

ARAŞTIRMA MAKALESİ / RESEARCH ARTICLE

The illicit business of sex, labor, and organs, and the laws addressing to it: a study on human trafficking in India

Faisal Mahmood¹  Waseem Ahmed² 

1 Research Scholar in Human Rights, Aligarh Muslim University, Aligarh, INDIA E-mail: fslmahmood1@gmail.com

2 Research Scholar in Human Rights, Aligarh Muslim University, Aligarh, INDIA E-mail: waseemahmedamu@gmail.com

Abstract

Human trafficking is a global evil that snatches freedom from millions of people worldwide to make money. It is a multi-billion-dollar industry affecting the lives of vulnerable – such as women, children, and the poor. Human trafficking, in its various ways, affects almost every country of the world, said the United Nations; and India is not an exception to it. Despite having rich legislation to combat the problem, human trafficking remains a significant issue in India.

This paper is a study about the potential purposes of human trafficking with a detailed discussion on anti-human trafficking laws in India. While addressing the causes of failure of these laws at implementation level, some suggestions has also been provided in concluding part of the paper.

Keywords: Human Trafficking, Human Rights, Modern Slavery, Sexual Exploitation

Citation/Atıf: MAHMOOD, F. & AHMED, W. (2021). The Illicit Business of Sex, Labor, and Organs, and The Laws Addressing to It: A Study on Human Trafficking in India. Journal of Original Studies. 2(1), 21-27, DOI: 10.47243/jos.2.1.03

Corresponding Author/ Sorumlu Yazar:
Faisal Mahmood
E-mail: fslmahmood1@gmail.com



Bu derginin içeriği Creative Commons Attribution-NonCommercial 4.0 Uluslararası Lisansı altında lisanslanmıştır.

Content of this journal is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License.

1. INTRODUCTION

In the ASEAN India Commemorative Summit, 2018, leaders and representatives of the member states visited India's 70th Republic day (26th of January). During this visit, discussions have been made regarding many subjects, including the issues related to human trafficking. Every member state demanded to increase cooperation in combating this crime.

Human trafficking has always been a serious concern of the international community as it affects the human rights of the victims. The vulnerable sections, like women and children, are affected more severely. As explained by United Nations Office on Drugs and Crime in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children under Article 3, human trafficking or trafficking in persons is "the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs (UN, 2000)." The Protocol defined children as "any person under eighteen years of age" and prohibits "the recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation (UN, 2000)" as human trafficking

whether it involves the purposes mentioned under the above definition or not. India is a party to this Protocol since May 5, 2011.

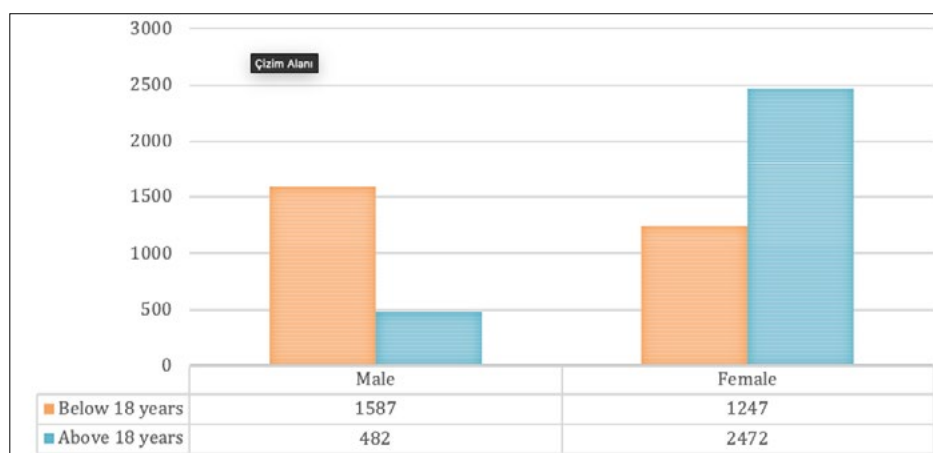
Human trafficking is not only confined within the boundaries of countries, but it also crosses the borders. Despite having multiple prevention mechanisms and documents at the national, regional, and international levels, the devil of human trafficking continues to the harbor.

"Traffic in human beings and the beggar and other similar forms of forced labor are prohibited (Constitution, 1950, Article 23)" under Article 23 of the Indian Constitution and is an "offense punishable in accordance with law (Constitution, 1950, Article 23)." But in India, the problem of human trafficking prevails as organized crime. Innocent people got trapped in human trafficking activities with the promises of better employment and luxurious lives far from their homes. Another cause of human trafficking is the illegal business of human body organs. The begging and sex industry also largely contribute to the cases of trafficking of women and children.

2. HUMAN TRAFFICKING AND ITS PURPOSES IN INDIA

Figure 01 showing 5788 cases of human trafficking reported in India in 2018. Among these 5788 victims, about half were minor. In these 2834 minors, boys were more in numbers than girls. In the case of adult victims, the number of females was much higher than males. Only 482 male adults were reported trafficked in comparison to 2472 female adults.

Figure 1: Gender-Wise Victims of Human Trafficking in India in 2018



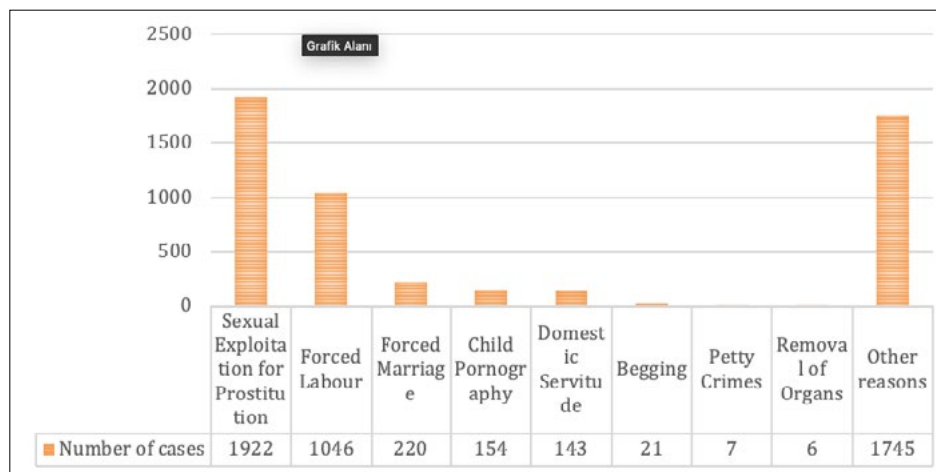
Source: Ministry of Home Affairs, National Crime Records Bureau, Crime in India – 2018, Vol III, <https://ncrb.gov.in/en/crime-india-2018>.

Poverty has been acknowledged as the primary force behind the human trafficking activities in India. Among the other factors responsible for human trafficking in society, such as “caste based discrimination, lack of resources, lack of human and social capital, social insecurity, gender discrimination, commodification of women, social exclusion, marginalization, inadequate and outdated state policies, lack of governance, nexus of police and traffickers, unemployment, breaking down of community support system, cheap child labor, child marriage and priority to marriage, attraction of city life, corruption, employment trade, migration policies conflict and lack of awareness among the victims (Naik, 2018)”, but in one or another way these factors are also caused by poverty. The advent of free movement and free trade resulted in Globalization also is a cause behind the rapid pace of human trafficking in the 21st century. Domestic violence also creates circumstances for the victims to get trafficked.

As pointed out by Abdul Basit Naik, “90 percent of the victims trafficked as sex slaves experienced domestic violence before they were trafficked (Naik, 2018).” There may also be other factors responsible for human trafficking, forcing people to live a life in slave-like conditions.

According to data given by NCRB in 2018 (see Figure 02), the percentage-wise share of different motivating factors of human trafficking in India. The data shows that 37 percent of victims were trafficked for sexual exploitation or prostitution, followed by forced labor found in 20 percent of cases of human trafficking. These two grounds together share 57 percent of the total cases of human trafficking. The remaining includes 4 percent for forced marriage, 3 percent for child pornography, 3 percent for domestic servitude, and 33 percent for other purposes.

Figure 2: Number of Cases of Human Trafficking for Different Purposes in India in 2018



Source: Ministry of Home Affairs, National Crime Records Bureau, Crime in India – 2018, Vol III, <https://ncrb.gov.in/en/crime-india-2018>.

2.1. Sex Tourism

The rapid growth of the tourism industry has benefitted the world in various ways. It has many positive outcomes for individuals and their communities. Still, on the other hand, it can also increase the difficulties for the vulnerable sections of society, including women and children. Tourism for sexual activities is an example of these kinds of risks.

World Tourism Organization¹ defines sex tourism as “trips organized from within the tourism sector, or from

outside this sector but using its structures and networks, with the primary purpose of effecting a commercial sexual relationship by the tourist with residents at the destination (Eades, 2009).” It includes tourists who travel to attain sexual desires with fellow travelers or local people and may involve tour arrangements keeping in mind to have the access of commercial sex workers. It may also include intentions “to satisfy a specific desire to have exploitative and illegal sexual contact with children (Magill, 2017).”

¹ The World Tourism Organization (WTO) is a United Nations specialized agency.

Sexual tourism, which has found its way into the mainstream tourism industry, has crucially increased the sexual exploitation of children. It involves all the arms of tourism networks like hotels, travel companies, tour operators, and others, even some of the travel agencies openly advertise the availability of child sex workers.

Trafficking of children for commercial sexual exploitation is a serious global issue. A study by Glover reveals that “more than 800,000 children being trafficked for sex in Thailand, 400,000 in India, and 20,000 in Sri Lanka.” “World Vision Australia estimates 250,000 tourists visit Asia each year for sexual activities with a minor.” The use of ICT has also provided ease to these criminal networks. Using modern communication technology, “offenders can more easily and less expensively recruit child victims for sexual exploitation, communicate with co-conspirators, and find customers. Groups offering child sex tourism can charge customers for the service of connecting them with their child victims across borders.”

According to a joint report by some reputed organizations, “sex tourism is reportedly prevalent in Rajasthan, Goa (a major destination) and Kerala in India (Carolin, 2015).” This report also covers a study on sex tourism-related sexual exploitation of children. This study based in the area of the eastern coast of India and found that 60 percent of a sample of 150 children were promised a ‘better job’ (Nair & Sen, 2005) before they have trafficked to the tourist area, “accompanied by the neighborhood uncle (Nair & Sen, 2005).” People are organized at different positions to make the availability of child prostitutes for costumers in tourist hotels. “Rickshaw pullers, van pullers, petty traders. These people make contact with street children

and bring them to tourist lodges and hotels as per the demand placed by customers (Nair & Sen, 2005).”

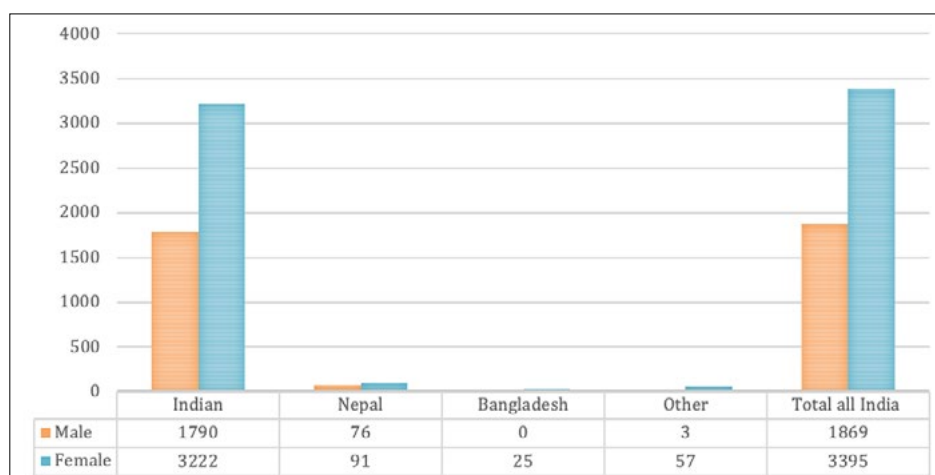
2.2. Bonded Labor & Sex Trafficking

Human trafficking for forced labor and sexual exploitation is prominent wherein people get trafficked to perform labor, prostitution, and marriage by the use of lie, coercion, fraud, or “by more subtle means such as accumulated debt, retention of identity papers or threats of denunciation to immigration authorities (ILO, 2012).” The Global Estimates of Modern Slavery: Forced Labor and Forced Marriage, carried out by the ILO, estimates that “40.3 million people were in modern slavery, among which 24.9 million in forced labor and 15.4 million in forced marriage. The situation of women and children was found to be worse in this case too. Women and girls were disproportionately accounting for 99% of victims in the commercial sex industry, and 58% in other sectors (ILO, n.d.).”

The practice of bonded labor in India, although predominantly exists in all kinds of sectors like brick industry, carpet and embroidery industry, textile and garment manufacturing, mining, manual scavenging, and agriculture, its magnitude is very high in informal and unregulated. “Evidence suggests that members of marginalized castes and tribes, religious minorities, refugees and migrant workers are disproportionately affected by debt bondage (Accountability, n.d.).”

India is a host of trafficked victims, especially girls and women, from neighboring Bangladesh and Nepal for the commercial sex industry. As data in figure 03 shows, 91 female and 76 male Nepalese victims of human trafficking were rescued in India in 2018. Similarly, in the same year, 25 Bangladeshis were rescued, and all of those were female.

Figure 3: Nationality-Wise Data of Victims Rescued Under Human Trafficking in India in 2018



Source: Ministry of Home Affairs, National Crime Records Bureau, Crime in India – 2018, Vol III, <https://ncrb.gov.in/en/crime-india-2018>.

Women and children everyday face exploitation and are forced to work in prostitution and the porn industry. In India, Mumbai is believed to be the biggest center for pedophilia commerce in India (Nair & Sen, 2005). A report presented by Maharashtra State Commission for the Protection of Child Rights and International Justice Mission (IJM) showed, "Victims are kidnapped, lured from their homes and rural communities, and brought across the state and national borders to supply Mumbai's booming sex trade. With an estimated 100,000 girls in the sex trade serving an average of six customers each day, it is estimated that CSE [The Commercial Sexual Exploitation] in Mumbai generates \$400 million a year in revenue (Parks et al, 2015)." The U.S. State Department, in its 2016 report on human trafficking, mentioned India as "a source, destination, and transit country for men, women, and children subjected to forced labor and sex trafficking (Giri, 2019)."

2.3. Organ Trade

Medical advancement has developed to greatness in past centuries. Organ replacement/transplant is one of those great achievements. Besides giving another life to hundreds of thousands of people, organ transplantation feeding an underground organ market. Because of the high demand and low supply of organs for transplantation, the poor fall into this to fulfill the organ demands. "The WHO estimated in 2007 that organ trafficking accounts for 5-10% of kidney transplants performed annually across the globe and that in India, around 2,000 Indians sell a kidney every year (Masoodi, 2015)." Dr. Francis Delmonico², in his interview with IPS News, stated, "People who are rich are able to buy organs, and it's the poor who end up being the source of these organs. You can go to a country such as India and get an organ there (illegally), or you could get the donor coming to India from Africa and do the transplantation there. It happens every day. The extreme aspect of this picture is that this process becomes even more abusive (Srouf, 2018)."

There is a vast illegal market of organs running worldwide and having transnational activities. People are getting trafficked from the deprived areas of the world to the rich countries. A report by

Global Financial Integrity (GFI) estimated that "up to 10 percent of all transplants rely on organs that have been illicitly acquired (Mavrellis, n.d.)." This number includes organ transplantation of kidneys, livers, hearts, lungs, and pancreas.

3. ANTI-HUMAN TRAFFICKING LAWS IN INDIA

Human trafficking is considered an organized crime in India. India has a wide range of anti-human trafficking provisions in the Constitution and under various other laws. Article 23 of the Constitution prohibits "traffic in human beings and forced labor (Constitution, 1950)" as a fundamental right. Article 24 prohibits the employment of any child under the age of fourteen years in any hazardous work. It forbids the exploitative working of children in industries and mines (Constitution, 1950).

3.1. Indian Penal Code

Indian Penal Code (IPC) has many provisions concerning the crimes of human trafficking. Some important clauses among them are under sections 366A, 366B, 372, and 374. Section 366A of IPC steps in barring human trafficking for sexual exploitation of minor girls. It forbids the inducement of girls under eighteen years by someone to go to any place or to do anything with the intention to forced or seduced illicit intercourse with someone other shall be a punishable offense and shall also be liable to the penalty (IPC, 1860). Adding to this, Clause B of Section 366 criminalizes the import of any girl under the age of twenty-one years from any other country to India for sexual exploitation (IPC, 1860). Section 374 of IPC Punishes any person for compelling – unlawfully and forcefully – any other person to labor against his will (IPC, 1860). It is a punishable crime under Section 372 of IPC to selling, hiring, or otherwise disposing of a minor for prostitution (IPC, 1860).

3.2. Immoral Traffic (Prevention) Act (ITPA)

The current law of Immoral Traffic (Prevention) Act (ITPA) is a follow-up amendment to the Suppression of Immoral Traffic in Women and Girls Act (SITA), passed by the Parliament of India in 1956 to comply with the United Nations Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949. The SITA was amended in 1986 and renamed as Immoral Traffic (Prevention) Act.

² Dr. Francis Delmonico is an expert in organ transplant surgeon. He is an adviser to the World Health Organization (WHO) on organ donation and transplantation.

The 1986 Amendment to the Act widened the scope of the law and covered both the sexes exploited for commercial sex. This amendment increased penalties for crimes against minors and children. The most important change that the 1986 Amendment has brought was the reformation in the definition. This Act defines prostitution as “the sexual exploitation or abuse of persons for commercial purposes and the expression prostitute shall be construed accordingly (ITPA, 1956).” The former SITA described prostitution as “the act of a female offering her body for promiscuous sexual intercourse for hire, whether in money or in-kind, (SITA, 1956)” and a prostitute was defined as the “female who offers her body for promiscuous sexual intercourse for hire, whether in money or in-kind (SITA, 1956).” This Act includes a corrective treatment of prostitutes. It talks about rescuing them and for the protection and support to encourage them to live a social life. “The Act lays down penalties for keeping a brothel or allowing premises to be used as a brothel; living on earnings of prostitution; procuring, inducing and inducing person for the sake of prostitution; detaining a person in premises where prostitution is carried on; prostitution in or in the vicinity of public places; seducing or soliciting for purpose of prostitution; and, seduction of a person in custody (Ganguly & Sathpathy, n.d.).”

3.3. Juvenile Justice (Care And Protection Of Children) Act

Indian Parliament came up with the Juvenile Justice (Care and Protection of Children) Act in 2000. This law repealed the former Juvenile Justice Act of 1986 as a result of the signing by India of the 1989 United Nations’ Convention on the Rights of the Child (UNCRC) in 1992. This Act was further amended in 2006, 2010, and 2015.

Juvenile Justice (Care and Protection of Children) Act is the principal law to deal with juvenile justice in India. This Act provides for a “child-friendly approach (Juvenile, 2015)” in settlement of matters in the “best interest of children (Juvenile, 2015)” found or alleged to be against the law and “children in need (Juvenile, 2015).” This law caters to their “basic needs through proper care, protection, development, treatment, social re-integration (Juvenile, 2015).” While defining the term child in need, the Juvenile Justice (Care and Protection of Children) Act covers a wide range of areas of possibilities in which children may found vulnerable and is likely to be inducted

into drug abuse or trafficking (Juvenile, 2015).

Moreover, there are some other legal provisions for the prevention of human trafficking of children in India. The Factories Act of 1948 prohibits the employment of any child under the age of 14 years in factories. Similarly, the Mines Act of 1952 prevents children below the age of 14 years in the mines. The Child Labor (Prohibition and Regulation) Act, 1986 provides a range of directives regarding child employment. It outlines where and how children can be employed.

4. CONCLUSION & SUGGESTIONS

Despite the existing national policies towards the protection of women and children, they are exposed to brutality, abuse, sexual exploitation, forced labor, and organ trade, etc. Serious efforts have to be made both at the local and national levels; strategies have to be planned and implemented to deal with the problems of trafficking and others. This problem is severe both in the metropolitan cities as well as in rural areas. A network of specialized police squads at local, regional, state, and national levels needs to be introduced to counter trafficking in persons. The existing machinery, at the moment, is inadequate due to limited personnel, compared to the multiplicity and gravity of the present-day problems. Enrolment of personnel, both men and women in the police force, is essential. Society as a whole has been responsible for the existence of trafficking of women and children for prostitution. So, we have to play a significant role in eradicating this social evil, which dehumanizes the dignity of women when she enters in this profession. The police force has to play an important role as a custodian & implementer of law. Kailash Satyarthi rightly said:

“When you are living in a globalized economy and a globalized world, you cannot live in isolation, all the problems and solutions are interconnected, and so the problem of child labor in any part of the world is your problem.”

Individually, everyone should inform authorities about the activities they found suspicious in this regard. Many agencies are working towards providing support and protection to the victims of human trafficking. People may provide support in various ways to such agencies in their fight against human trafficking.

REFERENCES

- ACCOUNTABILITY HUB (n.d.). Labour Exploitation Accountability Hub. <https://accountabilityhub.org/country/india/> (Accessed Date: 3/12/2019).
- CAROLIN, L., LINDSAY, A., & VICTOR, W. (2015). Sex Trafficking in The Tourism Industry. *Journal of Tourism and Hospitality*, 4(4), 166-171.
- CONSTITUTION OF INDIA (1950). Art. 23.
- EADES, J. S. (2009). Moving Bodies: The Intersections of Sex, Work, And Tourism. *Economic development, integration, and morality in Asia and the Americas*. Emerald Group Publishing Limited.
- GANGULY, S & SATHPATHY R. (n.d.). India Still Stuck in The Traffic. *Mighty Laws*. <http://www.mightylaws.in/551/india-stuck-traffic> (Accessed Date: 9/12/2019)
- GIRI, A. (2019), What's Wrong with India's Efforts to Check Human Trafficking? *The Diplomat*, <https://thediplomat.com/2019/01/whats-wrong-with-indias-efforts-to-check-human-trafficking/>.
- ILO (2012). *21 Million People Are Now Victims of Forced Labour*, ILO Says https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_181961/lang-en/index.htm (Accessed Date: 30/11/2019)
- ILO (n.d.). *Forced Labour, Modern Slavery and Human trafficking*. <https://www.ilo.org/global/topics/forced-labour/lang-en/index.htm> (Accessed Date: 30/11/2019)
- IPC (1860). Section, 366A.
- JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT (2015). Section 2 (14) (ix).
- KAR, D. & SPANJERS, J. (2017). Transnational Crime and The Developing World. *Washington: Global Financial Integrity*. Retrieved on May, 30, 2019. https://secureservercdn.net/45.40.149.159/34n.8bd.myftpupload.com/wpcontent/uploads/2017/03/Transnational_Crime-final_exec-summary.pdf?time=1580853010 (Accessed Date: 30/11/2019)
- MAGILL, ALAN J. (2017). Implications of Sexual Tourism. *International Association for Medical Assistance to Travellers Organization (IAMAT)* link-<https://www.iamat.org/blog/implications-of-sexual-tourism/> (Accessed Date: 3/12/2019).
- MALBY, S. ET AL. (2015). UN Reporot *Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children*. http://www.unodc.org/documents/Cybercrime/Study_on_the_Effects.pdf (Accessed Date: 20/11/2019)
- MASOODI, A. (2015). Why organ trafficking thrives in India. *Live Min*. <https://www.livemint.com/Politics/pXj4YasmivrvAhanv6OOCJ/Why-organ-trafficking-thrives-in-India.html> (Accessed Date: 9/12/2019)
- MAVRELLIS, C. (n.d.). *Transnational Crime and the Developing World* (n.p.: Global Financial Integrity, 2017). 29, https://secureservercdn.net/45.40.149.159/34n.8bd.myftpupload.com/wpcontent/uploads/2017/03/Transnational_Crime-final_exec-summary.pdf?time=1580853010.
- NAIK, A. B. (2018). Impacts, Causes and Consequences of Women Trafficking in India From Human Rights Perspective. *Social Sciences*, 7(2), 76-80.
- NAIR, P. M., & SEN, S. (2005). *Trafficking in women and children in India*. Orient Blackswan.
- PARKS, A. C. ET AL (2015). *Commercial Sexual Exploitation of Children in Mumbai* (n.p.: IJM, 2017). Report, <https://www.ijmindia.org/files/library/CSES%20Study%20Report%20Rev%20%28Final%20Prevalence%20Study%29.pdf> (Accessed Date: 8/2/2020)
- SROUR, M. (2018). "Human Trafficking for Organs: Ending abuse of the Poorest," *Inter Press Service*, <http://www.ipsnews.net/2018/04/human-trafficking-organs-ending-abuse-poorest/> (Accessed Date: 30/11/2019)
- THE IMMORAL TRAFFIC (PREVENTION) ACT (1956). Section 2 (f).
- THE SUPPRESSION OF IMMORAL TRAFFIC IN WOMEN AND GIRL ACT (1956). Section 3 (f).
- UN GENERAL ASSEMBLY (2000). *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*. <https://www.refworld.org/docid/4720706c0.html> (Accessed Date: 11/12/2019)