
THE ROLE OF TRANSNATIONAL ORGANIZED CRIME IN WOMEN HUMAN TRAFFICKING: CHALLENGES AND SOLUTIONS FOR LAW ENFORCEMENT

Ananya Malhotra, Christ Deemed to be University, Bangalore.

1. Introduction

Human Trafficking also referred to as modern-age slavery is a pressing issue of global concern. It refers to the Illegal Trade and exploitation of human beings for forced labor, sexual slavery, forced marriages, and commercial sexual purposes. It is the third largest organized crime in the world and is escalating and mounting every day. The United Nations defines human trafficking as the recruitment, transportation, transfer, harboring, or reception of persons by force, fraud, or deception to exploit them for profit.¹ Women are the most vulnerable when it comes to being in danger of being trafficked and exploited. Women account for 55-60 percent of all trafficking victims detected globally. According to a new report from the United Nations Office on Drugs and Crime (UNODC), the majority of victims of human trafficking are women and girls, accounting for about 71% worldwide.

According to the recent report of NRCB around 2,189 cases were registered under the Anti-Human Trafficking Units across India in 2021. India continues to be the major hub of origin, transit, or destination for the victims. Around 20 to 65 million Indians are affected by this problem globally. Poverty, corruption, gender discrimination, lack of livelihood, displacement, deception, and fraud are some of the factors that contribute to this Crime. This condensing of the world can be attributed to Globalization due to which trafficking has become a lucrative and fast-growing criminal activity.² Globalization makes the process of communication and transportation more feasible which makes it easier for traffickers to traffic people around the world. Traffickers often resort to coercion, fraud, deception, abduction, and false job advertisements to lure the victims into this dark web of trafficking.

¹ <https://www.unodc.org/unodc/en/human-Trafficking/Human-Trafficking.html>

² L.E. Nagle, "Selling Souls: The Effect of Globalization on Human Trafficking and Forced Servitude", 26 Wis. Int'l L.J. (2008-2009)

II. Organized Crime

Trafficking is a rapidly growing area of International Criminal activity. Alarming it is on the rise worldwide. Transnational Crime refers to the trafficking that takes place between the borders of different Nations. It is an organized business with linkages around the world. Women are being transported to different lands and enslaved through labor or commercial sexual exploitation. Human Trafficking is organized by groups that are also involved in narcotics and weapon trafficking with the complicity of the government in many countries. Organized crime becomes a huge source of Profit for people involved in this web, generating around seven to ten billion dollars annually according to UN estimates. Generally, the flow of Trafficking is from less-developed countries to industrialized countries, or toward the neighboring countries with higher standards of living. Most of the victims are sent to Asia, North America, the Middle East, and Western Europe.³

In most instances, traffickers use the women's legal documents and tourist visas to make them legally enter the destination countries and these women are then eventually taken from country to country on legal tourist visas. In other cases, they use false documents which make women more susceptible to the risk of being arrested and deported as she is staying there illegally. A crucial aspect of globalization involves the connections formed across borders through migration. Criminal groups establish relationships with willing partners within dispersed communities globally and within migrating groups, they construct networks of international criminal activities. The rise in migration also provides a disguise for traffickers who use the movement of people to transport women to locations associated with the sex industry. The expansion of privatization and liberalization in global markets has led to broader and more accessible trading environments worldwide. Another significant element of globalization is the digital exchange of international financial transactions, which not only enhances prospects for transnational criminal activities but also reduces the likelihood of being identified and captured. This technological facet of globalization facilitates the movement and cleansing of funds acquired through unlawful endeavors such as women's trafficking. Numerous trafficking victims have shared their accounts with non-governmental organizations, journalists, and law enforcement agencies. While there may be individual differences in their stories, common patterns emerge involving manipulation and aggression by traffickers, followed by additional

³ Abosede Omowumi BabatundE, "Human Trafficking and Transnational Organized Crime: Implications for Security in Nigeria", Canadian Mennonite University, Peace Research, 2014, Vol. 46, No. 1 (2014), pp. 61-84

mistreatment by the authorities.⁴

III. India's Standpoint on Transnational Trafficking

In India, Human Trafficking continues to thrive, with women being the major victims who are mostly trafficked for prostitution, forced labor, and forced marriages. Most of these women belong to the vulnerable section of the Society, i.e. from uneducated and poor backgrounds. The rigid Patriarchal norms prevalent in society and the gender discrimination that accompanies them, are all predictors of trafficking and abuse⁵. Women and girls who belong to the lowest "Dalit" caste are occasionally subjected to a ceremony where they are symbolically wedded to a nearby temple deity. Sadly, this practice leads to their exploitation, essentially making them involuntary partners for sexual activities by individuals from higher castes within theirs. Migration in search of better job opportunities is also one of the reasons for women being lured into trafficking in the name of false promises of employment. Traffickers employ various deceitful tactics to exploit young women. These tactics include offering appealing job opportunities, creating false romantic relationships, purchasing girls from impoverished families, and in some cases, even abducting them forcibly⁶.

Traffickers focus their attention on Indian girls and women, but they also deceptively recruit a substantial count of Nepali and Bangladeshi females for sex trafficking in India. Furthermore, traffickers exploit females from regions like Central Asia, Europe, and Africa for commercial sexual activities, with Goa being a prominent location. An investigation into sex trafficking victims in Goa revealed that a considerable portion of them had journeyed from Central Asia to New Delhi before being subjected to exploitation within Goa's casinos, massage parlors, private accommodations, and clubs. In Mumbai, traffickers disguised as representatives from the entertainment industry reportedly enticed Eastern European and Colombian women with false assurances of acting or modeling prospects. Delhi is notably recognized as a focal point for the illicit trade involving young girls, who are coerced into domestic labor, forced into marriages, and subjected to prostitution⁷.

⁴ Donna M. Hughes, "The "Natasha" Trade: The Transnational Shadow Market of Trafficking in Women", *Journal of International Affairs*, Spring 2000, Vol. 53, pp. 625-651

⁵ F.P. Bernat et.al., "Human Trafficking: The Local Becomes Global", 20 *W & CJ* (2010) 2-9.

⁶ Alison Brysk et.al., "Rethinking Trafficking: Patriarchy, Poverty, and Private Wrongs in India" 14 *Global Dialogue* Number 2

⁷ *Trafficking of Women and Children in South Asia: Taking Stock and Moving Ahead. A Broad Assessment Of Anti- trafficking Initiatives In Nepal, Bangladesh, and India*, Sponsored by UNICEF Regional Office Save the Children Alliance.

Young girls are trafficked from Nepal into India. Karnataka ranks as the third highest state in India for human trafficking. Similarly, other states in South India are also frequently targeted destinations for this heinous crime. Each year, more than 300 cases of human trafficking are reported in each of the four South Indian states. Comparatively, West Bengal and Bihar report an average of 100 cases annually. According to the data, over half of the recorded incidents of human trafficking originate from these states.⁸

In certain instances, families resort to selling their daughters to brothels as a means to alleviate their financial burden and secure monetary gains. Regrettably, these families display a lack of empathy toward their daughters, subjecting them to the horrors of this reprehensible activity. This not only infringes upon the girls' bodily autonomy but also inflicts lasting emotional impoverishment. While some women resign themselves to this fate, others are trapped in a perpetual state of fear, devoid of any prospects for justice or liberation. The severe trauma and intimidation suffered by women lead to a significant decline in their physical and emotional resilience against traffickers. They endure repeated abuse, including physical assaults and sexual violence, which gravely affects their mental well-being. Consequently, their psychological state deteriorates, often leading to depression. As a tragic consequence, these women are dehumanized, lose their identity, and are regarded as mere commodities, existing solely to fulfill the sexual desires of customers.

Disturbingly, girls as young as 12 years old are traded to traffickers in rural areas. In the most distressing situations, these young girls are compelled to engage in sexual activities with an alarming number of customers, sometimes reaching 20 to 30 individuals per day. This distressing form of trafficking occurs in makeshift structures along highways, providing a convenient location for truck drivers to engage in exploitative acts by paying a nominal amount. Furthermore, sex trafficking also transpires in urban settings, ranging from city dance bars to concealed spaces in large cities' hidden alleyways. The exploitation extends to secluded areas within hotels or even private residences.

IV. Legal Framework in India

The UN General Assembly passed a resolution 55/67 on 4th December 2000, wherein it urged and advised Governments all around the World to devise, enforce, and strengthen effective measures to combat and eliminate all forms of trafficking in women and girls through a comprehensive Anti-Trafficking Strategy comprising of robust legislative measures,

⁸ <https://www.mapsofindia.com/my-india/society/human-trafficking-in-india-must-end>

reintegration of victims and prosecution of offenders⁹. India in the last few years has adopted a set of comprehensive measures and has come up with legislation aimed at combating trafficking in Women especially for sexual exploitation. On the regional level, India has ratified the United Nations Convention against Transnational Organized Crime (UNTOC). One of its protocols is the prevention, suppression, and punishment of trafficking in persons, especially women and children. Various measures have been taken to implement the convention and, consistent with the protocol. India has also ratified the SAARC (South Asian Association for Regional Cooperation) Convention in 2002, whose aim is to harbor regional cooperation for the protection of women and children in South Asia.

The Constitution's Article 23 (1) clearly bans activities like human trafficking, forced labor, and practices like begar. Human trafficking is strictly prohibited because it goes against the fundamental principles of the Indian Constitution.¹⁰ Additionally, Article 24 prevents the hiring of children under 14 years old for dangerous jobs in factories or mines¹¹. These important rules from the Constitution have been turned into various laws by both the central and state governments to make sure they are followed.

The Immoral Traffic (Prevention) Act, of 1956 (ITPA) is a crucial law in India to prevent and fight against human trafficking. It was originally named the Suppression of Immoral Traffic in Women and Girls Act, of 1956. It was originally named the Suppression of Immoral Traffic in Women and Girls Act, of 1956. The main goal of this law is to stop and eliminate the trafficking of women and girls for the purpose of forcing them into prostitution to earn money¹². Before the ITPA, various state laws existed, but they were not enough or consistent in dealing with human trafficking. So, there was a need for a strong national law that would be the same everywhere. The ITPA has rules that punish those involved in immoral trafficking like traffickers, brothel owners, and those living off the earnings of trafficked women. It also includes measures to help sex workers recover and rebuild their lives. The main focus of the ITPA is to penalize the people who pay for sex, pimps, and those who run brothels and not commercial sex workers. The main goal of this law is to stop and eliminate the trafficking of women and girls for the purpose of forcing them into prostitution to earn money. The ITPA makes it a crime to be involved in activities that lead to trafficking, such as procuring and

⁹ UNODC, Measures to Combat Trafficking in Human Beings in Benin, Nigeria and Togo Final Report-Nigeria (2000) 12

¹⁰ Article 23. The Constitution of India, 1950

¹¹ Article 24. The Constitution of India, 1950

¹² The Immoral Traffic (Prevention) Act, 1956

profiting from the trade. However, it doesn't clearly define what trafficking itself means. This law was created after India agreed to a global treaty called the Convention for the Suppression of the Traffic of Persons and of the Exploitation of the Prostitution of Others in 1950. The ITPA has rules that punish those involved in immoral trafficking, like traffickers, brothel owners, and those living off the earnings of trafficked women. It also includes measures to help sex workers recover and rebuild their lives. The main focus of the ITPA is to penalize the people who pay for sex, pimps, and those who run brothels and not commercial sex workers.

However, there are several criticisms of the Act. It offers a very small amount of Rs. 20,000 as compensation to victims, which isn't enough to help them recover or find new ways to earn a living. This puts victims at risk of being trapped by traffickers again. Moreover, the punishment for traffickers under Section 3 of the Act is just three years, which isn't strong enough to discourage offenders. Because of this, very few traffickers are actually convicted under this law, showing that it's not effective in stopping trafficking. In 2013, the Justice Verma Committee was formed to suggest changes to the law to ensure faster trials and harsher punishments for those who commit sexual crimes against women. This committee's report highlighted the weaknesses of the existing law. It pointed out that the current law only considers trafficking for prostitution and doesn't cover other forms of trafficking. The main focus of the ITPA appears to be stopping prostitution rather than preventing human trafficking. One important observation is that the efforts against trafficking, including making laws and enforcing them, mostly concentrate on activities like raids to free victims, bringing them back home, and helping them recover to some extent. However, there's a noticeable lack of clear guidelines for preventing trafficking in the first place and punishing the offenders. In the case, *Gaurav Jain v. Union of India*¹³ the Supreme Court used its special powers to create a detailed plan for rescuing and helping victims of sexual exploitation. This case showed that there can be a more comprehensive approach to tackling the issue.

The enactment of the Criminal Law (Amendment) Act 2013 has led to the implementation of new provisions, replacing Section 370 of the Indian Penal Code with Section 370 and 370A IPC. These amended sections encompass a wide range of strategies aimed at addressing the pressing issue of human trafficking. This includes the trafficking for various forms of abuse, such as physical or sexual exploitation, as well as practices like slavery, forced servitude, and the illicit harvesting of organs. This legislative revision represents a comprehensive approach

¹³ *Gaurav Jain v. Union of India and others*, 9 July 1997, 8 SCC 114

to combatting the grave problem of human trafficking. Under this legislation, the offense of trafficking shall be punished with rigorous imprisonment for a term not less than 10 years, which may even extend to life imprisonment, and the offender shall also be liable for a fine.

Additional legislations that have been introduced to address the issue of trafficking in women and children include the Prohibition of Child Marriage Act 2006, which prohibits child marriages that often lead to the trafficking of underage individuals, particularly girls, and aims to protect the rights and welfare of children. The Bonded Labour System (Abolition) Act, of 1976 which prohibits and abolishes bonded labor, which is a form of human trafficking. It provides for the identification, release, and rehabilitation of bonded laborers. Juvenile Justice (Care and Protection of Children) Act, 2015, lays down the legal framework for the protection and care of children in need of care and protection, including trafficked children. Further legislation are the Child Labour (Prohibition and Regulation) Act, of 1986, and the Transplantation of Human Organs Act, of 1994. These statutes are accompanied by specific sections within the Indian Penal Code, such as Sections 372 and 373, which specifically address the trafficking of girls with the intent of engaging in prostitution.¹⁴ This legal framework collectively reflects a comprehensive endeavor to tackle the intricate problem of trafficking in women and children.

V. Challenges in Combating Transnational Trafficking

Lack of Resources among Law Enforcement Agencies: In numerous countries, law enforcement agencies face challenges due to limited resources and insufficient training. Investigating complex in combating organized crimes that span across borders is a struggle due to a lack of expertise and experience. Many of these countries have only recently criminalized trafficking, resulting in investigators being unfamiliar with effectively handling this type of crime.

Additionally, some nations might not have the financial means to offer proper training, ample funding for technology, or the higher costs associated with investigating crimes that cross national boundaries. When there's a lack of resources, it becomes harder to provide adequate protection, support, and assistance to victims, which, in turn, hinders investigations and prosecutions. This is because victims are less likely to share information and testify to law enforcement and prosecutors when their needs for safety and recovery are not met. Addressing

¹⁴ Biswajit Ghosh, "Trafficking in women and children in India: Nature, dimensions and strategies for prevention" (2009, December 1)

transnational trafficking cases necessitates cooperation between law enforcement agencies in countries where the trafficking originates and where it occurs during transit. This collaborative effort is intricate, potentially expensive, and demands a significant investment of time and resources.

Transnational Nature of the Trafficking Cases: Law enforcement agencies often face unique challenges dealing with trafficking cases that span multiple countries. They need to gather evidence from foreign areas, some of which may not be willing or able to cooperate. These challenges include the practical complexities of investigating crimes that occur across borders, Limited cooperation, resources, training, skills, and appropriate laws. Issues arise from differences and conflicts in laws among the countries where a group of traffickers operates. This creates obstacles when trying to investigate, apprehend, extradite, and prosecute offenders. Traffickers' ability to avoid arrest by leaving the jurisdiction that's attempting to hold them accountable is also an area of grave concern, The ease with which traffickers can hide their ill-gotten gains by utilizing countries with underdeveloped systems for tracing financial transactions and the logistical challenges in protecting victims, witnesses, and their families who reside outside the jurisdiction where the prosecution is taking place.

Victims' Reluctancy to Testify: Many victims hesitate to participate in criminal trials. This reluctance stems from various factors like the fear of retaliation from traffickers, concerns about their legal status leading to deportation, lack of trust in authorities, shame, and the belief that what their traffickers did wasn't criminal. Some victims simply want to return home and rebuild their lives rather than remain in a country where they suffered exploitation. It's widely acknowledged that safeguarding and helping trafficking victims aligns with the goals of the criminal justice system. When victims feel secure and their needs are addressed, they're more likely to cooperate with authorities. Thus, a successful response to trafficking is closely connected to human rights. There is a need to provide law enforcement authorities with adequate investigative powers and techniques to enable effective investigation and prosecution of suspected traffickers.

Particularly with respect to India, despite the introduction of comprehensive legislative measures by the government, the incidence of women trafficking has not exhibited a noteworthy decrease. The government's performance falls short of meeting the fundamental benchmarks in various critical domains. While the commitment of law enforcement bodies to probe these offenses remains commendable, their endeavors in addressing trafficking at its foundational level through effective anti-trafficking initiatives are found to be lacking.

The agencies have been carrying out fewer inquiries resulting in a lower conviction rate. According to the UN report 2022, the rate of acquittal for individuals involved in trafficking cases stayed steady at 89 percent. No official reports were made regarding investigations, prosecutions, or convictions of government personnel implicated in trafficking-related offenses. Oversight of shelters funded or managed by the government remained insufficient and there were persistent gaps in safeguarding services for victims, particularly children. Some foreign trafficking victims were held in state-operated shelters for prolonged periods due to lengthy or absent repatriation procedures. Several victims experienced delays of several years before receiving compensation mandated by the central government, often because state and local legal offices did not proactively pursue compensation or assist victims with application submissions.

The efforts of law enforcement agencies across the nation were deemed insufficient when compared to the extensive nature of the problem. According to legal provisions, when authorities received information regarding a serious offense like forced labor or sex trafficking, they were obligated to initiate a criminal inquiry by filing a First Information Report. However, there were instances where suspected traffickers were not apprehended, FIRs were not officially lodged to initiate a formal complaint, or FIRs were not filed for cases related to trafficking; instead, some cases were resolved during the complaint phase itself.

In recent times, allegations emerged suggesting that authorities in Assam, Jharkhand, and West Bengal directed the police to categorize trafficking incidents as instances of kidnapping or cases of missing persons. This measure seemed to be aimed at reducing the number of officially recorded trafficking cases within the statistics. Further, there have been various instances where the alleged traffickers have been granted bail by district courts, and neither the prosecutors nor the victims, including underage victims safeguarded by the POCSO Act, were notified of these bail hearings. This action stood in contradiction to the provisions outlined in the POCSO Act. In February of 2022, the Indian Supreme Court issued a directive to the government, urging the establishment of nationwide video conferencing facilities tailored for child witnesses, which encompassed victims of trafficking. This directive was prompted by the challenges faced by victims who had to undertake long journeys to engage in court proceedings.

In certain instances, the implementation of measures designed to safeguard victims and offer legal support, including the provision of witness protection, was found to be inadequate. This deficiency resulted in victims opting out of participation in trials. Furthermore, non-governmental organizations reported that numerous cases were prematurely closed by judges

due to the government's failure to furnish sufficient financial aid that would facilitate the victim's involvement in the trial process. There have been various instances where the victims themselves get pigeonholed as criminals, such as individuals engaged in prostitution being apprehended in locations like hotels, brothels, and red-light districts. Unfortunately, law enforcement often overlooks the possibility that these girls might be victims of trafficking, coerced into this grim situation. Instead of recognizing their victimhood, these girls are unjustly categorized as criminals, amplifying their distress. It is imperative that a thorough investigation is conducted before branding them as wrongdoers or initiating any punitive measures, ensuring a clear distinction is made between those who are exploited and those who are offenders.

VI. Recommendations

The need of the hour is to eliminate this crime from society so that women are no longer robbed of their dignity and bodily autonomy at the hands of the traffickers who force them into exploitative situations every day. Prevention of trafficking requires effective policies and programs wherein awareness campaigns, education programs, social and economic initiatives, and training programs can play a very crucial role.

The foremost issue that the government needs to address is Poverty and the widening gap between the rich and poor in society. The rich-poor divide within the country aggravates the situation as it increases the number of perceived poor who are vulnerable to exploitation and abuse and thus trafficking. This situation is further aggravated by the regional disparities in economic development within our country. Still, within the country, there are various regions that are more developed than the others, and this unequal level of development among the various states is one of the major reasons for migration and movement of people especially women in search and better livelihood and employment opportunities in order to support their poor families, thus making them more susceptible to Exploitation. The same is the case with rural areas which lag behind in the development of basic amenities and employment opportunities in respect to city or urban areas. The Government should make sure that there is an equitable distribution of resources throughout all the regions of the country as well as sufficient job opportunities. The government needs to bring in a better set of schemes to tackle the problem of Poverty within the Country.

Further trafficking in India is exclusively understood in the light of prostitution and commercial sexual exploitation. It's time to broaden our view and bring other forms of trafficking under the purview of the criminal justice system. Trafficking under the guise of marriage is also an area

that the law needs to focus on. It is important to work on the demand sides and factors that cause such demands and eliminate the problem from its core. Preventing trafficking under the veil of marriage involves a multi-sectoral approach, therefore proper enforcement of the right to free and compulsory education can prove to be a catalyst in preventing the trafficking of minor girls to a great extent.

There has to be a revision of the existing legal framework in order to ensure sufficient protection of the victims, by amending the ITPA and other relevant laws paying due relevance to the fact that the enacted laws don't prove detrimental to the interests of the victims. The focus should shift from the punishment of the victims – the basic loophole of ITPA towards their rehabilitation. Also, there is an absence of an effective law enforcement system and there is a discriminatory and insensitive attitude towards the victims which further exuberates the crime as due to the insensitive nature of the prevalent system, many women get reluctant to share their experiences of abuse and the administration ends up taking advantage of the situation by refusing, neglecting and hiding the problem. The need of the hour is to have an objective multi-dimensional approach towards combating crime.

There needs to be a comprehensive uniform mechanism for assessing the government's compliance with the minimum standards to eliminate crime and India should Strengthen the bilateral, multi-lateral, and regional agreements to garner better international cooperation and also enter into new ones in order to tackle the problem of women human trafficking.

There should be a stricter enforcement of the law and traffickers should be prosecuted to the full extent of the law while making sure to create a balance between punitive measures and the protection of human rights. The problem of lower conviction rates, delays in prosecution, non-filing of FIR, and high acquittal rate of the offenders needs to be tackled at the earliest to ensure maximum protection for the victims while also restoring their faith in the justice system.

There is also a need for an ongoing research and data bank. Such research will lead to synergies between the government, non-governmental organizations, and various stakeholders to work together and coordinate their efforts to find lasting solutions to the Trafficking Problem, while also keeping abreast of new trends in human trafficking and related crimes. Unless and until the Government exercises enough scrutiny and works towards eradicating this evil with a more robust and comprehensive set of measures, it will be very difficult to free our society from this evil.

VII. Conclusion

In conclusion, the global menace of human trafficking, particularly affecting women and girls, demands urgent and concerted efforts from governments, law enforcement agencies, and society as a whole. This research paper has underscored the transnational nature of this crime, its prevalence in India, the existing legal framework, and the multifaceted challenges hindering effective combat against trafficking. While India has made significant strides in formulating and ratifying international conventions and enacting laws to address human trafficking, there remain critical gaps in implementation and enforcement. The legal framework, exemplified by the Immoral Traffic (Prevention) Act of 1956, requires revaluation and amendment to ensure more comprehensive coverage and stronger deterrence against traffickers. The focus should shift from penalizing victims to prioritizing their rehabilitation, addressing the root causes of trafficking, and fostering international collaboration.

Challenges such as limited resources, the transnational nature of trafficking, and victims' reluctance to testify underscore the need for enhanced cooperation, training, and victim support. Law enforcement agencies must be equipped with the necessary tools and resources to investigate and prosecute traffickers effectively. Moreover, a victim-centric approach, ensuring the protection and empowerment of survivors, is crucial to breaking the cycle of exploitation. To combat human trafficking successfully, there is a pressing need for proactive measures, including poverty alleviation, equitable regional development, and educational initiatives. The research also highlights the importance of a data-driven approach, ongoing research, and international collaboration to stay ahead of evolving trafficking trends.

In essence, eradicating human trafficking requires a holistic, multidimensional strategy that addresses its root causes, strengthens legal frameworks, enhances law enforcement capabilities, and prioritizes the well-being of victims. Only through collective and sustained efforts can societies hope to eliminate this grave violation of human rights and restore the dignity and autonomy of those affected by trafficking.