

# **CHAPTER 2**

## **REVIEW OF LITERATURE**

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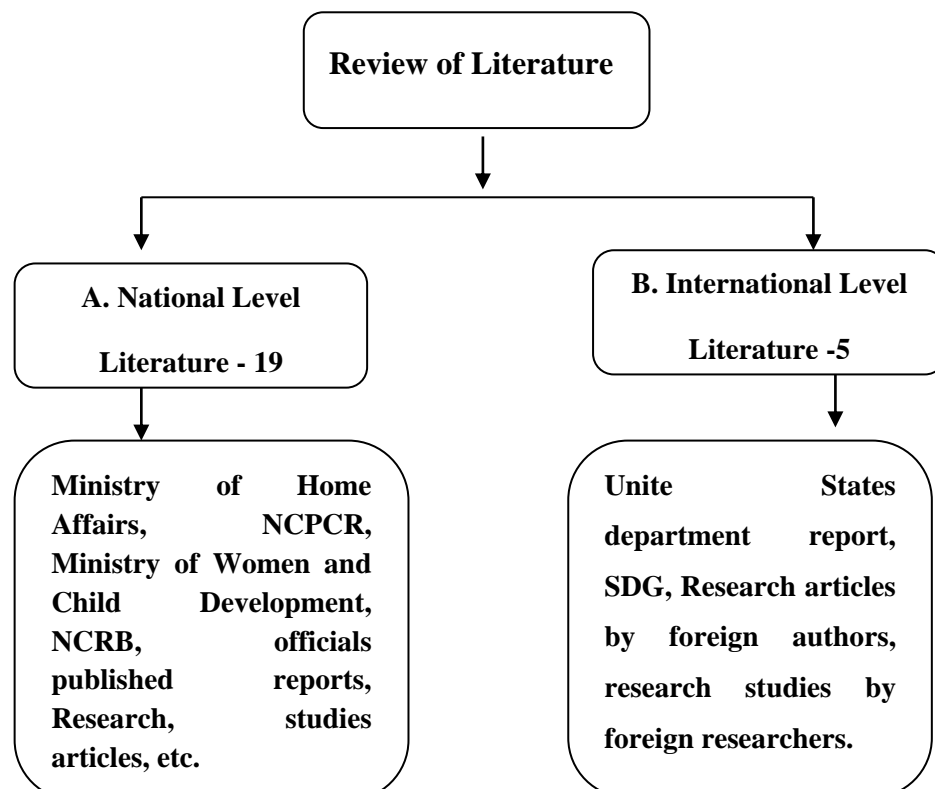
### LITERATURE REVIEW

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Previously, we have discussed in the Introduction chapter the concept of human trafficking, the magnitude of human trafficking, legal provisions, development of AHTUs, guidelines, definitions, and so on.

This chapter is discussed the various findings of the previously done research studies. Finding literature for this study was not an easy exercise. The researcher has reviewed hundreds of literature. The majority of the researches are discussing the perspective and problems of trafficked victims, not the system. It was very challenging to find studies focusing on experiences and opinions of Anti Human Trafficking Units functionaries. After a long time procedure of fetching the relevant contents, the researcher has selected a few studies which have a partial focus on the system aspects.

The reviewed literature in this chapter is divided into two different levels. One discussed the national-level research, reports from various government agencies, and Second International level literature included reports, research studies, and research articles.



## **A. NATIONAL LEVEL LITERATURE REVIEWED**

**Das, A. (2020)** research study title “Rehabilitation of Victims of Human Trafficking: A Study Of Effectiveness, Efficiency, And Sustainability Of Victim Compensation Schemes” explained the following findings.

The study analyses data collected from 253 trafficked victims through interviews schedule from three states (Rajasthan, West Bengal, and Uttar Pradesh) of India. The findings are as follows.

- The majority of the trafficked victims were female i.e. 55% (n=139).
- The highest share of age was 26-40 years at the time of rescue i.e. 32% (n=82).
- The majority of the victims were trafficked for forced labour i.e. 69% (n=175).
- The majority among them did not have access to compensation i.e. 58% (n=148)
- The majority of the NGOs are playing an important role in supporting and processing the compensation i.e. 98% (n=103)
- The attitude of officials with whom the victims interacted during the processing of their cases, the majority of the victims’ i.e. 43% (n=45) could not rate the attitude of officials decisively. These findings show that the attitude of officials has not been always good with victims.
- Police officials are not sending the First information Reports to the District Legal Service Authority (DLSA).

### ***Researcher Comment***

*The study neither clearly explained the factual relation between the gender, age and victims trafficked for forced labour nor category of officials with whom the majority of the victims experienced a bad attitude.*

**Ministry of Child and Women Development (2020)**, in its annual report, introduced several positive initiatives for women as follows.

- Recently ministry approved the project of the ministry of home affairs. The project was initiated to support and counselling the trafficked victim. Around

100 crores of Indian rupees was approved to start up the Anti-Human Trafficking Units in all states districts and Union territories.

- To enhance the cooperation between Indian and United Arab Emirates (UAE) countries. A joint task force meeting was held in 2019 in Abu Dhabi.
- National Investigation agency received authority now to investigate especially trafficking-related matters under section 370 and 371 of Indian Penal Code on the direction of the central government under the National Investigation Agency Act, 2008 amendment 2019.
- The supreme court has directed the ministry to introduce effective Trafficking in Person (Prevention, Protection, Rehabilitation) Bill before its consideration by the Cabinet.
- Ujjwala scheme implemented through Non-government organisations has been revised in 2016. The Scheme has five components— Prevention, Rescue, Rehabilitation, Re-Integration, and Repatriation of trafficked victims for commercial sexual exploitation. The funds' stipulation estimated Rs. 30.00 crore for Financial Year 2019-20 for implementing the Ujjwala Scheme.

#### ***Researcher comment***

*It is necessary to make an independent body for a better result in police administration however, in many regions, where the Integrated Anti Human Trafficking concept is highly advocated because of the scarcity of staff members. The project approved by the ministry will help in enhancing the strength of the Anti-Human Trafficking Units in India. We all know that India is a source and destination for trafficked women on both sides. The cooperative effort between Indian and UAE will help in bringing down the labour-related trafficking issues. Human trafficking victims' rehabilitation is a very challenging task for the law and order maintaining authorities. Many studies revealed that police authorities are not aware of all about the victim's welfare programs. However, judges have the authority to pass the compensation for trafficked victims under several laws but that is not working effectively. The Ujjwala scheme was being implemented through the Non-government organisation will help the trafficked victims in getting maximum benefits.*

**Ministry of Woman and Child Development (2020)** in the report "Sexual abusive cases of children reported Online" stated that the central government has taken several

steps to stop child sexual abuses through the initiative of Fast Track Special Courts (FTSC) and Fast Track Investigation in Child abusive cases. The government is concern about the increasing case and they have set up 1023 Fast Track Special Courts (FTSC) for timely justice and disposal of cases related to rape and the Prevention of Child Sexual Offence Act (POCSO). To make the investigation procedure much faster the government has taken certain important steps like Online reporting of cases related to child sexual abuse, improvement in cyber forensic facilities, and empowering the law enforcement officers/judges/ public prosecutors through training.

### ***Researcher comment***

*The ministry has taken a very important step to stop child sexual abuse and rape cases from the country. It is a fact that many law enforcement agencies have a lack awareness of the important legal framework of the country. Sometimes, they confuse child trafficking and child sexual abuse. However, child trafficking includes force child labour and sexual abuses both but identification of real cases and putting them all into the proper section is a very challenging task for law enforcement agencies. Online registration cases will indeed provide good access to the police officials more transparently. According to National Crime Record Bureau, there are numbers of cases of rape, child sexual abuse, and child trafficking are pending final rewards. The fast track initiative is providing speedy justice to large numbers of pending cases through the appointment of ad-hoc and retired judges.*

**National Commission on Protection of Child Rights (2020)** in annual reports(2020)commission has started monitoring the implementation of the Protection of Child from Sexual Offences (POCSO) Act in various States/UT. They are more concerned about child-related cases. The commission has collected information through special courts, public prosecutors, police officials on child victims for compensation. The commission has organised many awareness programs to enhance knowledge on child rights and POCSO act among the police officials, School administrations, colleges, and so on.

(2017-18) the commission has taken an action by a court of its own accord, without any request in the matter of infant trafficking in West Bengal. The commission has conducted inquire into the matter of infant trafficking at Purbasha Old Age Home in

Kolkata at West Bengal. The commission also funded a Research Study for Odisha Police in collaboration with Sambalpur University on 'Combating Child Trafficking.

(2012-13) Commission facilitated rescue operation and saved three minor children from Manipur and 31 girls from brothels in the kabaddi bazaar of Meerut with help of police, district administration department, and NGOs. Later on, minor girls were handed over to child welfare committees by police for age verifications and the minor children to their native place after a proper medical check-up in All India Institute of Medical Sciences (AIIMS), Delhi. Moreover 68 girls from placement agencies from the Shakurpur area, 168 children were rescued from Ajmer- Sealdah express, and the next day another 43 were rescued by the child welfare committee from the same train. While a total of 103 children were rescued by the child welfare committee and childline from Jaipur and Agra.

***Researcher comment.***

*The commission reports show active participation of deferent members for cultivating the minds of law enforcement authorities. The registered case under POCSO Act is increasing since 2015 in Gujarat. There are many cases of child trafficking that have been recording throughout India. NCPCR to stop such kinds of grave anti-social activities periodically facilitating rescue programs, awareness activities, and research studies at the states level since establishment. The finding of the funded research by the commission is not declared yet. It is assumed to be in the process. At the state level, no evidence is available on the website that speaks about the activities conducted to control child trafficking in Gujarat.*

**Ministry of Home Affairs in his annual report (2018-19)** clarified the following initiative to strengthen the anti-human trafficking workforce. The ministry has set up an Anti-human trafficking cell. Police are state subject matter hence registration of cases, prevention of crime, and investigation on human trafficking are their primary responsibilities. Ministry is just playing a supplementary role by taking a necessary step for combating trafficking-related issues. Ministry has approved 332 Anti-human Trafficking proposals from various states for strengthening the law enforcement response to combat trafficking. In addition to this India has created a multilateral mechanism through signatory to the South Asian Association for Regional Cooperation (SAARC) meeting to stop and fight against Trafficking in Women and

Children for Prostitution. India has also ratified the United Nations Convention on Transnational Organized Crime (UNTOC) Protocol to stop, stifle and Punish Trafficking in Persons and against the Smuggling of Migrants by Land, Air, and Sea, supplementing the UNTOC.

***Researcher comment***

*However, it is good initiatives taken from the ministry of home affairs on set-up the antihuman trafficking units in various states of India, but the report does not explain the nature of the units and financial approvals given for each. Bilateral and multilateral mechanisms help in combating cross borders trafficking-related issues faced by India from Bangladesh and Nepal. The signatory initiative is hope for the upcoming future that it will deal with many international issues including human trafficking through a joint task force mechanism. Ratification of international protocols simply means that the Indian government is more open and ready to bring the changes into their legal framework by introducing new legislation or amending new policies which can effectively work to combat trafficking.*

**Ministry of Women and Child Development (2018-19)** in annual report signified a few important silent features of the Trafficking of Persons (Prevention, Protection, and Rehabilitation) Bill, 2018

- The bill ensures the prevention of human trafficking and protects, rehabilitates, cares for the trafficked victims from such kind of organised crime.
- The bill uses to give an enthusiastic institutional mechanism to stop human trafficking and provide protection, investigation, and rehabilitation aspects to the victim of trafficking.
- The bill includes a new offence with a severe sentence and fine. These are not incorporated in existing laws of human trafficking.
- To provide timely justice, fast clearance of cases through sessions court in each district, and to send the victims back to the home country the concept of repatriation is also introduced.
- The bill ensures the privacy and immunity of trafficked victims for several criminal actions against them.

- The bill ensures to protect and confidential the personal information of trafficked victims, complainants and eyewitnesses.
- The bill provides certain aspects of rehabilitation funds for the wellbeing of trafficked victims to address the health crisis.

***Researcher Comment:***

*There are many laws framed to protect the trafficked victims in India. But all of these have several limitations. All the legislation is not uniform in nature. Many important areas are not covered, sometimes several segments are unclear and hotchpotch which creates a lot of confusion for law and order maintenance authorities. As a result, accuracy in registering the cases of human trafficking become iniquitous. The new bill introduced covered many important aspects of human trafficking which was never included in the past like for example repatriation of the trafficked victim, definitions of human trafficking, trafficker, etc. The bill was introduced with the hope to light all the unclear legal dimensions of human trafficking, which is necessary to protect, rehabilitate the trafficking survivors.*

**National Human Rights Commission of India (2017-18)** in an annual report stated that the commission has developed on core group to combat trafficking-related issues in India. The core group experts included signifying Central Government, Police, Research Institutes, NGOs, and Civil Society Organizations. The core group has jointly worked formulating Standard Operating Procedure (SOP) and the commission has released it in 2017.

***Researcher Comment***

*It is necessary to develop the standard operating procedure, but the effort is not collective. India has many laws and sections about human trafficking. It seems to be no coordination between different departments, commissions, and ministries. All the Ministries, Commissions associated with trafficking-related issues are differently preparing their Standard Operating Procedure (SOP). It should be a uniform effort so that confusion should be minimized.*

**S. Saratkumar Sharma (2016)** in his research study “Child Trafficking in Indo-Myanmar region: A case study of Manipur” stated that 56.4% of victims recruited by compelling their parents and guardians for free education and boarding, 28.2% of



victims attracted for employment, and 7.7% victims for skill training from the traffickers. It means traffickers are well aware of the regional needs.

Manipur has reported 66 child trafficking cases in the last eight years. In the year of 2010, 135 children were rescued from traffickers. It was a fact that the majority i.e. 79.5% of the saved children were from Manipur while 20.5% were from the northeast part of India. 82.1% of victims are repatriated to their families, while 15.4% of victims were dispensed over to child welfare committed because they were from outside Manipur state.

The study revealed that 33.3% of the first information report was filed against the person who is responsible for child trafficking in Manipur.

#### ***Researcher comment***

*It is a fact that child trafficking in the northeast region in the name of providing quality education is much higher. Mainly for employment and education, the trafficking is being conducted through the route of Imphal-Myanmar-Singapore. The infrastructure setup is very poor. It was noticed in the report that because of irregular or/ no funding many government offices operated under a rented building. One example of the Child Welfare Committee in the same region, it was running under the borrowed building.*

**D. Ranjhana and Dr. B. Patnaik (2015)** in their study “Human Trafficking: A Study Exploring its Causes” explained that in many places where the normal tribal people are unable to file an official complaint because of the rigid bureaucratic system and rough police behaviour. It was observed through a case study in the report that many people are forced to wait for a long period outside the police station for filing first information reports. In many police stations, the police officials are not filling the officials' reports instead they use general dairies to fill the complaints which as no/less significant. It was assumed to be the main causative factor that people in the tribal belt of Sundergadh district in Odisha, are helpless and afraid of police administration.

In addition to this many Non-Government Organisations reported that Police authorities and district administration are not dealing fairly with the problems of migration and trafficking. Many times, they are confused between job migratory

movement of people and cross border trafficking. As result, they are unable to take strict actions against such incidence.

***Researcher comment.***

*It was noticed in many reports that rude and miss behaviour among the police administration is very common. Especially, in many states' officials are aware and they are organising behavioural sensitising training for their staff members. Several Anti-trafficking cells are internally administered under various key departments hence there is the highest disparity and injustice with the work. The strength of police officials is not sufficient as result the burden of responsibilities increased on a single person and this makes them physically, mentally unhealthy. Which finally results in rude behaviour with the local people. According to several reports, community policing may play important role in solving cross-border trafficking issues through the support of the local community.*

**Secretary member-submitted the report to the honourable supreme court of India (March 2015)** in petition number 56/2004 titled "Prajwala Versus Union of India and Others" explained that currently, many victim rescue activities are conducted by the law and order maintaining authorities. The raids led to punishing the sufferers of human trafficking instead of defending them. The rescue processes are not conducted for a specific purpose as necessary. These operations are without planning and strategies are not victim friendly. Rescue operations used for brothel-based trafficked victims, street-based prostitution, and child victims of sexual exploitation are common in nature. It is noticed that states and departments are lacking in internal coordination and collaboration. Indeed, the Ministry of Home Affairs (MHA), and the Ministry of Women and Child Development (MWCD) are not strictly following the set of rules and advisories on particular legislations. Negligible attention is given to protect the rights of sex workers and rescued victims. Thus, the rescue operation itself is an upsetting experience for the victims towards law enforcement agencies.

***Researcher comment.***

*It is a fact that Anti-human trafficking activities are implemented with the specific aim of protecting trafficked victims. But poor monitoring, frequent transfer, and attitude of*

*authorities make the mean wicked. There are many places in Gujarat where the rescue operations were not at all conducted because of the integrated nature of setup and multiple duty base work environments. One report on "Protocol on Inter-State Rescue and Post Rescue Activities" clearly explained the pre-rescue protocols for systematic procedure and guidelines for the police officials. But it is awful that many police officials are neither trained nor aware. In 2007, police officials received training through joint initiatives of UNODC and the Ministry of Home Affairs, to which only selected states police officials were invited. After the years passed, the process of strengthening the system became depraved because of poor monitoring and follow-up towards strengthening procedures.*

**Ministry of Home Affairs, Government of Indian (2008)**in his report "comprehensive schemes for establishment of Anti-human trafficking Units and Training of Trainer" explained the set up provided in targeted states in the year of 2006. Each Anti-human trafficking unit setup would be provided with one office table, ten chairs, 1 computer table, wardrobe for books and records, two mobile phone instruments of 3000 Indian rupees cost, digital camera for evidence collection with memory stick, 1 vehicle, 1 motorcycle, landline phone connection facility with broadband, one counselling expert at 8000 Indian rupees per month for three years. Total seven official police manpower suggested by the government for smooth function of Anti-human trafficking units in targeted states. These seven police officials incorporated 1 inspector, 2 sub-inspector, 2 head constables, 2 constables. Moreover, the report said that the need base association of one representative required from woman and child development, health and family welfare, labour and employment, and prosecution.

**Dr. P. M. Nair and Geeta Sekhon (2008)** explained in the report on "Standard Operating procedure (SOP) on the investigation of crimes of trafficking for forced labour" 13 steps to be taken for the rescue of trafficked victims by police officials.

Step 1: Without compromising the facts the information should enter in the General Diary of the police station.

Step 2: Consider the details of place, entry and exit points, ways, and means of taking out victims firmly and preventing the disappearance of traffickers. All entrance and walking-out points must be protected. Carry out a rescue of the

place to be searched. An official who is familiar with the local language to be sent to the place incognito. Maintain the confidentiality of provided information and take support from local officers and NGO representatives. Allow survivors, who are prepared to co-operate, could be useful in rescue. After the rescue, portray a sketch map of the area which could be used for briefing and for assigning specific duties to the officials who will participate in the rescue.

- Step 3: Rescue team should go along with bonded labour and child labour laws implementing authorities are like Sub Divisional Magistrate (SDM) and officers of the labour department so, that both laws may be utilized wherever applicable.
- Step 4: In case if Sub Divisional Magistrate is unavailable, the rescue team should acquire a search warrant from the jurisdictional Magistrate u/s 166 of Cr. P.C.
- Step 5: Rescue team officials should be sufficient in numbers. Interview of the trafficked victim should be done by police officers in the absence of traffickers. It is highly encouraged if the police department could take help of NGO services for an interview of victims and act as an eyewitness. Maintain the list of NGOs and other government officials who are actively working on human trafficking areas. At least one authorized officer from the labour department should be a part of the rescue team.
- Step 6: Ensure resources and utensils are required for documentation and evidence collection.
- Step 7: Provide proper updates about the planned actions, including the places to be visited/ searched and the projected time to the appropriate authorities.
- Step 8: Inform the responsible system of the Government and NGOs regarding the approximate number of persons likely to be rescued and the time when they are likely to be brought to the Home.
- Step 9: To keep separate victims from offenders, an adequate number of vehicles for the rescued operation should be maintained.

Step 10: All the victims should be recognized and rescued during the operation without giving importance to age.

Step 11: Try to provide a supportable environment for the victims by communicating.

Step 12: Victims especially children are afraid of the police because of the threat of employers that if they will not work hard then the police will arrest them. Immediate efforts should be made to win the confidence of the victim. So, that they can be calm.

Step 13: Ensure the jurisdiction of the event. If the rescued persons belong to a different state(s), then update the information to the Special in charge of the concerned state(s).

***Researcher Comment.***

*It is appreciable that the Standard Operating Procedure (SOP) is created by a team of UNODC and the Government of India. Ministry of Home Affairs through document no 15011/54/2018-ATC circulated draft of the SOP on an interstate coordination mechanism to address the crime of trafficking in persons in 2019. The state-level procedure for the implementation of such SOP is still under process. The Standard Operating Procedure (SOP) has only one missing point that it was not discussing the repatriation of victims from neighbour countries.*

**K. Bedi (February 2008)** article title “Human Trafficking in India”. Human Trafficking can be categorized into three different clusters. The first category is Commercial Sexual Exploitation (CSE) and that could be in a brothel or anywhere in beer bars and cover under marriage bureaus, massage parlours especially in the place where the distorted position has been a witness for females. The second category is exploitative labours (EL) that can be male or female or both in organised and unorganised sectors such as agriculture, domestic places, entertainment industry, temporary industrial labours, tea stalls, hotel industries, and third category included other forms of exploitations such as illegal organ selling, children trafficked use for camel jockeying and many more.

She emphasis on two-dimensional causes of human trafficking. The first dimension is demand, which she believes, demands as an important dimension that drives any form of human trafficking. And another dimension is the vulnerability of trafficked or likely to be trafficked persons not because of exactly poverty but it is concluded several other factors such as lack of awareness of rights, lack of access to rights, illiteracy, and scope of exploitation of a person, feeble law enforcement and etcetera.

**National Human Rights Commission (2004)** in one action research study “Trafficking in women and children in India” revealed that police officials who are dealing with trafficking cases have very weak knowledge about the crime of human trafficking. The study indicated that police officials are giving low preference to the human trafficking crime because of the high preoccupation of police with a crime such as rape, slaughtering, arson, and other general law and order issues.

***Researcher comment.***

*It is a fact that many NGO representatives explained that due to a lack of knowledge of trafficking-related laws, the lodging of complaints concerning putting exact and needed sections quoted in the act becomes difficult for police officials.*

**P. Nair and Sankar Sen (2002-2003)** have conducted a research study in 11 states of India. They explained in the same study report on "Trafficking of woman and children in India" that police attitude toward victims of human trafficking during rescue and post-rescue operations is not so good and needs a lot of improvement. The study shows 43.3 percent of police officials have caring behaviour, 27.1 percent stated that they were not caring, and 10.5 percent reported abusive behaviour of police officials during the rescue and post-rescue situations. Concerning the post-rescue scenario of trafficked victims, 53.1 percent stated that woman police officials were absent when body searches were carried out. The same percentage of respondents also stated that they were not interviewed by female police officials.

*Section 15 (6A) of Immoral Traffic (Prevention) Act, 1956 clearly stated that The special police officer or the trafficking police officer, as the case may be, searching this section shall be accompanied by at least two women police officers, and where any woman or girl removed under sub-section (4) is required to be interrogated, it shall be done by a woman police officer and if no woman police officer is available,*

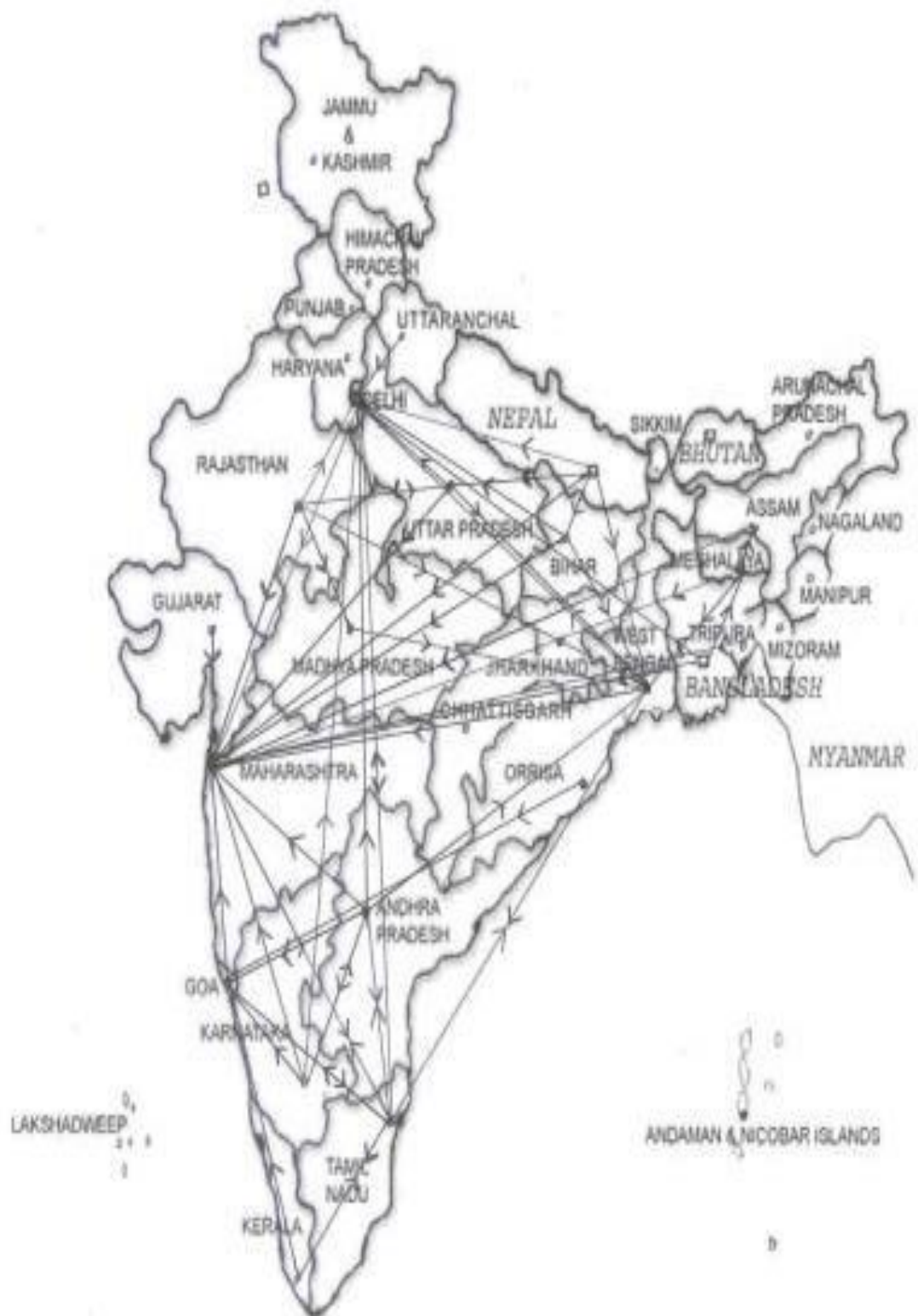
*the interrogation shall be done only in the presence of a lady member of a recognised welfare institution or organisation.*

Moreover, many NGO functionaries received a lot of positive reception for their behaviour with victims of human trafficking the same study shows 57 percent of NGO functionaries behaviour was caring, 15.9 percent of respondents' behaviour was uncaring whereas only 1 percent of victims experienced abusive behaviour of NGO functionaries.

The study explicated through illustration 1, illustration 2, and illustration 3 that India has many transit and destination sources of human trafficking. It is clear through illustration 2 that 17 states have 169 transit sources to Delhi's destination. It is accepted that Gujarat is one of these states. It has one point that is in Surat which is equally responsible for the supply of victims for commercial sexual exploitation in immoral trafficking.

Figure 3 specified that 17 states of India have 181 transit points to Maharashtra destination. Among 17 different states of India, Gujarat has four major sources or transit points for human trafficking. Those transit points are Gandhinagar, Baroda, Saurashtra, and Surat

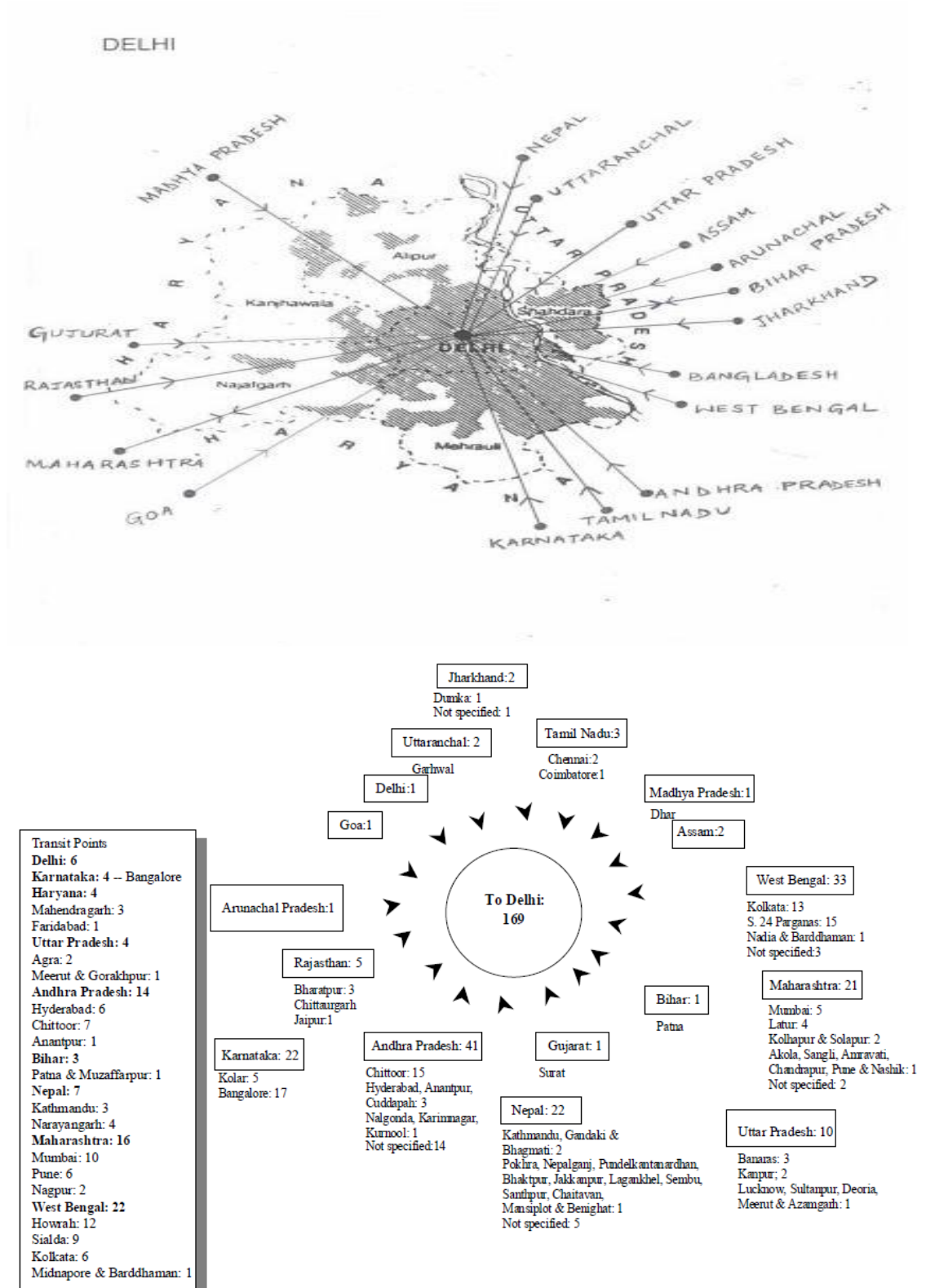
**Figure 2 Commercial sexual exploitation trafficking Map of India**



(Source: Mr. P.M. Nair (IPS) and Mr. Sankar Sen (2002-2003), research study "Trafficking in woman and children in India")

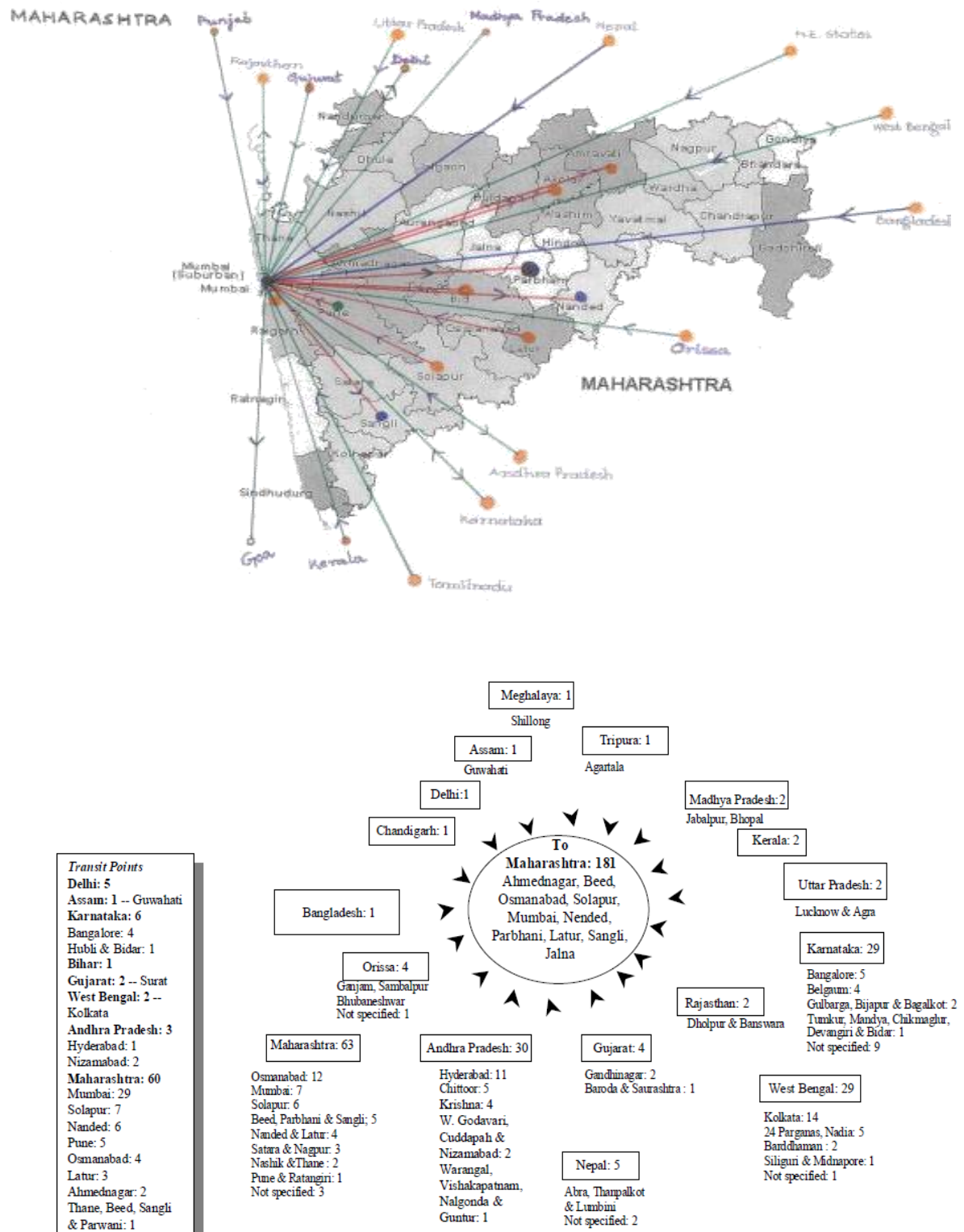


**Figure 3 Transit and destination points for immoral trafficking in commercial sexual exploitation to Delhi.**



(Source: Mr. P.M. Nair (IPS) and Mr. Sankar Sen (2002-2003), NHRM report on "Trafficking in woman and children in I

**Figure 4 Transit and destination points for immoral trafficking in commercial sexual exploitation to Maharashtra.**



(Source: Mr. P.M. Nair (IPS) and Mr. Sankar Sen (2002-2003), NHRM research report on "Trafficking in woman and children in India")

### ***Researcher comment***

*The study was conducted in the year 2002-2003 after that no latest information was available. The study focused on only 11 different states of India which exclude Gujarat state. The study explains transit and destination points of trafficking. It mainly focuses on Delhi and Maharashtra as destination points of trafficking for commercial sexual exploitation.*

**Case title: State versus Unknown, Case No. 51/2010, Judgment date: 28.08.2012**

### ***Case background:***

On 22.12.06 Inspector, Sub-Inspector, and Assistant Sub Inspector were on patrolling duty in the area of G.B. Road, Kamla Market, Delhi. At about 12.05 A.M. When they reached Kotha No.56, Inspector received secret information that two girls had been procured illegally and forced into prostitution, at Kotha No.68. There are written instructions not to conduct a raid in such cases in absence of representatives of NGOs so that all the proceedings are conducted fairly. So, Shakti Vahini, NGO was informed. NGO accompanied by a female social worker, program Officer reached near Kotha No.56, G.B. Road and joined the investigation.

At about 12.25 am, Police officials, two members of the NGO and the secret informer reached Kotha No.68. At about 12.40 a.m., a secret informer pointed out towards the girl, stating that she had been forced to indulge in prostitution at Kotha No.68. Another girl was also rescued from there. Her statement Ex.PW3/A was recorded.

### ***Court reasoning.***

The court finds that the prosecution has failed to substantiate any of the accusations levelled against the accused persons beyond the shadow of reasonable doubt. All of them are acquitted in this case while extending the benefit of the doubt.

**Case title: Sageer and Other versus the state of Uttar Pradesh, Case No.: 70403/2011, Judgment date: 05.01.2012**

***Case background***

Habeas Corpus has filed the petition on behalf of 44 bonded labourers. The labours were inhabitants of different villages in the State of Uttar Pradesh. They claimed to be held in bondage at a brick kiln. Labours were not allowed to leave the premises and work elsewhere. They were not paid their wages in time and their accounts were also not completed. Labours were forced and abused to continue employer work without medical aid.

Moreover, the report presented by the district magistrate in high court stated that not a single petitioner was present at the brick kiln during the on-spot inspection by the relevant government officials. The report concluded the absence of evidence of bonded labour amongst the petitioners.

***Petition reasoning***

The High Court stated that the District Magistrate appeared to have too readily accepted the report of the Labour Enforcement Officer and the NaibTehsildar (who inspected on his behalf). The Court stated the necessity of sensitizing the District Magistrates and other concerned government functionaries to certain salient aspects of the law relating to bonded labour.

Unorganized sectors in which bonded labour is employed and the practical lacunae in the implementation of the Bonded Labour System (Abolition) Act, 1976 listed by the court. The unequal feudal and power structure between bonded labourers and the employer/authorities under the Bonded Labour Act makes it difficult to file complaints and to pursue the matters to their logical legal conclusion.

***Court reasoning***

The court made detailed references to Constitutional provisions; ILO Conventions; Universal Declaration of Human Rights, 1948; UN Supplementary Convention on the Abolition of Slavery, 1956; the Bonded Labour System (Abolition) Act, 1976; Legal Services Authorities Act, 1987; previous Supreme Court judgments on the issue of

bonded labour; the role played by the National Human Rights Commission; and the welfare schemes for poverty alleviation at the Central and State levels.

### **Court resolution**

Importantly, the court stated that neither the Government nor the Court should be content with only specific securing identification and release of bonded labourers but every effort must be made by them to see that the freed bonded labourers are properly and suitably rehabilitated after identification and release.

Directions were given by the High Court to all relevant government functionaries to ensure synchronization of different departments and to issue appropriate directions for checking bonded labour for ensuring that the socio-economic issues of such helpless sections are dealt with on a priority and comprehensive basis.

The court specifically directed the setting up of free legal services to victims of trafficking in human beings or 'beggar' as referred to in Article 23 of the Constitution, under the National Legal Services Authority (Legal Aid Clinics) Scheme, 2010 and the National Legal Services Authorities (Legal Aid Clinics) Regulations 2011 in pursuance of Section 12(b) of the Legal Services Authorities Act, 1987.

**P.M. Bakshi (1999, March)** in his article "Sale of woman: A case for law reform" explained that section 372 and 373 of the Indian penal code has a very serious limitation. Both sections ideally dealing with the selling and purchasing of minors (of either sex) for prostitution or illicit sexual intercourse. Although, both sections speak about the selling and purchasing of minors the sale or purchase of adult women is not covered. It means to sell or purchase of adult woman who is not minor and mentally challenged also have scope to exploit sexually.

**Case title: Bachpan Bachao Andolan versus Union of India and Ors. Case No. 51/2006, Judgement date: 18.04.2011**

### ***Case background:***

Bachpan Bachao Andolan (Childhood protecting movement) is a civil society organisation and Indian based movement. They filed a public interest petition under Article 32 of the Constitution regarding the grave violation and abuse of children. The

trafficked children from borderline areas of India were forcefully confined in circuses. The majority of them were abused sexually, emotionally, and physically. The children from Nepal were forced to stay in inhuman conditions. State agencies are like police service, human rights commissions were failed to deal with the issue of child trafficking because of the unavailability of labour or welfare laws which are made to protect the rights of these children.

***Petition reasoning:***

The Appeal was submitted in the court and requested to frame proper guidelines for the persons betrothed in circuses and issue several instructions or directions against the state for guiding the raids on circuses. The special task force should appoint to conduct raids for releasing the children and inspect the gross violations of children's rights. The petition was submitted to appoint Special Forces on the borders to prevent cross-border trafficking of children, to convict intra-state trafficking, forcible captivity, sexual harassment, and abuse of children. The petition requested to compensate the rescued victims from the circus and empower the Child Welfare Committee under the Juvenile Justice (Care and Protection of Children) Act, 2000 and strictly forbid the employment or engagement of children under 18 in circuses.

***Court reasoning:***

Children are entitled to preserve legal civil liberties under the Constitution and protection under the Juvenile Justice (Care and Protection of Children) Act and international agreement and conventions related to human rights and child rights, including the Convention on the Rights of the Child, to which India is a participant. However, there are perpetual violations of the law concerning children who are trafficked into circuses. The Court found that the Government of India is fully aware of the problems of children working in circuses and elsewhere from the inclusive submissions made by the educated lawyer General. The Court made many orders in light of the suggestions of the Solicitor General and others.

***Court resolution:***

- I. The Supreme Court ordered that prohibiting the employment of children in circuses within two months from the date of the order to implement the

fundamental right of the children under Article 21A of the Constitution of India.

- II. Simultaneous raids are to be conducted on all circuses to liberate the children and investigate the violations of their fundamental rights. The saved children should be kept in the Care and Protective Homes until they are 18 years old.
- III. The government shall connect to the parents of the children and if the parents are willing to take their children back to their homes, they may be directed to do so after appropriate confirmation from the investigation team.
- IV. The state was instructed to frame proper systematic plans of rehabilitation of rescued children from circuses.

**Case Title: Vishal jeet Versus Union of India and Ors. Case No. 421/1989, Judgment date: 02.05.1990**

### **Case background**

Appellant with other appellant advocates file a petition under Article 32 of the Constitution of India by the way of a Public Interest Litigation seeking for certain directions into issues of forced prostitution from a law enforcement perspective, the dedication of young girls as Devadasi and Join, rescuing the victims from commercial sexual exploitation and providing better medical aid, shelter, education, and training in various disciplines of life.

### **Petition reasoning.**

The appeal presented the fact that poor parents were selling their children and young girls with the hope that their children occupied only household duties or manual labour. However, pimps or brokers, or keepers either purchase or kidnap them for economic gain and untrustworthy means. Some time the tricky act forces them into 'flesh trade'.

### **Court reasoning.**

The Supreme Court (SC) held that this matter entails a humanitarian rather than a purely legislative approach from different positions. The questions involved cause considerable anxiety to the Court in reaching a satisfactory solution in eradicating such sexual exploitation of children. The court stated that instead of a punitive

method, preventive measures were to be taken for the socio-economic problem. The Supreme Court examined the Constitutional provisions about human trafficking, right against exploitation, and rights of children, principles specify under the Declaration of the Child Rights in the year 1959.

**Court resolution.**

The Supreme court issued the following directions inter alia to the State Governments and Union Territories:

- I. Law enforcement authorities should take suitable and speedy action under the existing laws for eliminating child prostitution.
- II. Take initiatives for the rehabilitation of victims and provide shelter homes.
- III. Set up a separate Advisory Committee consisting of relevant government officials, sociologists, criminologists, members of the women/ child welfare/ voluntary social organizations to make suggestions for terminating child prostitution and the Devdasi and Jogini tradition.
- IV. An established committee should take measures for care, protection, treatment, development, and rehabilitation of trafficked victims.



## **B. INTERNATIONAL LEVEL LITERATURE REVIEWED**

**United State department office (2020)** in the report of "Trafficking in-person" ranked and recommended the activities to the governments of the world who are following the standard of the Trafficking victim's protection Act. U.S. government has initiated ranks in three tiers. Tier One is for the Countries whose governments fully meet the Trafficking Victims Protection Act's (TVPA) minimum standards. There are around 36 countries that fall under tier one. Tier two Countries whose governments do not fully meet the TVPA's minimum standards but are making significant efforts to bring themselves into compliance with those standards. Approximately 80 countries fall under the same criteria in which India is one among them. Tier two watch list Countries whose governments do not fully meet the TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards and: a) The absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; b) There is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; or c) The determination that a country is making significant efforts to bring itself into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year. There are approximately 45 countries that fall under the same criteria. Tier three is for the Countries whose governments do not fully meet the minimum standards and are not making significant efforts to do so.

### ***Researcher comment***

*The U.S. Government gave rank two to the Government of India because they may believe that the Indian government has increased effort for protecting the victims by indicating a higher number of reported cases on records and they are putting their effort into meeting the minimum standards of the trafficking in person protocols set by the American government. It is a fact that for the past nine years the Indian government is on tier two rank. The Indian government has adopted an action plan to prevent child abuse and child trafficking. It is awful that still, they are lacking in many key areas. Many Non-Government Organisation has common complaints that many police officials are not lounging First information report especially in case of boded labours. Authorities in many Anti-human trafficking units are putting passive efforts into the identification of such labours in the field. It is observed in the report*

*that compensation is not provided to all the trafficking victims. Although as per the several legislations, providing compensation is under the control of judges but the effort that helps traffic victims to get the advantage of that compensation is absent in many areas. When we compare the efforts with a developed country like the United States then it became clear that the Government of India is putting less effort into improving components such as prosecution, protection, and prevention. The following table shows the Indian government's efforts to meet the minimum United States government standards of trafficking in person protocol.*

***India government efforts to meet the minimum U.S. government standards.***

<b><i>TVPA COMPONENTS</i></b>	<b><i>U.S. GOVERNMENT EFFORT</i></b>	<b><i>GOVERNMENT OF INDIA EFFORT</i></b>
<i>Prosecution</i>	<i>The state has actively elevated the efforts of passing the proper legislation that justifies immoral human trafficking and imprisons the exploiters who abuse other humans for profit.</i>	<i>The government of India increase law enforcement efforts but was low in Conduction, prosecution, and investigation for the scale of human trafficking in India.</i>
<i>Prevention</i>	<i>Support foreign countries in drafting laws to prosecute trafficking, creating programs for trafficking victims, and assistance with implementing effective means of investigation and also efforts to combat trafficking, as well as address trafficking within the United States, including through research and awareness-raising.</i>	<i>The government of India does not have a national action plan to fight against immoral human trafficking. (In January 2017, the Ministry of Woman and Child Development catapult the national plan of action for preventing and protecting children from all forms of trafficking and to conduct research and analysis.)</i>

*Protection Identifying victims, The government of India increased its providing them with medical efforts to protect victims. The care and shelter (and if government did not provide complete necessary, witness information on the number of protection), and, when trafficking victims it identified. The appropriate, repatriating government does not have them. appropriate information about victim identification tool development.*

**R Van Dyke (2017)**, in her article title ‘Monitoring and Evaluation of Human Trafficking Partnerships in England and Wales’, *Anti-Trafficking Review*, issue 8, pp. 131—146 explained the collaborative efforts of police officials and Non-Government organisations to bring positive change in United Kingdom. It gave a good outcome that justifies a fair criminal justice system. She explained that the increase in the number of cases related to human trafficking shows the positive effort of NGOs and Police administrations. In her study, she examined that Non-government organisations are playing an active role in making aware people of the human trafficking-related issue in England.

### ***Researcher Comment***

*Collaborative efforts always bring a positive outcome in society. It is a fact that NGOs and police administrations do not working together to bring the human trafficking-related issue down. There are many reasons for lack of collaboration such as unavailability of Non-government organisation into their specific region, Frequent transfer of police officials, lack of awareness among the staff members, lack of following the policy and procedures mentioned by their senior officials, and attitude of the people. The NGOs like Bachpan BachaoAndolan are actively putting effort to bring positive change in bureaucratic policies.*

**Achim Steiner United Nation Development Program administers (January 2016)** in United Nations summit adopted seventeen Sustainable Development Goals (SDGs) with 169 associated targets and it replaced eight Millennium Development Goals

(MDGs). The SDGs focus on the five Ps. These Ps incorporated people, the planet, prosperity, peace, and partnership.

## **Sustainable Development Goals (SDG) and Human Trafficking relevance**

<b>GOALS</b>	<b>TARGET RELEVANCE TO HUMAN TRAFFICKING</b>
5 - Gender equality.	Target 5.2 - Country trafficking calls for “Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitations”.
8 - Decent work and economic growth.	Target 8.7 - Call for nations to, " Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of worst forms of child labour, including recruitment and use of child soldiers and by 2025 end child labour in all its forms.
16- Peace Justice and strong institutions.	Target 16.2 – Call for nations to “End abuse, exploitation, trafficking and all forms of violence against and torture of children.

### ***Researcher comment***

*United Nations targeted 8 basic areas in the year 2000. These targeted areas are known as MDGs, The UN actively reached the target of around 50-60% by the end of 2015. It was noted that no specific explanation is given especially about human trafficking. However, only a few kinds of research showed linkages of human trafficking with millennium development goals, but it was not sufficiently explained. UN Secretary-General initiated thinking for the post-2015 agenda and as a result of the Rio+20 conference, the Sustainable Development Goals came into existence. The SDGs include 17 goals and 169 targets these targets are to be reached the goals by the year-end of 2030.*

**Dejanajovanovic (July 2014)** with others in his article “Modern slavery – trafficking in Human beings in Serbia” explained that in many countries the police officials are facing the issue of unregistered internal migrations from neighbour countries. Many times, victims of human trafficking entered the country without a valid visa and that gave a high degree of control to the traffickers during the transit stage. It is a fact that victims of human trafficking are not able to get protection because they are frightened of law enforcement authorities.

***Researcher comment***

*In 2010, the United Nations Office of Drug and Crime has positively introduced a community policing idea to enhance the relationship between the community and police officials. It was noticed that in many cases police shove the women and girls back across the borders. Unfortunately, these girls are then become an easy target for traffickers, and they trafficked again. In such situations, community policing play a very role to stop such kind of anti-social migratory activities. This initiative may help in reducing the problem of cross-border trafficking through local public support.*

**Joint secretary and Ms. Christina Albertin, Representative of UNODC (2013)**

“Meeting Minutes of The State/UT Nodal Officers for Human Trafficking” explained Trafficked victims ensure protection from the human traffickers. The confidentiality and personal identification of trafficked victims should be maintained. There should be a supportive and rehabilitative approach for trafficking survivors. In addition to this more stress is given to the development of a standard operative procedure for the repatriation of victims of Bangladesh and Nepal.

Moreover, representatives of prominent Non-Government Organisations raised the common problem that in many cases police authorities are adopting a delayed attitude for registering the First Information Reports. It is a fact that they are sometimes showing careless behaviour in registering cases of trafficked victims. They observed that there is a huge gap in imparting knowledge and delegating work to staff and superiors. There are a few possible cases where the FIR is not registered because of unclear jurisdiction. Dr. P.M. Nair (IPS ret'd.) mentioned that all lack of clarity about territorial jurisdiction should not be the ground for non-registration of first information reports (FIR).

**Researcher comment.**

*Criminal procedure codes explain compulsory registration of First information report in case of cognizable offenses without conducting a preliminary inquiry under section 154. In certain cases, if they delay, refuse, or excuse due to unclear jurisdiction in registering the first information reports then it is considered that the police officer himself committing the offence and they use to be punished for one year under section 166A(c). It is a fact that few studies found that registration of victim's information in their general diary which has no accountability is very common among police officials. One case study on tribal reflected that they are afraid of registering their complaints in case of missing wards because the police officials keep them waiting to reline their information for long hours outside their police station.*