

HUMAN TRAFFICKING: “A FUNDAMENTAL IMMORALITY” THAT IS POSING CHALLENGES TO HUMAN RIGHTS

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Abstract: Human Trafficking is a brutal assault on the entire mankind. It deprives individuals of their dignity and robs off their human rights. Many succumb to this assault while others come forward and fight back.

In fact today all over the world the victims of human trafficking are coming forward to create awareness regarding it and also to highlight its negative impacts on the wellbeing and psyche of human beings and society in general. One such individual is Nadia Murad who was also conferred with Nobel Peace Prize in 2018. When she was 19 years old, she was taken as prisoner by ISIS and was subjected to repeated beatings and rape. After three months she managed to flee from their clutches and now works towards helping women and children who are victims of human trafficking.

This research paper focuses on the various forms of human rights and human trafficking and also their relationship with each other. The obligations of states under the international human rights law and the recent trends related to the Human Trafficking have also been discussed in detail. Study has been made more enumerative by adding the comparative picture of Europe and South Asia. Laws related to human trafficking in India have also been discussed. Focus is also given on the physical and psychological impacts of human trafficking on victims. The research paper concludes by laying down some ways in order to tackle the problem of human trafficking in order so as to create a world devoid of any form of human exploitation.

Key Words: Human Trafficking, UDHR, Standard Operating Procedures, Trends, Stockholm syndrome

1. WHAT IS HUMAN TRAFFICKING

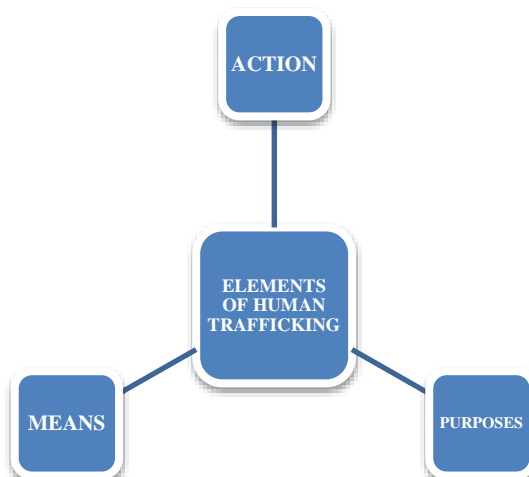
Human Trafficking today is posing a great challenge to the regime of human rights. The term human trafficking is made up of two words; human and trafficking. The word human is derived from the Latin word “*humanus*” which means human beingsⁱ and word trafficking is derived from the French word “*trafique*” which means to trade in coastal waters.ⁱⁱ Thus human trafficking can be defined as trading of human beings.

According to the *Merriam Webster’s Dictionary*, human trafficking is a business in which a person is induced to perform labor or engage in prostitution through means such as force, fraud, or coercion.ⁱⁱⁱ

According to the *Cambridge Dictionary*, it is a criminal activity which includes both buying and selling of people for purposes like sex work and making money from such forced activities.^{iv}

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children 2000, defines human trafficking as recruitment, transportation, transfer and harboring of human beings through threat, force and coercion such as abduction, fraud, deception for the purpose of exploitation.

Thus it can be concluded that three key elements are necessary to constitute human trafficking. These are; action, means and purpose.



ELEMENTS OF HUMAN TRAFFICKING

UN Human Rights Office of High Commissioner has highlighted some important aspects of human trafficking. These are:

- Human Trafficking is gender neutral. It affects women, men and children alike.
- Human Trafficking is no longer confined to sexual exploitation of women and girls. Its ambit has increased in the past few decades.
- Crossing of international borders is not a necessary pre-requisite for human trafficking. The smuggling of a human being can also be done in the country to which the victim of trafficking belongs to.
- Trafficking not only includes movement. Even the receipt and harboring of someone for the purposes of exploitation also comes in its ambit.^v

2. FORMS OF HUMAN TRAFFICKING

Human Trafficking can take various forms such as:

- **SLAVERY:** It is the most common form of trafficking that has been in existence since ages. In the ordinary sense slave refers to a person who is a property of another person. Such persons are held captive against their wishes and are deprived of any form of liberty. They are also ravished for the purpose of sexual gratification.^{vi}
- **FORCED LABOUR:** It means compelling a person to work against his or her wishes. The conditions in which these forced laborers work are quite horrendous and not at all suitable for their physical and mental well-being.^{vii}
- **DOMESTIC SERVITUDE:** It occurs mainly in the households. The women and children are its main victims and they work as domestic servants. They suffer various forms of abuse including sexual assault at the hands of their employers.^{viii}
- **FORCED MARRIAGE:** It is a situation in which there is a lack of free consent of both the parties in a marriage. In some cases one of the parties to marriage is considered as some type of chattel that can be sold or transferred.^{ix}
- **ORGAN TRAFFICKING:** Organ removal is a growing problem. Over the period of time the global demand for organs which can be transplanted has shot up. It is a matter of grave concern since some of these organs like kidneys are removed from living humans even without proper medication and procedures. These organs are later on smuggled at hefty prices.^x

It must also be noted that different people are trafficked for different purposes.

Children are mainly trafficked for purposes ranging from sexual exploitation to begging. Disabled persons are trafficked for exploitative labor and women are trafficked for prostitution, sex tourism, and forced marriage, unwanted or forced pregnancy.

3. WHAT ARE HUMAN RIGHTS:

After the end of World War II and advent of UN a lot of focus is put on the idea of human rights. Human rights can be defined in the simplest terms as the rights which all human beings inherit from the moment they take birth. These rights are available to all humans irrespective of their race, sex, nationality, ethnicity, language or religion. In fact all those rights which are necessary for a human to lead a life of dignity and respect and to reach his fullest potential can be defined as human rights. Some of these rights are right to life, freedom from slavery, the right to work etc. This list is only enumerative and not exhaustive.

UDHR or popularly known as *Universal Declaration of Human Rights* adopted by the general assembly of UN in 1948 can be described as a code to which every individual and nation looks forward to. It has established ways not only to promote the ideas of human rights but also on assisting states in carrying out their due responsibilities in this respect.

According to the UN the human rights can be broadly classified into social, economic, political, civil and cultural rights.

- **ECONOMIC, SOCIAL AND CULTURAL RIGHTS:** As per *The International Covenant on Economic, Social and Cultural Rights* which came into force in 1976 these rights include;
 - Right To Work In Conditions That Are Just And Favorable
 - Right To Social Protection
 - Right To An Adequate Standard Of Living
 - Right To The Highest Attainable Standards Of Physical And Mental Well-Being.^{xi}
- **CIVIL AND POLITICAL RIGHTS:** According to *The International Covenant on Civil and Political Rights and its First Optional Protocol* which came into force in 1976 these rights include;
 - Right To Assemble P
 - Right To A Fair Trial

- Right To Freedom Of Thought and Conscience
- Protection Against Torture, Cruel , Degrading Treatment, Slavery And Forced Labor^{xii}

4. WHAT IS RELATION BETWEEN HUMAN RIGHTS AND HUMAN TRAFFICKING:

The idea for the protection of the human rights and eradication of human trafficking are closely related to each other. Right from the very inception of the idea of human rights they have been considered to be fundamental for the development of human beings. The covenants on the human rights have been interpreted widely by the international community. It is a well-accepted idea that through these covenants various inhumane practices like arbitrary detention, forced labor, debt bondage, forced marriage, and the sexual exploitation of children and women have been outlawed. According to *Fact Sheet 36* published by *UN High Commission for Human Rights*, human trafficking involves violation of various human rights at one stage or another in the trafficking cycle. While some can be attributed to the causes of trafficking others can be attributed to the actual process of trafficking.

Following are the various human rights which are violated during the cycle of human trafficking:

- The right to life
- The right to liberty and security
- The right not to be a slave or be submitted to servitude or bonded labour
- The right not to be subjected to torture or degrading treatment
- The right to be free from violence that is gender oriented
- The right to freedom of movement
- The right to just and favorable conditions of work and an adequate living standard
- The right to social security

It is worth noting that the aforementioned forms of human trafficking have been prohibited under the garb of human rights.

Various human rights conventions have been signed at both the international and regional level in the past decades and they contain specific reference to human trafficking. Some of the international level conventions are; *The Convention on the Elimination of All Forms of Discrimination against Women 1979* and *The Convention on the Rights of the Child 1989*.

As per the second convention, states in no way can prioritize other considerations over the best interests of the child who is a victim of trafficking.

At the regional level these conventions include; *The Council of Europe's Convention on Action against Trafficking in Human Beings 2005* and *The European Union Directive On Preventing And Combating Trafficking In Human Beings And Protecting Its Victims 2011*.

It is worth noting that both The United Nations General Assembly and the Human Rights Council have declared that the human trafficking impedes upon the fundamental human rights.^{xiii}

The Charter of the United Nations and the Universal Declaration of Human Rights has made it clear that human rights apply to everyone, regardless of their race, sex or ethnicity. This implies that even the trafficked persons are entitled to the human rights. The argument that they are outside of their country of residence does not hold any merit. The trafficked individuals cannot be discriminated against owing to the fact that they are non-nationals. Thus it can be concluded that international community as a whole has recognized that human rights law applies to each and every individual within a State's territory or jurisdiction, regardless of his or her nationality or citizenship.

Thus human trafficking and subjecting the trafficked individuals to torture, cruelty, inhuman or degrading treatment or punishment, depriving them of their liberty acts as an impediment to the fuller development of human beings and subjects them to unnecessary vulnerabilities.

It is imperative to have a human rights-based approach to trafficking. The General Assembly and the Human Rights Council both support this idea.

A human rights-based approach can be defined as a conceptual framework for dealing with trafficking and protecting the human rights. For the application of this approach it is necessary to analyze the human rights violations in the trafficking cycle. It seeks to identify and redress the discriminatory practices that deny justice to the victims of human trafficking.

Under this approach, aspects of the national, regional and international response to trafficking and obligations established by international law upon the states are taken into consideration.

5. VARIOUS OBLIGATIONS IMPOSED ON THE STATES

Various obligations have been imposed on the states to prevent human trafficking and protect human rights through plethora of treaties which are signed and ratified by them such as *United Nations Convention against Transnational Organized Crime, the United Nations Convention against Corruption, and the Rome Statute of the*

International Criminal Court. Some important non-treaty instruments relevant to trafficking include Recommended Principles and Guidelines on Human Rights and Human Trafficking, and UNICEF Guidelines on the Protection of Child Victims of Trafficking

In addition to these treaties, customs and general principles of law also impose some obligations over the states to ensure protection of human beings from human trafficking.

Some of these obligations are enumerated below:

- The states are under an obligation to identify, protect and support victims of trafficking.
- States also have an obligation to provide immediate protection and support.
- States are also under an obligation to provide legal assistance, including temporary residency to the victims.
- States shall also undertake measures to identify victims of trafficking.
- States are also required to move the trafficked person out of the place of exploitation to a place of safety
- The State in which a trafficked person is present is also under an obligation to provide that person with physical and psychological care.
- The states must ensure that care and support should not be made conditional on cooperation with criminal justice authorities.
- All necessary efforts should be made to ensure that the victims are able to participate in legal proceedings freely and on the basis of full information as they can provide evidence against their exploiters, through written statements or in person.
- Trafficked persons must also be provided with legal and other assistance in a language that they are comfortable in so as to keep them informed of the scope of proceedings as well as the outcome of their cases.
- The states are also under an obligation to ensure the safe return of victims of trafficking to their respective countries. Under no circumstances they should be forcefully deported.^{xiv}

6. DATA RELATED TO HUMAN TRAFFICKING

Despite of a number of obligations imposed on the states *United Nations Office on Drugs and Crime* publishes an annual report on the human trafficking. It is called Global Report on Trafficking in Persons.

This report publishes the trends related to human trafficking from around the world. The latest version of this report at the time of writing this research paper was published in 2018. This report has identified that over the past few years there has been an increase in the number of reported cases of human trafficking. In addition to this this report has also made it clear that over the period of time even countries are showing more willingness to identify and punish the culprits of the human trafficking.^{xv}

Some of the noteworthy points regarding plight of victims of human trafficking that have been made clear in this report are:

- 58% of victims of human trafficking were identified and detected within their own borders out of the 16,159 victims whose citizenship was reported by 90 countries from around the world.
- There has been a significant increase in the number of victims that have been identified in the borders of their own country since 2010.
- In the last few years the percentage of domestic victims has doubled up from the initial 27%.
- Out of 2350 girl victims that were identified 72% were trafficked for sexual exploitation.
- Data collected from 54 countries reveal that 21% of girls were trafficked for forced labor.
- Out of 711 boy victims that were identified from 54 countries 27% were trafficked for sexual exploitation.
- In 2016 in 54 countries around 50% of males were trafficked for forced labor.
- In 2016 child victims accounted for 55% of total victims of human trafficking in Sub-Saharan Africa.
- In South Asia, East Asia and Pacific men made up for 30% of detected victims in 2016.^{xvi}

Thus even though countries are having a lot of obligations under the international human rights law but still the cases of human trafficking are on a rise.

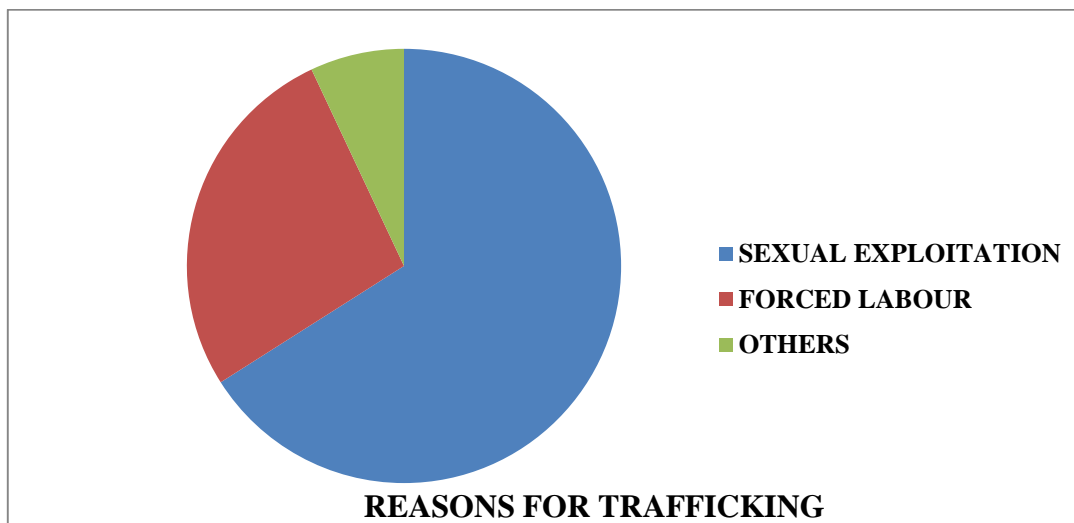
7. REGIONAL VARIATIONS- A CASE STUDY OF EUROPE AND ASIA:

7.1 TRENDS IN EUROPE

- **COUNTRIES IN THE REGION:** This region includes countries like United Kingdom, Austria, Andorra, Belgium, Cyprus, France, Finland, Germany etc. These are the countries which are usually characterized with high level of development and most of them are considered to be developed.
- **SEX VARIATIONS IN VICTIMS OF TRAFFICKING:** In the Western Europe most of the victims of human trafficking were women but the reports have suggested that over the period of time the share of male victims of

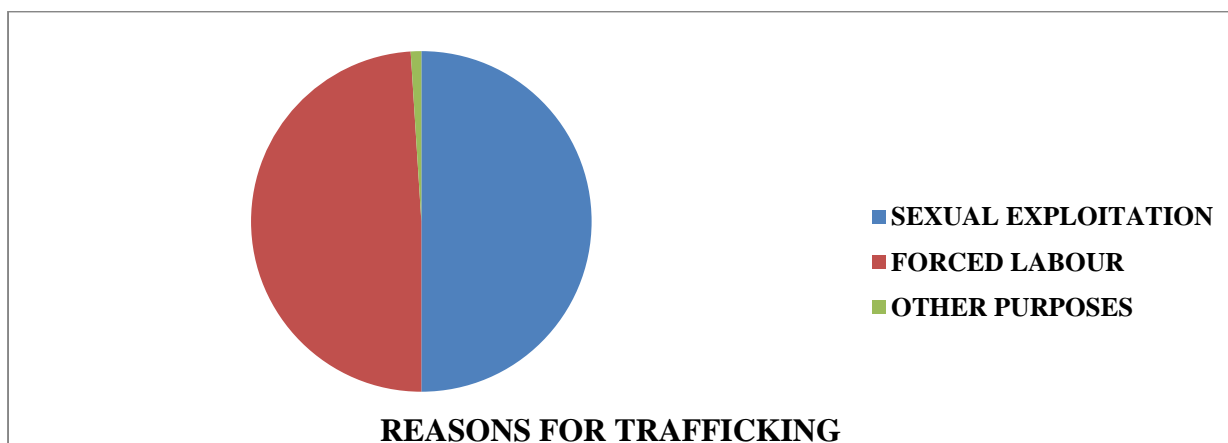
human trafficking has also increased. As per the data revealed in 2018 women accounted for 52% of victims of human trafficking while children accounted for 25% of total share.^{xvii}

- **PURPOSES OF TRAFFICKING:** Reports have revealed that 66% of trafficking in Western Europe is done for sexual exploitation out of which 72% of victims were women. Less than 1/3 of the detected victims were trafficked for forced labor. Only a miniscule number of victims were trafficked for organ removal. In addition to this other reasons of trafficking were begging, forced criminality and sham marriages.^{xviii}



7.2) SOUTH ASIA

- **COUNTRIES IN REGION:** This region includes countries like Bangladesh, Nepal, Bhutan, Pakistan, Afghanistan, India etc. These are countries which are considered to be developing.
- **SEX VARIATIONS IN VICTIMS OF TRAFFICKING:** Female victims in this region account for 59% of the victims whereas men accounted for 37% of total victims. In some countries like Nepal there are more child victims than the adult ones. The report published by UNODC clearly states that there is limited amount of information available for many countries due to some reason or the other.^{xix}
- **PURPOSES OF TRAFFICKING**
It is worth mentioning that due to administrative gimmicks only a limited amount of information is available regarding this aspect. In fact only a few countries have reported some kind of exploitation. On the basis of the available information only one conclusion can be drawn and that is that trafficking for forced labor and exploitation are equally divided in this part of the world. A staggering 50% of the victims were trafficked for sexual exploitation while 49% of them were trafficked for forced labour. As per the Human Trafficking Report of 2018 only 1% of the victims were trafficked for the purposes other than forced labor or sexual exploitation.^{xx}



8. LAWS IN INDIA AND ROLE OF NHRC:

India is one of the South Asian countries that bears the brunt of Human Trafficking every year due to reasons such as poverty, illiteracy and demand and need of cheap labor. But these are only the secondary reasons. One of the prime reasons for human trafficking not only in India but whole over the world is sexual exploitation. Keeping this in mind and also to keep a check on the human trafficking certain legal provisions have been made. Following are some of them:

- **CONSTITUTION OF INDIA**

In the Constitution of India, protection from human trafficking has been given the status of a fundamental right under Part 3 of the Indian Constitution. As per *Article 23* of the constitution human trafficking, beggar and forced labor are offences punishable by law.

- **IMMORAL TRAFFIC (PREVENTION) ACT, 1956**

This act was passed in 1956 so as to keep a check on the immoral human trafficking and consists of 25 sections. This act has clearly and in precise words has defined various terms like brothel, child, major etc. As per *Section 2* of this act makes it clear that any building or room which is used for the purposes of sexual exploitation or abuse from which another person earns some benefit or gain. The same section also defines the word sexual exploitation and abuse of persons for commercial purposes as prostitution.

By the virtue of *Section 3* of this act the act of keeping, managing and assistance in keeping a brothel is punishable with rigorous imprisonment for a term extending from one to three years along with a fine of around two thousand rupees and with a rigorous imprisonment of two to five years and a fine of up to two thousand rupees.

In fact according to this act anyone who lives on the earnings of prostitution shall also be punishable with an imprisonment of up to two years, or with fine which may extend to one thousand rupees. It is worth noting that by the virtue of *section 5* of this act procuring or inducing a person for the prostitution is also an offence. *Section 7* of this act makes carrying out of prostitution and even allowing someone being an owner or landlord to carry out the prostitution in the vicinity of the public areas an offence. In some cases the people who have been given the duty to take care of some individual ravish his life by pushing that person in the dirt of prostitution. *Section 9* of this act punishes such individuals with imprisonment for a period of seven to ten years but which may extend to life imprisonment in some cases too.

It is worth mentioning that as per the provisions of *section 11* of this act a record of all the people who have been convicted in any offence related to human trafficking in any form.

Keeping in mind the gravity of the offences and their impact on the society the offences mentioned under this act have been made cognizable by the virtue of *Section 14*.

Section 16 of the act the police can also rescue people who are being forced to carry out prostitution.

- **INDIAN PENAL CODE, 1860**

Even in the Indian Penal Code some specific provisions have been made to deal with human trafficking.

Section 370 of this code specifically deals with Trafficking of Persons. As per this section anyone who recruits, transports, transfers or harbours any person by means like force and threat for exploitations such as slavery, servitude or removal of organs shall be punished with rigorous imprisonment for seven to ten years or with fine. *Section 370A* makes exploitation of a trafficked person a punishable offence. *Section 371* of the code makes habitual dealing in slaves punishable with a term up to 10 years or life imprisonment along with fine.

In the case of *Venku v. Mahalinga (1889 ILR 12 Mad. 273)* it has been held that the main purpose behind *Section 372* of IPC is punishing the sale of minor girls below age of 18 years for the purpose of prostitution or illicit intercourse.

Section 374 of IPC makes unlawful compulsory labor punishable with an imprisonment of up to one year and with fine. The honorable Supreme Court of India in *People's Union for Democratic Rights v. Union of India*

(AIR 1982 SC 1646) has declared that in case the wages that are given are less than the minimum prescribed wages then it amount to making someone work as a laborer unlawfully.

- **BONDED LABOUR SYSTEM ABOLITION ACT 1976**

In India the system of bonded labor was prevalent until the passing of this act. This act has made bonded labor an offence punishable by law. But it is such an irony that even after this act the problem has not been solved and is still prevalent in some parts of the country.^{xxi}

In the case of *Bandhua Mukti Morcho v. Union of India (AIR 1984 SC 802)*, their lordships of the apex court have said that bonded laborers live a life worse than that of animals. They added that animals have the freedom to go roam freely and grab food but it is not the case with the bonded laborers.

- **ROLE OF NATIONAL HUMAN RIGHTS COMMISSION**

NHRC works for the protection of human rights in India. It has laid down a *Standard Operating Procedure for Combatting Trafficking of Persons in India (SOP)* which provides a step-by-step guidance in order to deal with human trafficking. As per this this SOP it is necessary to have some anti-trafficking professionals and other such individuals who will be involved in all the processes right from identification to rescue to investigation and rehabilitation.

The main purpose of this SOP is to guide state and non-state actors which are involved in process of dealing with human trafficking by:

- Taking steps to prevent human trafficking.
- Providing a procedure for rescuing a victim.
- Preparing a compendium of all the laws punishing human trafficking.
- Providing guidance to investigating officers regarding trafficking and investigation
- Ensuring victim protection and victim friendly trial proceedings.
- Ensuring rehabilitation of victims of trafficking.^{xxii}

9. CONSEQUENCES OF HUMAN TRAFFICKING ON THE VICTIMS:

Human Trafficking leaves irreparable scars on the mind and body of victims. It impacts their physical and psychological well- being to a great extent. They fall prey to numerous mental health problems the most common of which are depression, stress, self-blame and guilt.

Psychological disorders like *Post Traumatic Stress Disorder (PTSD)* and *Stockholm syndrome* make their lives even worse. Stockholm syndrome is a form of psychological reaction under which the victims of sexual abuse mainly the children develop feelings of empathy and attachment with their abuser because they like the attention that is given to them by that adult.^{xxiii}

Most of them are kept hungry or in isolation. They are turned into hapless sex slaves whose only purpose in life is to satisfy their perpetrator or master. The victims lose their feeling of self- worth and self-esteem.

In addition to this most of the victims have also been diagnosed with diseases like HIV/AIDS and other forms of STD's. In the long run they may resort to drug abuse and self- destructive behaviors.

But the biggest obstacle which comes in their way to lead a normal life is the social stigma that comes along with all of this.

9. PREVENTION OF HUMAN TRAFFICKING:

In order to tackle the problem of human trafficking it is necessary to devise a holistic approach. So as to tackle this problem it is necessary to take steps so as to eradicate this problem from the grass root level.

The United Nations Human Rights Council Resolution 17/1 has laid down some ways to achieve this. These are:

- Promotion of the effective application of international norms and standards related to prevention of human trafficking.
- Improving these norms and standards in order to remove the existing loopholes.
- Identification of gender and age-specific vulnerabilities related to human trafficking.
- Identifying and sharing of best practices in order to uphold and protect the human rights of victims.
- Promoting international cooperation so as to tackle human trafficking.
- Improving communication between the governments, treaty bodies and non-governmental organizations in order to request, receive and exchange information about human trafficking.

- Preparing reports related to human rights violations more precisely and reporting the trends to Human Rights Council and the General Assembly in order to find practical solutions to the same.

In addition to these finding solutions to problems like poverty which induce the individuals to go for human trafficking and measures for rehabilitation and psychological and physical treatment of victims can also help to solve this problem.

10. CONCLUSION:

Thus we can conclude that today human trafficking is posing a major challenge to the regime of human rights. The human trafficking is acting as a major impediment towards the goal of ushering in an era where there is no violation or exploitation of human beings and everyone is able to lead a life of dignity.

Human trafficking is fundamentally and ethically wrong and only a stringent reaction from the international community can help to eradicate it.

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