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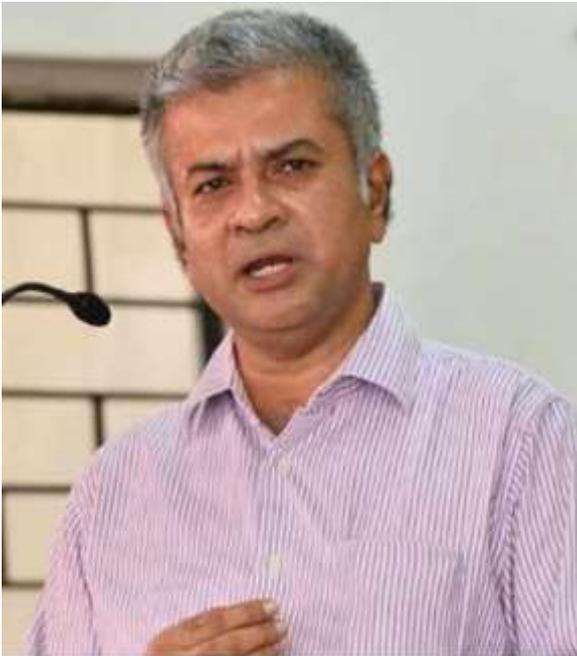
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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

AN ANALYTICAL STUDY OF HUMAN TRAFFICKING, ITS IMPACT IN THE SOCIETY- WHETHER IT CAN BE ERADICATED?

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ABSTRACT

In this paper the author has made a discussion on Human Trafficking, its forms in two ways. Here the author has attempted to highlight the main aim of the traffickers which attracts them to involve in such activities. There are several factors which influences a criminal minded people to stick towards such activities and hence the instances of human trafficking are increasing rapidly in every state, and the author has made a discussion on the issue. Further a discussion has been made with regards to the International Instruments signed and ratified by different states to take measures in order to reduce human trafficking as well as the Mechanism for national reporting and a Counter Trafficking Data Collaborative. And the author highlighted the Constitutional Provisions with respect to prevention of human trafficking and various legislation with Special reference to Immoral Traffic (Prevention) Act as well as the role of the Judiciary in this issue in various cases. Here the author stated certain welfare provisions or remedies to control the social evil or to assists the victims of such offence.

Keywords - Prostitution, Crime, Slavery, Labour Trafficking,

INTRODUCTION

It is true that human trafficking is rampant in every social system from numbers of years all over the world, it is just like a kaleidoscope where due to the mindset of the people in the society, they considers a women as a sexual object in order to satisfy their needs. In our country too it was there even during the period of Rigveda, based on several study it was found that there are cases were a woman was common to many men. Unfortunate but true that every year thousands of people become the victim of trafficking even in their own country. Human Trafficking is the form of slavery acts where number of victims are coerced, put in pressure, threatened, fraudulently engage them in commercial sexual activities with multiple partners and by which the exploiters earn money which is a violation of human rights and condemning

act.

TWO FORMS OF HUMAN TRAFFICKING

Human Trafficking is practiced in two ways - **Sex Trafficking and Labour Trafficking.**

Sex trafficking is commonly exists or available in several places like sex industries, escort services , residential brothels, fake massage trade in various places, strip clubs, and street prostitution.

However, Labor trafficking is commonly seen in numbers of labor settings that covers, domestic work, factories, small businesses. etc.¹

ESSENTIALS OF HUMAN TRAFFICKING

The Human Trafficking is the menace which consists of certain ingredients these are -

Human Trafficking is the process where humans are recruited for the purpose of exploitation, transportation, transferring, harbouring any one.

The Means

The traffickers are risk taker and clever enough they endeavor to influence an individual by the use of force, or they used to offer high amount of money in exchange of the voluntary involvement in human trafficking or used to threat the victim, number of times it was found misuse their power or coerce anyone or hire someone to convince the victim under whom the victim is in control.²

Aim behind human trafficking -

The main purpose of human trafficking is to continue forced labour, sexual exploitation of someone by offering greed of earning money, slavery or forcing someone or make him bound to remove the organs of body for the purpose of sale

WHY TRAFFICKING EXISTS IN OUR SOCIETY?

There are number of factors due to which human trafficking is increasing day by day despite of legislation and international instruments prohibiting and punishing such practices that

¹ National Human Trafficking Hotline, Human Trafficking, <https://humantraffickinghotline.org/type-trafficking/human-trafficking>, accessed 10 August 2020.

² ibid

include like the demand and supply of illegal drugs and narcotics and arms and other organised crimes inspire of legislations controlling such crime, it is increasing, similarly it is going due to the demand of less amount of labour as well as for commercial earning by intercourse with multiple partners and strangers. The traffickers used to hire some people for pressuring the poor and vulnerable sections of the society and offer money or show benefits in such areas by fraud, or misuse their power, manipulates them to enter in such dark world.

Trafficking of human beings persist and based on various causes, including:³

1. **Low Risk:** Despite of strong legislations, investigations of the reported cases, the traffickers considers it's a better option to earn money as they are getting equal demands and the criminal minded people used to continue their criminal operations in violation of human rights which a men acquire by virtue of being human. There are certain factors which ensure them. they will not be caught and the risk factors are lower : governments failure in the enforcement of law training, lack of community awareness, ineffective or improper implementation of laws, ineffective law enforcement investigation as well as lower rate of conviction in various nations , less resources for the treatment of the victims, fear of the victim of being ostracized by the society after their cases come out in front of public.
2. **High Profits:** This is one of the major factor which is influencing the unwanted growth in the market of human trafficking, in simple words, whenever the customers would visit a shop to purchase goods and services, they would give opportunities to the labour traffickers to increase the revenue with minimal production costs. If proper investigations doesn't carry in due time, it the traffickers will take the advantage as well as continue to practice without thinking about any risk factors.

However, in order to prevent the trafficking, the society can play pivotal role in not involving or promoting in the commercial sex industry. Furthermore, the people in the society to. observe Slavery Footprint by using various online devices to consider the prevalence of human trafficking in the services and products they use, moreover fair trade and survivor-made products which they used to purchase. Moreover, if the service providers discontinue the practice, and offenders involved in such trafficking are prosecuted at the Court of law and law enforcement, by such contribution it can prevent

³ ibid

the demand for sex and labor trafficking.⁴

INTERNATIONAL INSTRUMENTS PROHIBITING HUMAN TRAFFICKING

UNODC has played a vital role in assisting various states to form legislations as well as legal strategies in order to prevent trafficking of human. Furthermore, special guidance is given to each State for the development of national legislation, capacity as well as helped to develop means to instigate cross-border cooperation in investigations and prosecutions.

In 2000, Protocol to Prevent, Suppress and Punish Trafficking In Persons, Especially Women and Children was adopted by the United Nations General Assembly which basically revolves around prevention of human trafficking, moreover number of States have accepted the international efforts and have signed to the Protocol, but still each year millions of people get indulged into such evil and dark side of the life and there are least number of cases where the offenders of such crime get caught and convicted most victims are generally never identified or supported in the society. From 1990, UNODC has formed a strategy in order to combat the evil of migrant smuggling as well as Human Trafficking and together with that involved in defining the urgent necessities for UNODC's future action and involvement in such offences. Further the initiatives also covers the UNODC's Thematic Programme Against Transnational Organized Crime And Illicit Trafficking.⁵

UNODC' has taken steps to implement various protocols in order to combat human trafficking and the smuggling of migrants, and considered as three steps of interdependent and complementary components:

- 1) Awareness is required to enhanced for reducing human trafficking.
- 2) Development. of Protocols and capacity-building
- 3) The strengthening of partnerships and coordination.⁶

THE COUNTER TRAFFICKING DATA COLLABORATIVE

The first global data hub on trafficking of human and forced Labour is the Counter Trafficking Data Collaborative (CTDC), where the hub used to provide details regarding the cases of

⁴ ibid

⁵ United Nations, Human Trafficking

<https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html>, accessed 10 August 2020

⁶ ibid

trafficking by observing through the site as well as by interactive global map. Moreover, the hub used to help the counter trafficking society by sharing information regarding the cases or reports of human trafficking as well as aware the public through such data. Apart from that the Counter Trafficking Data Collaborative have its contribution in enhancing the scope, recognize the datasets of different counter trafficking actors and spreading guidelines regarding trafficking-case data. IOM's Counter Trafficking Data Collaborative has done wonderful job in resolving the data obstacles, But in order to accept the standards and various modes of data sharing, much more attention is required throughout the counter-trafficking community.⁷

NATIONAL REPORTING MECHANISMS

The Government's or other reporting agencies used to provide information regarding human trafficking as a report based on administrative data with in their competent jurisdiction. In order to Global Report on Trafficking of Human beings, UNODC used to form questionnaires with a common set of indicators and find out the role of Government of each nation in recognizing the victims of such crime and then present the final report of that In 2018, the world report was presented and then in 2016, it was found that more than 24000 people were identified who were the victims of such offences from about 97 States, moreover the information regarding the cases of human trafficking are disclosed in the public platform in the basis of numbers of exploitation by such various including sex, age as well as kinda of exploitation. Apart from that it used to gather details of reports produced by the Police in such cases as well as the information given by numbers of Non Governmental Organizations dealing with protecting the human rights.⁸

ESTIMATING PREVALENCE OF HUMAN TRAFFICKING

Various national estimates have been done based on human trafficking administrative data. Another method used for recognizing the victims of human trafficking in each State is Multiple Systems Estimation is the methodology. Many NGOs, law enforcement bodies or agencies, competent authorities or international organizations used to assist to find the rise of human trafficking case in each year and the MSE used to rely upon the numerous databases which focused to find the victims of such crimes in the countries.⁹

⁷ HumanTrafficking <https://migrationdataportal.org/themes/human-trafficking>, accessed 10 August 2020

⁸ ibid

⁹ ibid

CONSTITUTIONAL INTERPRETATION WITH REGARDS TO HUMAN TRAFFICKING

International Convention for the Suppression of Traffic in Persons and Exploitation, 1950 was enacted in order to prohibit the practice commercial sex, slavery of forced labour of a person which was also signed by India. Now talking about the provision provided under the Supreme Law of the Land in India, As per Article 23 of the Constitution, it prohibits trafficking of human and all other types of exploitation of human being. The main purpose of it was to forbid the trafficking in people which covers beggary, prostitution, escort services, domestic exploitation as a slave etc.¹⁰

OTHER LEGISLATIONS

Number of legislations were passed in order to eradicate the commercial vice of men, women as well children, the Suppression of Immoral Traffic in Women and Girls Act was passed in 1956 and included provisions to penalize procurers, recruiters, brothel keeps, or those who are participating in promoting human trafficking in India. And then it was further amended in 1978 and later on in 1986 referred as The Immoral Traffic (Prevention) Act. The main objective of the enactment was to inhibit the human trafficking of the human beings as an organised mode of survival or earning money.

In **Shefali Banerjee Vs State**¹¹, the Court held that this enactment was acting a a mode to minimize the crime of human trafficking in pursuance of the provisions of International Convention that was agreed and ratified in 1950. This legislation is a measure which acts dual role, at first in ameliorating the instances of commercial vice of traffic of people for prostitution as well as punishes people who are involved or pro Motingting such offences.

In **Gaurav Jain Vs Union of India**¹², case, the Apex Court has made a order to form an Advisory Committee in order to set free the people who are the victim of human trafficking and to ensure guidelines for the abolition of cuz prostitution and to find out suitable measures for providing protection, care, support, rehabilitation as well as proper treatment of the victim of prostitution from red light areas. Another role was to amend the legislation related to human trafficking or to enact a new one if demanded based on the need of hour.

¹⁰ Mamta Rao, Law Relating to Women and Children, 164-165(Third Edition, 2012)

¹¹ AIR 1969 Cal 544.

¹² (1997)8 SCC 114:1998 SCC (Cri)25: AIR 1997 SC 3021.

Further the Advisory Committee formed by the order of the Supreme Court found ten types of prostitution which covers street walkers, brothel prostitutes, singing and dancing girls in bars etc.

IMMORAL TRAFFIC (PREVENTION) ACT, 1956

Punishment in case of surviving out of the earning from Prostitution - (1) If Anyone who is above eighteen years of age live his life on the basis of the income from Prostitution of anyone and with having proper knowledge regarding that shall be punished with imprisonment upto two years maximum or with fine upto one thousand rupees maximum or with both however in case the earnings of income is with regards to prostitution of a child then he shall be punishable with imprisonment up to seven years minimum but shouldn't extend further more than ten years.¹³

(2) In case it is found that anyone who is more than eighteen years of age is (a) staying with or is in the attachment of, a prostitute; or

(b) any one is trying or used to regulate, give instruction or influence any prostitute, further controls in such a way and it's found that such person is assisting, instigating or forcing her prostitution; or

©if anyone is perform his role as a tout or pimp for the prostitute, it shall be considered that he is intentionally staying on the income of the prostitution of anyone else as provided under the sub section.

As per Section 5 is concerned it states. Procuring, inducing or taking any one for the purpose of indulging him for prostitution.¹⁴

(a) If anyone carry on or takes steps. in order to procure anyone in absence or presence of consent, for participating in the prostitution; or if someone whether in taking consent or not, for the purpose of prostitution

(b) if anyone forces someone to move out from a place with the object for the purpose of prostitution, tries to become the member or close to that person concerned, or brothel; or asks to. move from a place, with the intention of indulging that person for the purpose of prostitution

¹³

https://www.google.com/search?sxsrf=ALeKk02jmngE09fYkAMg0Ab6yuz03tOV1w%3A1597002751567&ei=1MwX4CbIuyK4-EP8-yT-As&q=human+trafficking+prevention+act+1956+pdf&oq=human+trafficking+prevention+act%2C1956&gs_lc p=ChNtb2JpbGUtZ3dzLXdpei1zZXJwEAEYADIFCCEQoAE6BAgAEEc6BggAEAcQHjoCCAA6BAgAEB46BggAEBYQHjoICCEQFhAdEB5Q5z9Yj9sBYIzjAWgBcAJ4AIABpgSIAa4lkEKMioxMS40LjAuMZgBAKABAcABAQ&sclient=mobile-gws-wiz-serp, accessed 10 August 2020

¹⁴ ibid

become the inmate of, a brothel,

(C) if someone takes steps to take a person or make such a circumstances to take such person from a particular area to another with the purpose to continue being brought up to carry on prostitution.

(d) if anyone make a such a situation or coerces any other person to carry on prostitution,, he shall be punishable with conviction with rigorous imprisonment up to three years but further not to extend the period of seven years along with fine which may enhanced up to two thousand rupees, while if any crime is committed against the interest of someone else, he shall be punished up to. the period of seven years which may further extend upto imprisonment upto fourteen years maximum

However the individual against whom the offence is committed under this sub-section, —

(i) is a child, the punishment given shall of of rigorous imprisonment up to seven years minimum but may extend up to life imprisonment; and

(ii) is a minor, the punishment provided shall be for rigorous imprisonment up to the period of seven years, however shall not extend after that

(3) An offence committed under the section -

(a) in the area where any one is procured, influenced to move, pressured to be taken off from such place to the individual or he is procured, influenced to move, or taken or caused to be taken or any other attempt regarding that is made to procure or take person is made.¹⁵

(b) in such a area where he is carried further due to such influence or to which he is taken or caused to be taken or any initiative has taken in order to take him

As per Section 6, it refers the detaining anyone in premises where the trafficking is the prostitution is carried on -

(1) if anyone detains any other person without taking his consent or will in the brothel, or in any place with the intention that the person concerned is having intercourse with anyone other than the spouse shall be punished with shall be punished with conviction, up to seven years. of imprisonment minimum but that may. increase for life imprisonment or for. a period up to ten years and shall also be liable to fine. However, the court may, for particular reasons to be written in the judgment, inflict a punishment up to imprisonment for a period of seven years minimum.

(2) In case any person is recognized with a minor in a brothel, it shall be considered unless the contrary is proved, he has involved in such an act where the child was recruited by his influence

¹⁵ ibid

in the prostitution.¹⁶

(2A) in. case a situation arrives that child or minor has been found in a brothel,. who is on medical examination, moreover is considered to have been sexually exploited, it shall be considered, unless the contrary is proved, that the child or minor has restrained in order to carry on prostitution or, has been exploited for commercial sex and earning from such exploitation

(3) an individual shall be seem to. confine a woman or a young girl in a brother or pimp or any other places, in order to continue intercourse with a stranger or someone other than her spouse, moreover if anyone intentionally make her bound or induce her to remain there, —

(a) takes away from her any jewellery, wearing apparel, money or other property on which the women is entitled to claim or

(b) if anyone portends her, moreover she takes away along with her jewellery, wearing apparel, treasure or other valuable property lent or supplied to her by as per the wish of such other person.

(4) no legal proceeding shall be filed against such lady as per the direction of such person by whom she has been detained, restricted, or confined for the taking back any jewellery, wearing apparel or other property which is alleged to have been lent or supplied to ladies to have been pledged by such woman or girl or for taking back of any money which is alleged to be paid by the ladies.

Section 7 states the practical of Prostitution in any public places. —

(1) if anyone who continuing prostitution, moreover the individual along with whom the practice is carried on in any place

(a) are near those places, mentioned under the provisions of the Act.

(b) the area where the prostitution took place are within two. hundred metre area where people used to go for educational purposes, practicing religious activities, nearby the hostel or accommodation for the students of educational institutions, nursing home any other areas which are for public purposes as mentioned by the Commissioner of Police or magistrate or any appropriate authority earlier shall be punished for s period of three months.

[(1A) in case, a child or minor is the victim of such activities, the individual concerned who has indged the child in such evil acts shall be punishable upto seven years minimum but that may be for life imprisonment maximum or a period up to ten years along with fine of certain amount decided by the Court. However the Court is authorized to impose a certain duration of

¹⁶ ibid

sentence after specifying the reason behind that in written form, and the penalty may include imprisonment up to seven years minimum.

(2) If anyone

(a) who has the responsibility to take care in any public place allows any prostitutes in order to carry on the trade of prostitution or to resort to or stay in any such area,

(b) who is considered as the tenant, lessee, occupier or anyone who has the responsibility of any house or area intentionally allows the premises or part of the premises with the purpose to continue prostitution,

(c) who is the owner, lessor or landlord, of any area used to assist the owner of the premise as an agent of the, lessor or landlord, allows any part of whole for continuing the practice of prostitution, shall be punished on first conviction with imprisonment upto three months maximum, or in other case fine up to two hundred rupees maximum, or with both fine as well as imprisonment, however during the second conviction, the punishment should be an imprisonment upto six months maximum and along with fine that may be for two hundred rupees, while if the public place where the illegal activities carry on are in any hotel, in. such a case the licence of the hotel shall be temporarily discontinued or suspended for three months minimum and that can be extended further for a period of one year of suspension. However if any child is a victim of such offence committed in a hotel, the licence of the hotel will be cancelled for lifetime and the hotel can't carry on any practice of business under any law is prescribed.

(3) The State Government has the authority to give any direction to prohibit the practice of prostitution in any area by making or issuing any notification in the Official Gazette, based on the number of people staying in any place for livelihood.

(4) In case any notification is issued with regards to any areas, the State Government has the authority to. specify the areas where no such practice will be allowed by issuing a notification in the Official Gazette.

(5) Furthermore, no more notification can be issued before the end of the earlier notification issued by the authority during the period of ninety days.

Section 8 states the Seducing or soliciting anyone with the intention to carry on prostitution. - If anyone who is, in a public place or and in any way is involved in or its known about him or as to be seen or heard that -

(a) by the use words, gestures, wilful exposure of person or takes steps or insists others to tempt, or encourage others or attracts people for indulging in such acts in order to carry on prostitution,

(b) helps or molests any person, or does any acts in which lead to create hindrance or disturbs people who are staying or passing by such public place or does any act which offensive in nature and against the public decency, in order to carry on prostitution, shall be penalised in case of the first conviction imprisonment up to six months, or with fine upto five hundred rupees maximum in both cases or with both, moreover in case of the second conviction, the person should be punished with imprisonment up to one year maximum, and also with fine up to five hundred rupees. However, in case any offence is committed by a man under the provision of the law, he shall be punished with imprisonment up to seven days minimum and upto three months maximum.

Section 9 described the Seduction of any person in the custody- If anyone who is in charge of the custody, or in the care of, or holds a post of authority, and make someone to or induces or assists or instigates the seduction for prostitution of that individual shall be punishable with imprisonment up to seven years minimum however that may increase for life imprisonment Upto ten years maximum and that may be liable with fine However, that the court may, after writing the reason behind that in written form to be mentioned in the judgment, confer the punishment for imprisonment upto seven years.¹⁷

THE INDIAN ANTI-TRAFFICKING BILL, 2018

The main aim of the legislation emphasis upon the vague language, without considering the misuse. As per the bill. is concerned it punishes those who instigates or antes anyone to migrate illegally into India, or Indians to other state. but that don't considers the contacts between a smuggler and migrant. Further it punishes those gives aid to migrants while neglecting. the reality

The bill doesn't provide any guidelines those a 3rd which lead to trafficking and it simply penalizes those acts of 'promoting or facilitating' of trafficking, and 'circulation' or 'publication' of material which instigates trafficking in the society. Lastly, the the Bill punishes the consenting sex workers and follows the provisions of 'Trafficking of Persons' as provided under Section 370 IPC.¹⁸

¹⁷ ibid

¹⁸ Himanshu Pabreja Ankit Sharam,

"The Indian Anti-Trafficking Bill, 2018: A Misguided Attempt to Resolve the Human Trafficking Crisis in India", 15th January 2019 <https://ohrh.law.ox.ac.uk/the-indian-anti-trafficking-bill-2018-a-misguided-attempt-to-resolve-the-human-trafficking-crisis-in-india/>, accessed 10 August 2020.

HUMAN TRAFFICKING ANNUAL REPORTS OF U. S ADVISORY COUNCIL

In this report, emphasis has been given to the 20th anniversary of the Trafficking Victims Protection Act 2000 along with a wide recommendations so that to enforce that in future and comparison of the effect of suggestions in 2019 report by the Underserved Populations Committee and the Survivor-Informed Leadership Committee. In the report, the U. S Advisory Council focused on the aim, takeaways, and suggestions from trip of Council to Colorado as well as Ohio. Further, Council gives an opportunity to survivors of human trafficking to provide recommendations with regards to the federal anti-trafficking policies to the President's Interagency Task Force in order to examine the cases of human trafficking.¹⁹

SUGGESTIONS IN ORDER TO MINIMIZE OR CURB THE EVIL

- 1) Whenever the a female is an offender to such crime as per Section 7 and 8, then based on the mental health conditions as well as considering other circumstances the Court is entitled to give direction for sending her in the corrective institutions for a period of minimum two years but not more than five years instead of penalty.
- 2) As per Section 15 and 17-A of the Act, the Police officers are empowered to visit and make an entry in any premises even. in absence of the Warrant of the Court, but along with other two officers, where the Official considers that any offence under the Act has been committed somewhere.²⁰
- 3) As per Section 17, a Magistrate is authorized to send a person involved in such offences to the protective home or the custody.
- 4) In any case, if a magistrate receive any information that anyone is staying somewhere to continue prostitution in a brothel, he is entitled to direct a police officer to remove such person from the place.
- 5) As per Section 18, a Magistrate is authorized to give direction for the eviction of a place which was used as a brothel.²¹

¹⁹ U. S. Advisory Council Releases Human Trafficking Annual Report, <https://www.acf.hhs.gov/otip/news/united-states-advisory-council-human-trafficking-annual-report-2020>, accessed 10 August 2020

²⁰ Mamta Rao, Law Relating to Women and Children, 171(Third Edition, 2012)

²¹ Id-172

CONCLUSION

In order to prevent the growing rate of the human trafficking in various firms, many responsibilities are there upon the law enforcement agencies like Police as well as the State as well as Non Governmental Organizations to come forward in order to help to retrieve from the evil Prostitution, and to ensure steps in order to provide rehabilitation so that they can live with dignity in the society, they should get the facilities like self employment through the steps of education, should be given financial assistance, legal counselling as well as legal aid, Further, the Courts are required to assist regaining social stability as well as to go take steps to go for judicial review, that will maintain the faith of the people in the rule of law.

