UNIT 2  NATIONAL LEGISLATIONS AND COURT DIRECTIONS

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2.1 INTRODUCTION

India is a signatory to the United Nations Conventions on The Rights of Children and transnational organized crime, as well as the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons among with other Conventions combating the trafficking of women and children. As a result, the Government of India is obliged to do everything within its powers to facilitate the rescue, rehabilitation and reintegration of victims of trafficking.

Government Initiatives:
1. Department of Women and Child Development (DWCD)

India has fairly wide framework of laws enacted by the Parliament as well as some State legislatures to deal with trafficking among human beings. However, it is interesting
to note that none of the federal legislation attempted to define Human Trafficking. The Goa Children’s Act is the only Indian statute, which gives a legal definition of trafficking and even this is child specific. It says ‘Child trafficking means the procurement, recruitment, transportation, transfer, harboring or receipt of persons, legally or illegally, within or across borders, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving payments or benefits to achieve the consent of a person having control over another person, for monetary gain or otherwise.’

It has been often seen that people with low self-esteem and lack of self-control are reported to be especially vulnerable to trafficking. Low level of literacy, awareness and information are risk factors. Economic deprivation and associated conditions are also listed as factors leading to vulnerability. Majority of Reports states that a high percentage of trafficked people belonged to low income groups. Central to the organization of trafficking are the victims who become highly profitable, low risk, expendable, reusable and resellable commodities. The greater the degree of impoverishment, the higher the risk of falling prey to trafficking.

### 2.2 OBJECTIVES

After going through this unit, you should be able to:

1. describe the initiative taken at national level to combat human trafficking;
2. explain Legal instruments in form of national legislations;
3. the development through court directions in combating human trafficking; and
4. how such national instruments along with various court directions can be used for combating human trafficking.

### 2.3 HUMAN TRAFFICKING IN INDIAN CONTEXT

Though there are no specific law to define Human Trafficking there are plethora of laws which deal with issues relating to Human Trafficking. As example, in order to redress Human Trafficking for Commercial Sexual Exploitation, in the year 1956 India enacted the Suppression of Immoral Traffic in Women and Girls Act (SITA) (Act 104 of 1956). By section 3 of the Suppression of Immoral Traffic in Women and Girls (Amendment) Act 1986 (44 of 1986) the nomenclature of the Act has been changed from 1987. Now it stands as The Immoral Traffic (Prevention) Act 1956 (104 of 1956) and is the main statute dealing with human trafficking in India. India is also a signatory to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the UN Convention Against Transnational Organized Crime.

In order to suppress the trafficking for labour, we have several statutes like

1. Bonded Labor System Abolition Act, 1976,
2. The Child Labour (Prohibition and Regulation) Act, 1976,
4. Similarly for Human Trafficking for Organ Transplantation can be address by implementation of The Transplantation of Human Organs Act, 1994. Similarly there are several other statutes which is also being used for addressing or redressing the menace of Human Trafficking in India such as;
2.4 TENTATIVE LIST OF NATIONAL LEGISLATIONS

In India, there are various legislations which deal regarding the issue of human trafficking. Following is the tentative list of national legislations which addresses the problem of human trafficking in India:

2.4.1 The Constitution of India

The Constitution of India either expressly or impliedly prohibits traffic in human beings. Article 14 provides for equality in general. Article 15 prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. Article 15 (3) provides for special protection in favor of women and children, it states that “Nothing in this article shall prevent the State from making any special provision for women and children” Article 16 (1) covers equality of opportunity in matters of public employment. Article 23 prohibits traffic in human beings and forced labor. Article 24 prohibits employment of children in any hazardous employment or in any factory or mine unsuited to their age. Article 38 enjoins the State to secure and protect as effectively as it may a social order in which justice - social, economic and political - shall inform all the institutions of national life. It basically says to provide opportunities to make equal results. Article 39 provides that the State should direct its policy towards securing, among other things, a right to adequate means of livelihood for men and women equally and equal pay for equal work their age or strength. Article 39 (f) provides that children should be given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity, and that childhood should be protected against exploitation. Article 42 protects against inhumane working conditions. Article 45 makes provision for free and compulsory education for children, which is now well settled as a fundamental right of children in Article 21-A. Article 46 directs that the State promote the educational and economic interests of the women and weaker sections of the people and that it shall protect them from social injustice and all forms of exploitation.
Please answer the following Self Assessment Question.

<table>
<thead>
<tr>
<th>Self Assessment Question</th>
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</thead>
<tbody>
<tr>
<td>1) Does the Constitution of India prohibit human trafficking?</td>
</tr>
</tbody>
</table>

2.4.2 The Immoral Traffic (Prevention) Act, 1956

The Immoral Traffic (Prevention) Act, 1956 (ITPA), initially enacted as the ‘Suppression of Immoral Traffic in Women and Girls Act, 1956, is the main legislative tool for preventing and combating trafficking in human beings in India. The Immoral Traffic (Prevention) Act, 1956, is a special legislation that deals exclusively with trafficking. Interestingly, this Act does not define the term “ Trafficking”. The Goa Children’s Act is the only Indian statute, which gives a legal definition of trafficking and even this is child specific. It says ‘Child trafficking means the procurement, recruitment, transportation, transfer, harboring or receipt of persons, legally or illegally, within or across borders, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving payments or benefits to achieve the consent of a person having control over another person, for monetary gain or otherwise.’ The main purpose of The Immoral Traffic (Prevention) Act, 1956, is to abolish the commercialized vice of trafficking in women and girls for prostitution as means of living. Offences under the Act are:

1. Keeping a brothel or allowing a premises to be used as a brothel (Section 3)
2. Living on the earnings of prostitution (Section 4)
3. Procuring, inducing or taking persons for the sake of prostitution (Section 5)
4. Detaining a person in a premises where prostitution is carried on (Section 6)
5. Prostitution an and around the vicinity of public place (Section 7)
6. Seducing or soliciting for the purpose of prostitution (Section 8)
7. Seduction of a person in custody (Section 9)

It was realized that The Immoral Traffic (Prevention) Act, 1956 (ITPA) did not achieve its purpose. Representations were made by various State Governments and voluntary organizations that the implementation of the Act is hampered by the existence of certain provisions of the Act, such as, Section 8 and Section 20, which are the most commonly involved provisions for any enforcement being done under the Act. These provisions are directed towards prosecution of the trafficked persons and result in further victimizing
National Legislations and Court Directions

the victim. Despite legislative changes, ITPA has remained ineffective to counter trafficking. Thus, with an objective to remove discrepancies, an Amendment Bill was presented in the Lok Sabha on 22nd May 2006. But, on 23rd February 2009, the Union Cabinet failed to approve official amendments to the original bill, which is now set to lapse with the dissolution of the Lok Sabha.

Please answer the following Self Assessment Question.

**Self Assessment Question**

2) What is the main purpose of The Immoral Traffic (Prevention) Act, 1956?

**2.4.3 Indian Penal Code, 1860**

Human trafficking is a multi-dimensional issue. Whenever a human being is trafficked, it results into violation of various valuable human rights of that trafficked person. Indian Penal Code provides variety of provisions which closely relates to the trafficked persons violation of various rights, which ultimately results into different criminal offences. Here is a table which depicts the various offences along with the relevant provisions under the Indian Penal Code with respect to human trafficking:

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
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<tbody>
<tr>
<td>Section 293</td>
<td>Sale, etc., of obscene objects to young person</td>
</tr>
<tr>
<td>Section 294</td>
<td>Obscene acts and songs</td>
</tr>
<tr>
<td>Section 317</td>
<td>Exposure and abandonment of child under twelve years, by parent or person having care of it</td>
</tr>
<tr>
<td>Section 341</td>
<td>Punishment for Wrongful Restraint</td>
</tr>
<tr>
<td>Section 342</td>
<td>Punishment for Wrongful Confinement</td>
</tr>
<tr>
<td>Section 354</td>
<td>Assault or Criminal force to woman with intent to outrage her modesty</td>
</tr>
<tr>
<td>Section 363</td>
<td>Punishment for Kidnapping</td>
</tr>
<tr>
<td>Section 363 A</td>
<td>Kidnapping or maiming a minor for purposes of Begging</td>
</tr>
<tr>
<td>Section 365</td>
<td>Kidnapping or Abducting with intent secretly and wrongfully to confine person</td>
</tr>
<tr>
<td>Section 366</td>
<td>Kidnapping, Abducting or Inducing Woman to compel her marriage, etc.</td>
</tr>
<tr>
<td>Section 366 A</td>
<td>Procuration of minor girl 366A. (Here, age of the girl is below 18 years).</td>
</tr>
<tr>
<td>Section 366 B</td>
<td>Importation of girl from foreign country including from the State of J&amp;K. (Here, age of the girl is below 21 years).</td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
</tr>
<tr>
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</tr>
<tr>
<td>370</td>
<td>Buying or Disposing of any person as a slave</td>
</tr>
<tr>
<td>371</td>
<td>Habitual dealing in Slaves</td>
</tr>
<tr>
<td>372</td>
<td>Selling Minor for purposes of Prostitution, etc.</td>
</tr>
<tr>
<td>373</td>
<td>Buying Minor for purposes of Prostitution, etc.</td>
</tr>
<tr>
<td>375</td>
<td>Rape</td>
</tr>
<tr>
<td>376</td>
<td>Punishment for Rape</td>
</tr>
<tr>
<td>498</td>
<td>Enticing or Taking away or detaining with Criminal Intent a married Woman</td>
</tr>
<tr>
<td>509</td>
<td>Word, Gesture or Act intended to insult the modesty of a Woman</td>
</tr>
<tr>
<td>511</td>
<td>Punishment for Attempting to Commit Offences Punishable with Imprisonment for Life or other Imprisonment</td>
</tr>
</tbody>
</table>

### 2.4.4 The Code of Criminal Procedure, 1973

Section 51(2), 53(2), 98, 160, 327(2) and 357 having relevance in this context.

### 2.4.5 The Indian Evidence Act, 1872

Sections 114 A and 151 are relevant in this context.

### 2.4.6 The Juvenile Justice (Care and Protection of Children) Act, 2000

The focus of the Act is to provide for proper care, protection and treatment by catering to the child’s developmental needs and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interests of children and for their ultimate rehabilitation through various institutions established under the Act. It is significant to note that the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000 and its subsequent amendment in 2006 is definitely a significant effort of the legislature towards recognition of adoption of orphan, abandoned and surrendered children by people irrespective of their religious status.

### 2.4.7 The Child Labour (Prohibition and Regulation) Act, 1986


### 2.4.8 The Bonded Labour System (Abolition) Act, 1976

 Defines the terms ‘advance’, ‘agreement’, ‘ascendant or descendant’, ’bonded debt’, ‘bonded labour’, ‘bonded labour system’ and provides for initiating appropriate action.

### 2.4.9 The Information Technology Act, 2000

Extends throughout India and also has extra-territorial jurisdiction. Section 67 penalises the publication or transmission of any material, in electronic form, which is lascivious; or appeals to prurient interests; or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied therein.
2.4.10 The Transplantation of Human Organs Act, 1994

The two-fold objectives of this Act are:

1. To provide for the regulation of removal, storage and transplantation of human organs for therapeutic purposes
2. To prevent commercial dealings in human organs. The Act also provides for regulation and registration of hospitals engaged in removal, storage and transplantation of human organs.

2.4.11 The Criminal Law Amendment Ordinance, 1944

Provides for attachment of property in case of commission of a scheduled offence.

2.5 COURT DIRECTIONS

Indian Judiciary plays a vital role in combating human trafficking in India. Time and again Indian courts have decided many cases dealing with the problem of human trafficking. Two widely mentioned Supreme Court judgements Vishal Jeet v. Union of India in 1990 and Gaurav Jain v. Union of India in 1997 are considered instrumental in initiating government action on the issue of commercial sexual exploitation on the one hand. Whereas, on the other hand, the judiciary is accused of playing a role in secondary victimization through its mode of questioning during court procedures and the long and tedious processes involved. The legal system is perceived to be formidable by the victims rather than being a deterrent to those who commit offences. Depending on the sensitivity of the judges, judgments range from supporting the victims to aggravating their harassment. So far as foreign nationals are concerned, Indian courts send rescued girls who are for example Nepalese or Bangladeshis, back to their countries with the help of NGOs; sometimes, they are sent to government homes. Beyond that, there is hardly any activism or inquiry. ‘Very little action is taken by the police or the judiciary against the traffickers and those who are initially responsible for the violation of the rights of these women. With regard to the evidentiary procedures involved in trafficking cases, the women and girls who are victims of the trafficking are the primary witnesses against the perpetrators. In cases involving organised crime, they are extremely vulnerable and in fear for their lives’.

SELECTED INDIAN CASE LAWS ON HUMAN TRAFFICKING

Here is a list of selected Indian case laws decided by various Indian Courts including the apex court i.e., the Supreme Court of India regarding human trafficking.

1. **Gaurav Jain v. Union of India**: [(1997) 8 SCC 114; AIR 1997 SC 3021]
   The Supreme Court held that the children of the prostitutes have the right to equality of opportunity, dignity, care, protection and rehabilitation so as to be part of the mainstream of social life without any pre-stigma attached on them. The Court directed for the constitution of a committee to formulate a scheme for the rehabilitation of such children and child prostitutes and for its implementation and submission of periodical report of its Registry.

2. **Vishal Jeet v. Union of India & Ors**: [AIR 1990 SC 1412]
   Directions given to the Central Government and various State Governments to set up Appropriate Committees for monitoring and evaluation of welfare and rehabilitation schemes for sex-workers and their children.
However, directing the CBI to conduct a nationwide inquiry into all those cases in which the police personnel are hand-in-glove with traffickers, pimps and brothel-owners, is not practically feasible.

1. **Ramu v. State: [1995 Cr.LJ 2525 (Mad.)]**

Person accused of luring helpless and gullible minor girls into prostitution can be prosecuted and punished under either Sec.5(c) Suppression of Immoral Traffic in Women and Girls Act, 1956 or Sec. 366, Indian Penal Code. As per Sec. 26, General Clauses Act when an act is an offence under two or more enactments, the offender is liable to be prosecuted and punished under either, and it depends on the discretion of the Prosecutor.

1. **Kumari Sangeeta v. State & Anr: [1995(101) Cr.LJ 3923 (Del.)]**

Immoral Traffic (Prevention) Act, Sec. 17 (5) - Constitution and composition of Tribunals - The word “may” is to be construed as meaning “shall”, and therefore, it is mandatory for the Magistrate to seek the assistance of a panel of five respectable persons while discharging his duties u/s 17(2) of the Act.


An accused, convicted u/ss 3 & 5, Immoral Traffic (Prevention) Act for running a brothel and brutally forcing a minor girl into carrying on prostitution shall not be entitled to any benefit under the Probation of Offenders Act, 1958, or Sec. 10 of the Immoral Traffic (Prevention) Act, 1956, even though she is out on bail and has undergone imprisonment for a considerable period of time.

1. **Ms. Khushi Harkishan Malhotra v. State of Maharashtra: [2006 (112) Cr.LJ 0612 (Bom)]**

A person who is a victim of trafficking for prostitution can not be detained in a Protective Home on the orders of a Magistrate without following the procedure laid down in Sec. 17 of the Immoral Traffic (Prevention) Act, 1956. State Government given strict directions to immediately remedy the appalling conditions and stop the rampant corruption in Protective Homes. State Government directed to expeditiously set up Special Courts as mandated u/s. 22 of the Immoral Traffic (Prevention) Act, 1956 to ameliorate the plight of many victims who are languishing in Protective Homes pending Magisterial inquiry.

1. **Bandhua Mukti Morcha v. Union of India (UOI) and Ors.: [(1984) 3SCC161]**

**Case Note:**

(i) **Constitution** - bonded labour - Articles 21, 32, 39, 41, 42, 226 and 256 of Constitution of India - Public Interest Litigation (PIL) alleging that certain workmen living in bondage and under inhuman conditions - Article 21 assures right to live with human dignity free from exploitation - State under constitutional obligation to ensure that there is no violation of fundamental rights of any person particularly weaker sections of society - State bound to assure observance of social welfare and labour laws enacted for securing workmen a basic human dignity - objection by Government that no infringement of fundamental rights occurred was improper - Government ought to welcome enquiry by Court in such matters - PIL not in nature of adversary litigation - PIL ought not to be challenged as it gave opportunity to Government to make basic human needs meaningful to deprived and vulnerable sections of community.
(ii) Locus standi - Article 32 - Court must allow any member of public acting bona fide to file writ petition on behalf of persons whose fundamental rights are violated and cannot approach Court owing to poverty or other disabilities - under Article 32 Court not bound to follow adversarial procedure - Apex Court has widest possible powers to enforce fundamental rights - Supreme Court can appoint commission to enquire into violations of fundamental rights in exercise of its writ jurisdiction.

(iii) Presumption - Sections 2 (d) and 12 of Bonded Labour System (Abolition) Act, 1976 - when labourer is compelled to provide forced labour it is presumed that he is bonded labour - such presumption may be rebutted by employer or State.

1. **Nirmala Rani v. State of Tamil Nadu:** [2003 (109) CrLJ 3108 (Mad)]
   The petitioner who tried to expose a criminal nexus between traffickers and police was subjected to hatred, contempt, and mala fide police investigation - heavy damages were awarded to her because the State and its instrumentalities had caused her undue mental agony and violated her Fundamental Rights.

   Children rescued from brothels should be treated as “children in need of care, an protection” under the Juvenile Justice (Care and protection of children) Act, 2000; A lawyer representing the accused should not represent the victims; A parallel was drawn between the Immoral (Traffic) Prevention Act and the Juvenile Justice (Care and protection of children) Act, 2000;

**Facts:**

1) This is a judgment from the High Court of Bombay. This petition came to be filed following the release of minor girls to the custody of certain persons, pretending to be legal guardians of the rescued victims but represented in Court by the same lawyers representing the accused in the same case. Following a raid and rescue operation from a red light area, several young girls and children were rescued, and the perpetrators were arrested.

2) During the pendency of these proceedings, the girls who were found to be less than 18 years of age were kept in an observation home. A lawyer filed an application stating that these children should be released on the ground that they had not committed any offence and therefore could not be detained. This lawyer was also the lawyer for the accused. On his application, the children were released.

3) Prerana, a NGO working with rescued victims/survivors of prostitution, filed a petition in the High Court as they apprehended that these children would be handed over to the accused and also that there was a clear case of conflict of interest as far as the lawyer was concerned. In this background, the High Court passed an Order in which it gave the following directions:

   i) No Magistrate can exercise jurisdiction over any person under 18 years of age irrespective of the fact whether that person is a juvenile in conflict with the law or a child in need of care and protection, as defined by Sections 2(1) and 2(d) of the Juvenile Justice (Care and Protection of Children) Act, 2000. At the first possible instance, the Magistrates must take steps to ascertain the age of a person who seems to be under 18 years of age. When such a person is found to be under 18 years of age, the Magistrate must transfer the
case to the Juvenile Justice Board if such person is a juvenile in conflict with the law, or to the Child Welfare Committee if such a person is a child in need of care and protection.

ii) A Magistrate before whom either persons rescued under the Immoral Traffic (Prevention) Act, 1956 or having been found soliciting in a public place are produced, should, under Section 17(2) of the said Act, have their ages ascertained the very first time they are produced before him. When such a person is found to be under 18 years of age, the Magistrate must transfer the case to the Juvenile Justice Board if such person is a juvenile in conflict with law, or to the Child Welfare Committee if such person is a child in need of care and protection.

iii) Any juvenile rescued from a brothel under the Immoral Traffic (Prevention) Act, 1956 or found soliciting in a public place should only be released after an inquiry has been completed by the Probation Officer.

iv) The said juvenile should be released only to the care and custody of a parent/guardian after such parent/guardian has been found fit by the Child Welfare Committee to have the care and custody of the rescued juvenile.

v) If the parent/guardian is found unfit to have the care and custody of the rescued juvenile, the procedure laid down under the Juvenile Justice (Care and Protection of Children) Act, 2000 should be followed for the rehabilitation of the rescued child.

vi) No advocate can appear before the Child Welfare Committee on behalf of a juvenile produced before the Child Welfare Committee after being rescued under the Immoral Traffic (Prevention) Act, 1956 or found soliciting in a public place. Only the parents/guardian of such juvenile should be permitted to make representations before the Child Welfare Committee through themselves or through an advocate appointed for such purpose.

vii) An advocate appearing for a pimp or brothel keeper is barred from appearing in the same case for the victims rescued under the Immoral Traffic (Prevention) Act, 1956.

1 Amrita Ahluwalia v. Union of India & Ors.: [1992 (98) CrLJ 1906 (Del.)]

Sec. 2(1), Juvenile Justice Act, 1986- definition of “neglected juvenile”- when a parent or guardian is unfit or incapable of exercising control over the juvenile. A parent or guardian would be regarded as being unfit to exercise control if the manner in which such control is exercised, is not what is expected of a loving parent. If the parent does not, willingly or unwillingly discharge his or her parental duties or functions, or does not act in the interest of the child, and if the Board comes to the conclusion that there is little likelihood of such control being exercised, then the child can be considered a neglected juvenile.

Chairman, Railway Board & Ors v. Chandrima Das & Ors.: [2000] 2 SCC 465

Established the rights of foreign nationals in Indian land, under the Constitution of India. Extended the “tort” principle of vicarious liability even to a case of rape.

Facts in brief:

1) A foreign national was gang-raped in the railway premises by a group of persons, some of them employees of the Railways.
2) A practicing advocate of the High Court at Calcutta filed a writ petition under Article 226 of the Constitution of India against the Railways and the Government of West Bengal, claiming compensation for the victim and for the relief of eradicating anti-social and criminal activities at Howrah Railway Station.

3) The High Court awarded a sum of Rupees ten lakhs as compensation for the victim as it was of the opinion that the rape had been committed in a building belonging to the Railways, and had been perpetrated by Railway employees.

4) On appeal before the Supreme Court, the Railways contended that it would not be liable to pay compensation to the victim who was not an Indian national. It also contended that the commission of the offence by the persons concerned would not make the Railways or the Union of India liable to pay compensation to the victim of the offence. Further, since it was an individual act of those persons, they alone could be prosecuted and punished upon being found guilty. It was also contended that for claiming damages for the crime perpetrated on the victim, the remedy lay in the domain of private and not public law and therefore, no compensation could be legally awarded by the High Court in a proceeding under article 226 of the Constitution and that too at the instance of a practicing advocate who, in no way was concerned with or connected to the victim.

Held:

i) The argument that the victim was a foreign national and, therefore, no relief under public law could be granted to her as there was no violation of the fundamental rights available under the Constitution must fail for two reasons: first, on the ground of Domestic Jurisprudence based on Constitutional provisions, and secondly, on the ground of Human Rights Jurisprudence based on the Universal Declaration of Human Rights 1948.

ii) The victim who was not a citizen of this country was nevertheless entitled to all the constitutional rights available to a citizen so far as the ‘Right to Life’ was concerned. She was entitled to be treated with dignity, and was also entitled to the protection of her person as guaranteed under Article 21 of the Constitution. As a national of another country, she could not be subjected to a treatment below her dignity, and neither could she be subjected to physical violence at the hands of government employees who outraged her modesty. The right available to her under art 21 was thus violated.

iii) Consequently, the State was under a Constitutional liability to pay compensation to her. The judgment passed by the High Court allowing compensation to her therefore could not be said to have suffered from any infirmity.

iv) The employees of the Union of India who are deputed to run the Railways and to manage its establishments including the railway stations are essential components of the Government machinery. If any of these employees commits an act of tort, the Union Government of which they are employees, can, subject to other legal requirements being satisfied, be held vicariously liable to the person wronged by those employees.

State of Punjab v. Gurmit Singh & Ors: [(1996) 2 SCC 384] Established that in camera trials are mandatory in rape cases. Recognized that a delay in filing the FIR is not fatal to the case of the prosecution, given the social context of the crime.
of rape, and the circumstances the victim is thrown into as a consequence of such crime.

Facts in brief:
1) The complainant, a young girl of sixteen years, who was kidnapped and repeatedly gang-raped by the accused, disclosed the fact to her mother much later.
2) The medical examination revealed that there was a very strong possibility that the complainant had been raped; however, there was also the probability that she was habituated to sexual intercourse. The accused, as well as the police, took this to contend that the complainant had indulged in sexual intercourse with them with her free will and consent. The trial court accepted this contention, and observing that in view of the fact of the prosecutrix’s promiscuous character, and that she was the only witness to the alleged crime, acquitted the accused.

Held:

i) This is a case where the Supreme Court set aside the acquittal, convicted the accused, and held that holding these trials “in camera” were mandatory in such cases. It was also strongly suggested that hearings should be conducted by lady judges as far as possible.

ii) With respect to the treatment of the complainant by defence counsel, the Court specifically directed that the courts must not sit as “silent spectators” during cross-examination; rather, they must ensure that cross-examination is not made a means of harassment or cause humiliation to the victim of a crime.

iii) The Court was careful to take into account the social context of the complainant in dealing with the issue of delay in reporting. It held: “The courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family...The conduct of the prosecutrix...appears to be most natural. The trial court overlooked that a girl, in a tradition-bound non-permissive society in India, would be extremely reluctant even to admit that the incident which is likely to reflect upon her chastity had occurred, being conscious of the danger of being ostracized by the society or being looked down on by the society. Her not informing the teachers or her friends at the examination centre under the circumstances cannot detract from her reliability.”

iv) The Court advised the lower judiciary that, even if the victim girl is shown to be habituated to sex, the Court should not describe her to be of a bad or immoral character.

The problem is multifaceted and accordingly we need multidimensional responses. The lack of academic research, particularly legal research, has resulted in slow pace of legal reform.

1 Vishaka & ORS. v. State of Rajasthan & ORS., [(1997) 6 SCC 241]
Extract

1) Before we refer to the international conventions and norms having relevance in this field and the manner in which they assume significance in application and judicial interpretation, we may advert to some other provisions in the Constitution which permit such use. These provisions are:

Article 51 of the Constitution of India provides:
Promotion of international peace and security. - The State shall endeavour to - (c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and

Article 253 of the Constitution of India provides:
“Legislation for giving effect to international agreements. - Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.”

Seventh Schedule:
“List I(Union List) - 14. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.”

2) In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the contents of international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. Any international convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit from Article 51(c) and the enabling power of Parliament to enact laws for implementing the international conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in Seventh Schedule of the Constitution. Article 73 also is relevant. It provides that the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws. The executive power of the Union is, therefore, available till Parliament enacts legislation to expressly provide measures needed to curb the evil.

3) Some provisions in the “Convention on the Elimination of All Forms of Discrimination against Women”, of significance in the present context are:

a) Article 11:
“1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular : (a) The right to work as an inalienable right of all human beings; (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.”
b) Article 24:

States Parties undertake to adopt all necessary measures at the National level aimed at achieving the full realization of the rights recognized in the present Convention.”

4) The meaning and content of the Fundamental Rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facets of gender equality including prevention of sexual harassment or abuse. Independence of judiciary forms a part of our constitutional scheme. The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the field when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law. The High Court of Australia in Minister for Immigration and Ethnic Affairs v. Teoh [128 Aus LR 353] has recognised the concept of legitimate expectation of its observance in the absence of a contrary legislative provision, even in the absence of a Bill of Rights in the Constitution of Australia.

2.6 SUMMARY

1. India has fairly wide framework of laws enacted by the Parliament as well as some State legislatures to deal with trafficking among human beings. However, it is interesting to note that none of the federal legislation attempted to define Human Trafficking.

2. It has been often seen that people with low self-esteem and lack of self-control are reported to be especially vulnerable to trafficking. Majority of Reports states that a high percentage of trafficked people belonged to low income groups.


4. The Immoral Traffic (Prevention) Act, 1956 (ITPA), initially enacted as the ‘Suppression of Immoral Traffic in Women and Girls Act, 1956, is the main legislative tool for preventing and combating trafficking in human beings in India. The main purpose of this Act is to abolish the commercialized vice of trafficking in women and girls for prostitution as means of living.

5. Indian Judiciary plays a vital role in combating human trafficking in India.

2.7 TERMINAL QUESTIONS

1) Does any Indian legislation define the term ‘Human Trafficking’?

2) What are the various provisions under Indian Penal Code which deals with the issue of human trafficking?

3) Describe the role of Indian judiciary in combating human trafficking?

4) Mention some of the landmark Indian case laws relating to human trafficking?

2.8 ANSWERS AND HINTS

Self Assessment Questions

1) The Constitution of India either expressly or impliedly prohibits traffic in human beings. Article 23 of the Indian Constitution specifically prohibits traffic in human beings and forced labor.
2) The main purpose of The Immoral Traffic (Prevention) Act, 1956, is to abolish the commercialized vice of trafficking in women and girls for prostitution as means of living.

Terminal Questions
1) Refer to Section 2.3
2) Refer to Sub-section 2.4.3
3) Refer to Section 2.5
4) Refer to Section 2.5

2.9 REFERENCES AND SUGGESTED READINGS

1) UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME <http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_eng.pdf>
2) Advisory on Preventing and Combating Human Trafficking in India <http://mha.nic.in/pdfs/Advisory-on-HTrafficking-150909.pdf>
4) Nair P.M., Trafficking in Women and Children in India, 1st Published, Orient Longman Private limited, 2005