other crucial aspects of human development.

Highlighting the importance of SAARC (South Asian Association for Regional Cooperation) Convention on Trafficking in Women and Children the writer
says that the Convention has been an important breakthrough. Most of the countries in the region do not have an anti-trafficking legislation or the means to protect the victims. The writer concludes his article by saying that countries of the region should make a concerted effort to treat trafficking victims as “victims” of human rights violations in all anti-trafficking strategies and actions.\textsuperscript{82}

In the third category various important judgments of the Supreme Court of India and High Courts concerning human trafficking and related issues have been dealt with.

Starting this category with the case of \textit{Gaurav Jain v. Union of India}\textsuperscript{83}. In this matter a public spirited advocate of Supreme Court of India Mr. Gaurav Jain filed a Public Interest Litigation (PIL) under Article 32 of the Indian Constitution seeking improvement in the plight of prostitutes/fallen women and their progeny. He had also asked for establishing separate educational institutes for the children of the fallen women. In the instant case the Hon’ble Supreme Court after hearing all the State Governments and Union territories which were then represented through their respective standing council, observed that segregating children of prostitutes by locating separate schools and providing separate hostels would not be in the interest of children and the society at large. The court in this case directed that they should be segregated from mothers and be allowed to mingle with others and become a part of the society.

The court instead of disposing the writ petition with a set of directions constituted a committee comprising of V.C. Mahajan, R.K, Jain and M.N. Sheroff. The Court directed the committee to submit its report giving suggestion for appropriate action. Accordingly, the report was submitted. After submission of the report the court re-heard both sides. Keeping in mind the legislative inertia and the consequent failure of the government to protect the rights and interests of the victims, it laid down certain guidelines and further directed a high committee to be constituted to make an in-depth study of these problems and to evolve such suitable schemes as are appropriate and consistent with the guidelines. The court further observed that

\begin{footnotesize}
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\item \textsuperscript{82} \textit{Ibid.}
\item \textsuperscript{83} \textit{AIR 1990 SC 292.}
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rehabilitation of prostitutes should be achieved through various welfare measures so as to provide them with means of livelihood and socio-economic empowerment.84

In another case of Vishaljeet v. Union of India85, writ petition by way Public Interest Litigation (PIL) was filed seeking direction for (i) inquiry against police officials under whose jurisdiction the menace of forced prostitution, devadasi system and jogin tradition were flourishing and (ii) for rehabilitation of the victims of this malady. Disposing the writ petition the court has held that the malady of prostitution is not only a social but a socio-economic problem and therefore, the measures to be taken in that regard should be more preventive rather than punitive.

The court further observed that in spite of the stringent and rehabilitative provisions of law contained in the Constitution of India, 1950; The Immoral Traffic (Prevention) Act, 1956; Indian Penal Code, 1860 and the Juvenile Justice Act, 1986, it cannot be said that the desired result has been achieved.86

The court said that this devastating malady can be suppressed and eradicated only if the law enforcement authorities in that regard take severe and speedy legal action against all the erring persons such as the pimps, brokers and brothel keepers.87

In the instant case the court also directed the Central Bureau of Investigation (CBI)- (1) to constitute an enquiry against those officers under whose jurisdiction the red light area as well as devadasi and jogin traditions were flourishing and to take necessary action against such erring police officers and law breakers (2) to bring all the inmates of the red light area and all those engaged in flesh trade to protective homes of the respective states, and to provide them with proper medical aid, shelter, education and training so as to live a dignified life and (3) to bring the children of those prostitutes and other children found begging in streets to protective homes to rehabilitate them.88

In Lakshmi Kant Pandey v. Union of India89, a petitioner an advocate of the Supreme Court of India addressed a letter in public interest to the court, complaining

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84 Ibid.
85 AIR 1990 SC 1412.
86 Ibid.
87 Ibid.
88 Ibid.
89 AIR 1984 SC 469.
about the malpractices indulged in by social organizations and voluntary agencies engaged in the working of offering Indian children in adoption to foreign parents. The petitioner alleged that such children are exposed to the long horrendous journey and in course of time become either beggars or prostitutes for want of proper care from their alleged foster parents.

Being a public interest litigation, the letter was treated as a writ petition. Disposing the writ petition, after indicating the principles and norms to be observed in giving a child in adoption to foreign parent’s, the court held that every child has a right to love and be loved and to grow up in the atmosphere of love and affection. The court further said that the most congenial environment for proper growth of children is his/her biological parents and if for any reason is not possible for biological parents, they should be given in adoption within the country and if that too is not possible then the child should be given in adoption to foreign parents that too after full investigation by Central Adoption Resource Authority (CARA) and other relating agencies. The betterment and proper growth of children should be given paramount consideration.90

The Supreme Court in *Bandhua Mukti Morcha v. Union of India* 91 has elucidated on the rehabilitation of bonded labour and directed the Governments to award compensation to bonded labour under the provisions of Bounded Labour System (Abolition) Act, 1976 after taking note of serious violations of fundamental rights and human rights of the same.

The court further held that the other question arising out of the implementation of the Bonded Labour System (Abolition) Act, 1976 is that of rehabilitation of the released bonded labourers. This is a question of an immense significance because if the bonded labourers who are identified and freed, are not rehabilitated, their condition would become much worse than what it was before during the period of their serfdom and they would become exposed to more exploitation and slide back again into serfdom even. Therefore, the court directed that rehabilitation programmes should be considered a priority.92

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90 Ibid.
91 1984 (3) SCC 161.
92 Ibid.
In the fourth category various International and National Reports relating to the human trafficking have been reviewed.

Starting with 146th Report of the Law Commission of India,93 which proposed Section 373-A in the Indian Penal Code 1860. The report starts with the general analysis of social evil of sale of women and children in India during the recent years. The report highlights this social evil which is substantially confined to the poor sections of our society. Therefore, all human beings especially women and children need special protection of law as they are particularly vulnerable to exploitation.

The law commission has also considered this subject *suo moto* having regard to the importance of the subject in the light of social justice to the poor. The report mentions that though the Indian Penal Code contains certain provisions designed to deal with the disposal of persons below a certain age by way of sale or other mode of transfer but those provisions are confined to cases where the transaction is entered into for one of the purposes specified in those sections. But where such a purpose does not exist or is not proved at the trial, those provisions are not adequate to safeguard the interest of women and children. The Law Commission has considered the matter in detail and forwarded the 146th Report of the Law Commission of India on the subject of ‘Sale of Women and Children’ with a proposal to add section 373-A of the Indian Penal Code to meet the social evil.94

The National Human Rights Commission in the Plan of Action to Prevent and End Trafficking in Women and Children in India (2001) gives a detailed report to combat human trafficking. The report highlights the issue of trafficking from a human rights perspective. The NHRC Plan of Action considers the recommendation and suggestions made by the Asia Pacific Forum of National Human Rights Institutions in a meeting held in Manila in September 1999. The Focal point of plan of action includes action research on trafficking in women and children in India and a national workshop to review the implementation of laws and policies related to trafficking: towards an effective rescue and post rescue strategy.95

94 Ibid.
95 For details see: [http://www.nhrc.nic.in/.. JPLANOFACTlON.doc](http://www.nhrc.nic.in/.. JPLANOFACTlON.doc), (Accessed on 20.11.2012)
The plan of action also makes an analysis of various international and national legal documents including the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, UN Convention Against Transnational Organized Crimes and Protocol to Prevent, Suppress and Punish Trafficking in Person, Especially Women and Children.96

The plan of action further recommends that there is a need to bring a new national law or amend the existing law in consonance with the international standards, which must be comprehensive enough to address all forms of trafficking including a provision for stringent punishments and effective penalties.97

1.5 Research Methodology

- The study is based on both secondary and primary data. Primary data has been retrieved in the form of structured and unstructured research questionnaires distributed among (a) Academicians (b) Police, (c) Media personnel, (d) Doctors (e) General Public, (f) NGO’s, (g) Members of the Bar and Bench and (h) Students.
- The secondary data has been collected from different published books, articles, reports, magazines, journals, websites and newspapers.

1.6 Limitations of the Study

The available literature on the problem of human trafficking in our country reflects how much work has been done and how many honest efforts have been made to give clear picture of this problem. There is a lack of data based on primary research. Very little academic research, particularly empirical based research has been conducted on trafficking in human beings in India and published in academic outlets. Thus, data available is inadequate to present a true picture of the menace of human trafficking in India.

Also there is lot of confusion among people at large about trafficking in human beings and prostitution. Because of lack of proper awareness, people mistake human trafficking and prostitution as one and the same. In fact, most of the research suggest only prostitution as a cause of trafficking in human beings.

Furthermore, because of the clandestine nature of problem and the social stigma attached to it, the researcher also faced a problem of willing respondents for the research questionnaire. Most of the respondents hesitate to discuss the problem of

96 Ibid.
97 Ibid.
trafficking in human beings and were not comfortable in presenting their views on the subject.

The literature on human trafficking reflects the dilemma of writing on a subject that is not easy to research. Considering the hidden and criminal nature of the problem, the data presented by most reports is valuable because of this very scarcity. While the definition, perspective and approaches to the problem of trafficking may vary the concern to find effective solution is common to all these studies.

The content and format of the majority of studies are repetitive and appear to be recycled. So much so, that books, articles and reports are indistinguishable from each other. The objective of every study appear to be establishing the occurrence of trafficking, reposting the lacunae in the response by different agencies and making recommendations. The information on trafficking is presented in narrative form or is merely recording incidents, events and cases. Much of the literature on trafficking also reflects a high degree of outrage. So far, there have been no studies that have dealt exclusively with the issue of trafficking for labour exploitation.

The information available is in bits and pieces, thereby reducing its value and undermining efforts to combat trafficking. There is a need to organize, collate and analyse the available information and knowledge even with the available data base. An analysis of the various dimensions of trafficking is possible, but most studies fail to do so. In the absence of any in-depth analysis of the issue and aspects involved, most studies have failed to paint a realistic picture of the scope of the trafficking problem, what sustains it and why it occurs? The varied dimensions and aspects of trafficking and their inter relationship need to be examined at length instead of being accorded superficial treatment, be it trafficking and migration or trafficking and organized crime.

While there are references to the nexus between politicians and the police force involved in the media reports, there are no studies at all to corroborate these stories. Apart from this not much is known about re-trafficking cases.

The literature on trafficking at the national level is completely dominated by the issue of commercial sexual exploitation, so much so, that trafficking as a distinct crime does not get highlighted. Sometimes it is almost entirely ignored. Though there is a large amount of information available, the reality of the trafficking in women and children in India continues to remain hidden and lacks any in-depth analysis of the problem in all its dimensions.
1.7 Plan of Study

The present study is divided into seven chapters in order to achieve the objective of understanding the national and international law mechanisms on the problem of trafficking.

The Introductory Chapter highlights the statement of the problem, its relevance, objectives, review of literature, hypothesis, research methodology, limitations etc. of the study.

The Second Chapter Human Trafficking: Conceptual Dimensions of the Problem examines the concept of trafficking in human beings in the light of various definitions given in different International Conventions and Protocols. In addition to it, the causes, implications, and effects of the problem of human trafficking have been studied and analysed therein.

The Third Chapter Human Trafficking: A Historical Perspective studies the historical perspective of the problem of human trafficking at the national and international levels. It also touches issues of human slavery and Devadasi systems in ancient India.

The Fourth Chapter Human Trafficking: International Legal Perspective reviews most of the important Conventions and Protocols against human slavery, prostitution, and trafficking in human beings. It also discusses various other International documents including the Universal Declaration of Human Rights, The International Covenant on Civil and Political Rights 1966, The International Covenant on Economic, Social and Cultural Rights 1966. This chapter also illustrates the role of various international and regional organisations including ILO, IOM, SAARC etc.

The Fifth Chapter Human Trafficking: National Legal Perspective reflects on various national laws relating to trafficking in human beings viz, provisions in Constitutional Law, provisions in the Indian Penal Code, Immoral Traffic (Prevention) Act, 1956, Juvenile Justice (Care and Protection of Children) Act, 2000, etc. This chapter also draws attention to the magnitude of the problem of human trafficking in India.

The Sixth Chapter Functional Evaluation of the Role of National Law Enforcement Constituents has been devoted to analyse the functional evaluation of the role of national law enforcement agencies in tackling the problem of human trafficking. Also in this chapter an attempt has been made to collect information by way of a structured questionnaire from various stakeholders like the Police, NGO’s, Media personnel, Bar-Bench fraternity, academicians, students, and the general public.
to examine the causes, implications and responses of the problem of human trafficking.

In the *Concluding Chapter*, on the basis of the analysis of primary and secondary research material, the researcher has put forth some valuable suggestions and recommendations. This is a humble attempt on the part of the researcher to emphasize the urgency of an appropriate policy formulation and legal intervention on the issue.