
HUMAN TRAFFICKING, ITS ISSUES AND CHALLENGES IN INDIA: A STUDY FROM HUMAN RIGHTS PERSPECTIVE

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ABSTRACT

Human trafficking has been in civilization for a very long time. It is a national curse that results in interminable anguish and weakens a person's physical and mental health. Their world does not understand the terms "growth" and "development." They are subjected to a great deal of prejudice and degrading treatment. There is a significant human rights and social justice issue at hand now. The number of people who are victims of human trafficking worldwide is estimated by a recent U.S. government assessment to be as high as 27 million. It is crucial to defend their fundamental human rights, create an environment that fosters their steady development, and shield them from global horrors. Even though there are numerous laws and government initiatives aimed at improving the lives of these people, there are still many obstacles in the way. Therefore, in order to give all of the country's victims of human trafficking a status and to foster their growth and development, it is necessary to create a better understanding of a problem like this. The study examines the numerous challenges faced by trafficking victims in India, many of whom experience intimidation, shame, difficulty in prosecution, and a significant risk of being victimised again in their own nation. The report comes to the conclusion that larger, victim-centered measures are required to support victims and establish a solid foundation for upcoming trafficking cases. Consequently, it seeks to examine the current state of India's anti-human trafficking legislation as well as the problems and obstacles that victims there face.

I. INTRODUCTION

The modern social justice problem of people trafficking is a major violation of human rights. It refers to the trade in people for a variety of reasons, such as sexual exploitation, forced labour, forced prostitution, sexual slavery, etc. In the case of a forced marriage, it may also apply to any spouse, male or female. It constitutes a serious offence against people and a violation of their fundamental rights. By using force or exploiting them for profit in their own country, it prevents citizens from moving freely. As a result, it can happen both domestically and internationally, or transnationally. Trade in people, particularly in women and children, is known as human trafficking. A report issued by the International Labour Organisation (ILO) claims that in 2014, only forced labour generated \$150 billion in profits. While the ILO estimated in 2012 that there were about 21 million victims of modern-day slavery. Out of these 21 million victims, approximately 14 million were used as labour, 4.5 million as sexual slaves, and the remaining 2.2 million were used as forced labourers.

The ILO observed that among all the victims of human trafficking, minorities, migrants, and child workers were all subjected to serious exploitation and all three groups were at a high risk of continuing to be abused.¹

Among the various transnational criminal organisations, human trafficking is thought to be one of the crimes with the fastest growth rates. By a number of international conventions, it is deemed to be a violation of the victims' human rights.²

Both national and international human trafficking might take place. The UN has implemented a number of protocols, including the Trafficking Protocol or Palermo Protocol, to prevent, suppress, and punish human trafficking on a global scale. These protocols focus on women's and children's trafficking in particular. Under the UN Convention against Transnational Organised Crimes (UNTOC), which went into effect on December 23, 2003, the UN carried out this agreement on a global scale.

Smuggling of peoples, on the other hand, entails someone who freely asks or pays someone else to discreetly take them all across an international boundary. This is not the case with human trafficking. It is frequently used since those who are smuggled into the country are unable to

¹ Srivastava R. Bonded Labor in India: Its Incidence and Pattern. Geneva: 2005.

² "The Worst Countries for Human Trafficking". RadioFreeEurope/RadioLiberty.

enter through legitimate means. As a result, once the traveller has entered the nation and reached his or her destination, they are free to navigate themselves. Despite the fact that it may be against the law, there is no coercion or fraud involved.

The International Centre for Migration Policy Development (ICMPD) asserts that people smuggling completely violates the national immigration laws of the country of destination while posing no threat to the rights of the individuals being smuggled. Contrarily, because the victims' fundamental and human rights are violated through compulsion and exploitation, human trafficking is a crime against people.

While smuggling does not require travel, human trafficking does. Coercion and exploitation are used to keep the victims of human trafficking captive against their will. They are made to do labour for others or work for human traffickers. Anything from bonded and forced labour to commercial sexual exploitation is included in the works or services. There is a plan in place for them to work under a work contract, but the terms are often highly exploitative for the victims, with minimal or no pay.³

II. HUMAN TRAFFICKING IN INDIA

Human trafficking is viewed as a serious problem in India. Despite the fact that the nation has a number of anti-human trafficking legislation, the issue still occurs. In this nation, people of all ages are trafficked for a variety of reasons, including prostitution, labour trafficking, and commercial sex demand. In locations where there are a lot of men or when the gender ratio is heavily skewed in favour of men,⁴ women and girls are trafficked within their own nation. While boys and men are specifically targeted for forced labour or labour trafficking.

All of the victims—men, women, children, etc.—are sexually exploited frequently and forced—against their will—to work as escorts, whores, prostitutes, gigolos, massage therapists, etc. A significant portion of the nation's trafficked youngsters are made to work against their will as domestic helpers, factory employees, beggars, factory workers, home staff, etc. Many times, terrorist organisations and insurgent groups across the nation kidnap children and force them to serve as armed combatants.

³ The Reality of Male Sex Trafficking: How our Blind Spots Hinder Equality | India.com

⁴ Trafficking in Persons Report 2008. U.S. Department of State, 4 June 2008

In India, women who have been trafficked themselves are frequently the ones who start the trafficking of young girls into prostitution. When they are adults, they can enlist the help of the other girls by leveraging their social networks and standing in their home towns.

The Immoral Trafficking Prevention Act (ITPA), which stipulates a punishment of seven years to life in prison, is one of the anti-trafficking legislation used by the Indian government to punish human trafficking for commercial sexual exploitation. Other anti-trafficking laws like the Bonded Labour Abolition Act, Child Labour Act, Juvenile Justice Act, etc. are in effect in the nation and forbid forced and bonded labour. Sections 366 (A) and 372 of the Indian Penal Code (IPC) also allow for the arrest of traffickers. These provisions forbid kidnapping and the sale of minors for prostitution and impose a maximum sentence of 10 years in jail and a fine.

The nation's Central Bureau of Investigation (CBI) has also developed a training programme against trafficking. While it was added to its regular curriculum and was directed by Dr. Gilly McKenzie of Interpol's Trafficking and Organised Crime Division. While the State of Maharashtra also created an action plan to combat human trafficking in the nation.

The Ministry of Labour and Employment often publishes several types of adverts in national publications to raise awareness of child labour and human trafficking. For domestic employees who relocate abroad under the guise of being exploited, the government has also started pre-departure education sessions. The government of India has implemented a number of additional steps, such as the introduction of "Emigration Check Required" (ECR) and "Emigration Check Not Required" (ECNR) passports.

The Indian government has unveiled a website dedicated to combating human trafficking in February 2014. It was created as a crucial IT tool for information exchange among all parties, including governments, union territories, civil society, and other key players, in order to implement anti-human trafficking policies successfully.

III. CATEGORIES OF HUMAN TRAFFICKING

Sex Trafficking: Sexual trafficking is the exploitation of migrants and the forcing of them into performing sexual acts as a condition of the traffickers facilitating or arranging their movement. This kind of trafficking frequently employs coercion, power abuse, deception, and bondage acquired through coerced debt, along with physical or mental exploitation.

Often, trafficked women and children are taken to brothels or other locations where they are forced to work as sex workers despite being promised employment in the service or domestic sector. While the traffickers are seizing their passports and other forms of identification.⁵

In significant instances, it has been discovered that the traffickers beat or imprisoned the sex trafficking victims and then offered them freedom in exchange for money from prostitution. The International Labour Organisation (ILO) asserted that 4.5 million persons globally are impacted by sex trafficking. While the majority of victims are placed in abusive or coercive situations from which it is nearly impossible, risky, and difficult to flee.

Labour Trafficking: They resemble indentured servants, which covers all forms of slavery such as serfdom, debt slavery, and labour camps, among others. The International Labour Organisation (ILO) defines forced labour as an involuntary activity or service that is rendered by the victims under threat of punishment, which includes the majority of tasks that fall under this category.

The transfer of workers for the purpose of forced employment or services, including domestic or involuntary servitude,⁶ bonded or child slavery, is known as labour trafficking. Most frequently, it occurs in the fields of agriculture, industry, construction, household chores, entertainment, etc. While indigenous peoples and migrant workers are particularly vulnerable to becoming victims.

It is more frequently established and enforced on migratory workers who have gone far from their homes and arrived in another country solely for financial gain. Since they lack the capacity to inform the appropriate authorities of their plight, they are easily recognised due to their physical, linguistic, cultural, or ethnic differences from the general population.

Child Trafficking: The problem of child trafficking, which is still widespread in our nation, is very difficult. In order to use them as slaves, forced labourers, or other forms of exploitation, children must be recruited, transported, harboured, transferred, or received. Children can be exploited in a variety of ways, such as commercial sexual exploitation, which involves forcing them into prostitution or other types of sexual activities like pornography.

⁵ Trafficking and Prostitution: The growing exploitation of migrant women from Europe. Geneva, International Organization for Migration, 1995.

⁶ Siddharth Kara (2009). Sex Trafficking: Inside the Business of Modern Slavery. Columbia University Press.

According to Article 34 of the UN Convention on the Rights of the Child, State Parties owe it to the child to protect them from all types of sexual exploitation and abuse. The Hague Convention on Protection of Children is an international treaty that addresses international adoption and tries to stop child trafficking, child exploitation, and other wrongdoings associated with it.

Organ Trade Trafficking: Another form of human trafficking is the trade of organs, which can occur in many different ways. In some situations, the victims are compelled to donate their organs, while in others, they agree to sell their organs in exchange for cash or commodities, only to receive little or no payment from the traffickers.

There are several instances where victims' bodily parts are removed without their consent, particularly when the victim is under treatment for another medical condition. In this situation, some people are at extremely high risk of exploitation, such as migrant workers, the illiterate, and the homeless.

Organ trafficking is regarded as an organised crime that involves a variety of criminals, including recruiters, traffickers, buyers, transporters, medical personnel, and middlemen. Kidney trafficking is frequently considered to be the primary body part in the organ trade. Additionally, the fact that there are already very long waiting lists for patients who all require body part transplants while there is a shortage of donors globally makes this a very lucrative industry for human traffickers.

Forced Marriage Trafficking: Because forced marriage violates the victims' autonomy and freedom, the United Nations has designated it a violation of human rights. Every person has the freedom to select their partner and engage into a marriage freely, according to the Universal Declaration of Human Rights (UDHR).

The Roman Catholic Church views forced unions as grounds for annulment, and both parties must freely consent to the union for it to be considered genuine. A forced union may, under certain circumstances, be considered a kind of human trafficking.

For instance, if a woman is taken abroad to be coerced into a marriage and constantly pressured into having sex with her new spouse, her experience would be considered sex trafficking. Another scenario would be labour trafficking, where a bride is treated as a domestic servant by

her in-laws or spouse.⁷

IV. ISSUES AND CHALLENGES OF HUMAN TRAFFICKING IN INDIA

Human trafficking in India presents a diverse array of significant problems and difficulties that must be addressed.

Commercial Demand for Sex: The nature of sex trafficking is viewed by the traffickers as an economic supply, and many abolitionists work to eradicate this nature while outlining the negative effects of a demand model. In this demand model, men solicit a prostitute, which creates a market for sex workers and ultimately encourages sex trafficking, illegal trade, and the coercion of people into the sex industry. While pimps and human traffickers act as distributors and provide a network of women for exploitation through sex. People's desire for sex has always increased, and pimps and traffickers are typically responsible for facilitating this demand. Due to the fact that they do not demand any form of pay, safe working conditions, agency when picking customers, etc., they also use trafficked women as workers and harass them.

Poverty, Globalization and Unemployment: Lack of poverty, educational and economic opportunities may lead women to migrate voluntarily and then they may be compelled into trafficking involuntarily for sex work. As globalization has opened up the national borders for smooth exchange of goods and services, its economic impact has also pushed peoples especially women and children to migrate and be vulnerable to trafficking. Gender inequality also pushes women to migrate towards informal sector which is more hazardous for them. Unemployment, Globalization and Internet Technology as well has facilitated a lot more towards human trafficking. Also long waiting list for the organs in countries like US, UK has created a thriving international black market of human trafficking. Wealthy countries are unable to meet their demand of organs within their own borders thus it perpetuates human trafficking. Globalization has nurtured the new technologies which may aggravate sex trafficking, while technology can also be used for assisting law enforcement and anti-trafficking methods.

Gender Based Discrimination:- In our patriarchal society, it is culturally accepted that sons are seen as superior, in charge, and more helpful to a family than daughters. As a result, girls

⁷ "Forced Marriage and the Many Faces of Human Trafficking". theahafoundation.org.

in this community have little to no access to education, which causes a gender disparity in both literacy rates and potential earnings for men and women. Therefore, bride trafficking, the illegal sale of women for marriage, is becoming more and more common in our nation if there are more men than young women in India. In the rural areas of the northern states of Punjab, Haryana, UP, etc. Bride trafficking is now a common issue in areas where the sex ratio is too high compared to the national average. It has sustained a social framework that prioritises men above women, and because men cannot find wives for themselves, this leads to self-destruction and an increase in the need for human trafficking of women in our nation for marriage.

Other challenges: The extent of human trafficking in India is expanding due to additional institutional and political issues. There are dishonest and poorly trained police personnel who frequently involve or violently mistreat victims of human trafficking, or who treat them as their own property. Migration and human trafficking are structural elements caused by some difficult-to-manage political situations, such as civil war and societal conflict between various groups. According to another survey, human trafficking is more likely to occur in larger nations, the poorest or richest nations, or nations with fewer press freedoms. The third-largest form of organised crime in the world is thought to be human trafficking.⁸

V. HARMFUL EFFECTS OF HUMAN TRAFFICKING TO CIVIL SOCIETY

Impact on Women and Children: The risk of unintended pregnancies, STDs, HIV/AIDS, maternal mortality, and other conditions affects women and girls all the time. They are also impacted by addictions, hazardous medications, and other substances that lead to a decline in physical and mental health. Additionally, they face dangers to their emotional health such as loss of family connections, threats to their social networks, isolation, and a persistent fear of arrest.

Short Term Impact: Human trafficking has a short-term effect on its victims that, psychologically speaking, is equivalent to an illness that threatens their lives. Threats, anxiety, physical or emotional abuse, and other factors frequently expose the victims to severe levels of psychological stress. The main goal of the traffickers is to convert the victim into a slave and use them for their own economic, emotional, verbal, and sexual gain.

⁸ Rao, Smriti and Christina Presenti, *Understanding Human Trafficking Origin: A Cross-Country Empirical Analysis*, vol. 18, no. 2

Short-term victims frequently experience attacks of sadness, numbing or intense stress, fury or hostility, guilt, or self-blame. Therefore, under these kinds of pressures, victims may experience feelings of hopelessness and helplessness that temporarily affect their mental and physical health.

Long Term Impact: All human trafficking victims may experience complex trauma for a very long time or long-term effects on their bodies. For instance, there are several instances of intimate relationship trauma, such as gang rape, forced prostitution, domestic violence, and sexual abuse. According to a paper by psychologists, complex trauma is harder to diagnose because of how long it has been since the event occurred.

The victims frequently endure extreme stress on a daily basis, which has a devastating impact on their healthy development, sense of self-worth, and biological integrity over time. The victims who experience continual exploitation as children frequently display antisocial and sexualized behaviour, hostility, mistrust of authority figures, and complex trauma throughout their entire lives.

VI. MEASURES TO COMBAT HUMAN TRAFFICKING IN INDIA

In the meanwhile, the government needs to restructure its anti-human trafficking strategy. We also need to consider additional structural elements that could help our nation develop a comprehensive anti-trafficking strategy. Nothing in this proposal is exhaustive, but it would include most of the well-effective elements that we all ask for in order to handle human trafficking as a serious crime. Although it is also based on the strategy with regard to human rights norms and standards.

Be Specific Regarding the Scope of Human Trafficking: Before moving on, I believe the most crucial subject that requires thorough inquiry is what really defines a crime of human trafficking and what its dimensions are. We need to do this to clear up any conceptual ambiguity regarding the problem of human trafficking in our nation. Even though the problem has already been identified in a number of protocols, our country's laws don't go into great detail about it.

For example, human trafficking and other forms of forced labour are prohibited by article 23(1) of the Indian Constitution, which only states that any violations of this provision will result in

a criminal offence that will be punished according to the law. Since prostitution is the primary form of human trafficking in India, the majority of the Indian Penal Code's (IPC) provisions relating to this crime concentrate on forced prostitution.

For instance, even though there isn't a particular reference to illegal trafficking of girls and women for forced prostitution, section 366 of the IPC, which discusses kidnapping or abducted women, can also be applied to human traffickers. The government also passed a law known as the "Suppression of Immoral Traffic in Women and Girls Act of 1956 (SITA)," which was amended in 1986 and is now referred to as the Immoral Traffic in Persons (Prevention Act) or PITA Act. Under this law, the protections provided are solely for trafficking in women and girls for the purpose of forced prostitution, completely excluding males.

Because any of the aforementioned groups of people could become victims of human trafficking, I believe that we should stop any restrictions or, in this case, discrimination against men and instead include women, children, men, and transgender people. However, it is absurd that men can also be targeted for this heinous crime while only women can be sexually exploited.

Judiciary Must be Held Responsible: In India, the judiciary functions as an independent, constitutional authority and is seen as the only safeguard against the country's citizens violating our fundamental rights and our human rights laws. The biggest issue with the judiciary, however, is that there aren't enough judges to handle all the cases that come before our courts, which is the fundamental reason why there are so many cases still pending.

As a result, depending on the circumstances, the majority of cases last between 5 and 6 years or between 10 and 12 years. In light of this, it is quite challenging for the investigating authorities to offer protection to the victims or witnesses or to prevent the witness from turning hostile for such a lengthy time. This results in the accused in human trafficking cases being exonerated, and as time goes on, it becomes increasingly difficult for the prosecution to gather victim and witness testimony against the accused traffickers due to the court's inability to quickly resolve human trafficking cases.

In the meanwhile, the traffickers might alter their names, addresses, identities, etc. and carry on with their human trafficking by abusing further victims in a different location while using their new identities. Therefore, it becomes difficult for the police to find the offenders once

more and bring them in for the trials. Therefore, it is imperative that vacant positions in our judicial system be filled quickly to ensure that it can function properly. We should also establish fast-track courts in each district, specifically for cases involving human trafficking, where proceedings will take place on a daily basis with the goal of reducing the backlog of such cases.

Must be Conviction of Traffickers to Deter Others: The alleged human traffickers must be found guilty in order to set an example for other traffickers and to prevent them from abusing any other victims; otherwise, they risk receiving draconian sentences. Additionally, the prosecution of all alleged human traffickers should be based on sufficient criminal provisions, which means that alleged traffickers should be punished rather than the victim who is being trafficked.

Any legal gaps that prevent a conviction from being made more likely should be covered by proper criminal measures. In our IPC, there is an example of several legal flaws that allow traffickers to use the legal system as a shield from punishment for the purported crime.

However, the IPC also has a number of strict provisions pertaining to the punishment of those who traffic in girls for the purpose of the sex trade. For instance, the domestic traffickers who move the females who have been sold into prostitution within our country are subject to punishment under section 366 (A) of the IPC. In contrast, importing an Indian woman under the age of 21 for prostitution is punishable under section 366 (B). However, neither of these provisions is strictly enforced because it is necessary to demonstrate that the girls were lured or brought into the house for illicit sexual activity. There is a significant gap in this provision since it allows for the possibility that a girl under the age of 18 may be forced into prostitution or forced to remain in the sex market. In this case, the initial trafficker would not have violated the law.

Adopt Various Anti Trafficking Initiatives: In order to address the issue of human trafficking in our nation, we currently need to change any anti-human measures that have already been implemented or adopt new strategies. Examples include criminal justice system reform, police reform, or the professionalism of police officers while looking into human trafficking in India.

At the district level, under the proper authorities, several anti-trafficking awareness

programmes and fundraising initiatives must be launched.⁹ Considering that they are crucial to efforts to combat trafficking.³³ An anti-trafficking programme called "The 24 Hour Race" is one such example from Asia. Its sole goal is to raise the level of anti-trafficking awareness among high school students in Asia.

The main factor that encourages human trafficking is police corruption, which results in a dispute between government representatives and NGOs and, ultimately, a debate between them. According to the UN Special Rapporteur on Violence Against Women, it is acknowledged that police corruption is a contributing factor to the problem of human trafficking, which is being consistently raised as a terrible issue by many women's groups and those who have been trafficked.

Accept the Human Rights Principles:- Ratifying international human rights conventions or treaties proposed by the United Nations or any other reputable domestic organisation is the most practical and sincere step India can take to combat human trafficking. The fact that our national laws do not follow the framework of international human rights is a serious issue that needs to be addressed. In other words, we lack a strong normative foundation for human rights to fight against human trafficking.

As an illustration, in 1993, India joined the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which establishes a framework for non-discriminatory actions against the trafficking of women and girls for prostitution in India. According to its article 6, India must use all necessary measures, including law, to end all forms of trafficking. Even so, after ratification, India expressed reservations about certain provisions that would have allowed discrimination in our country's cultural and customary practises.

Numerous international human rights organisations then questioned the impact of CEDAW on gender inequality in India based on this reservation regarding gender discrimination and the private sphere in marriage. For instance, if Indian law is incompatible with the CEDAW, its infringement cannot be contested in accordance with this convention's general principle. As a result, there is passive inaction about the violation of paragraphs 5 and 16 of CEDAW while

⁹ "Responsible Public Awareness Campaigns for Human Trafficking". Laboratory to Combat Human Trafficking.

implementing these reservations. Additionally, it is detrimental to the parties involved in the contract as well as the objectives of CEDAW.

Therefore, we are all concerned about the fight against human trafficking and other violations of human rights. Therefore, everyone who is concerned about human rights violations and the human trafficking process must band together on a global scale and work actively to combat this threat.

VII. CONCLUSION

It is essential to confront the problem of human trafficking in India in its entirety. To address the problem of human trafficking in our nation, a comprehensive plan is needed. As part of the efforts, it should be ensured that all victims of human trafficking go through a process of rehabilitation and reintegration, and that this process is carried out on a massive scale. If not, we would fail strategically in our attempt to handle the problem and it would not be resolved in the long run.

The fundamental idea of eliminating this problem, in my opinion, won't be successful unless various developed or developing nations, as well as other material actors, make steadfast commitments to addressing the negative effects of human trafficking on the victims.

This cycle must therefore be followed at every point, from prevention to recruiting, rescue to reintegration, or the provision of transportation for bonded labour. Therefore, without our collective intervention, the anti-trafficking campaigns will not be able to significantly impact the victims of human trafficking, and the exploitation of their human rights will continue.