
HUMAN TRAFFICKING: AN ALARMING AND TRAGIC CRIME IN INDIA

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ABSTRACT

Human trafficking is a multifaceted issue which requires a multidisciplinary approach. Human trafficking is a trade carried upon human beings. The offender's traffic human beings, exploit them in various forms for financial earnings. Human trafficking violates many human rights of the victims. It can happen anywhere, as long as the environment contains vulnerable conditions. Human trafficking varies from country to country, but it usually preys on vulnerable situations. People in vulnerable and precarious situations are looking for a way out and in their desperation can fall prey to human traffickers. Trafficking is a complex phenomenon that is often driven or influenced by social, economic, cultural and other factors. Every year, thousands of men, women and children fall into the hands of traffickers, in their own countries and abroad as well. The root causes or vulnerability factors of trafficking such as structural inequality, culturally sanctioned practices, poverty or economic insecurity, organ trade, bonded labour, gender violence, which are further exacerbated by corruption, have remained unrecognized in academic and policy areas.

Keywords: Trafficking, Human Trafficking, Human Rights, Traffickers, Vulnerable, Structural, Inequality, Poverty, Insecurity.

INTRODUCTION

Human trafficking is a serious human right as well as a contemporary social justice issue. It is the trade of human beings for various purposes like sexual exploitation, forced labour, forced prostitution, sexual slavery, etc. It is a serious crime against the human being and a violation of their fundamental or basic human rights. It inhibits the free movement of the citizens through commercial exploitation in their own country. Thus, it can occur within a country or even out of the country i.e. transnationally.

Human trafficking is a trade among all the peoples especially in children and women. According to a report released by the International Labour Organisation (ILO), an amount of \$150 billion in profits was generated by only through forced labour in 2014. While in 2012, it was estimated by the ILO that around 21 million victims were trapped in modern day slavery. Out of these 21 million victims, around 14 million were exploited for labour, 4.5 million were exploited sexually and rest of the 2.2 million victims were exploited in the forced labour. Among all the victims of human trafficking, the International Labour Organization (ILO) reported that the child laborers, minorities and migrants were exploited in the extreme nature and they all were at the considerable risk of more and more exploitation. Even the data shows that more than half of the world's 215 million workers are engaged in various hazardous sectors which also included forced sexually exploited and street begging workers. Various ethnic and highly marginalized groups were estimated to be engaged in the most hazardous and exploitative nature of the industries like mining, stone quarrying, tanning, etc. Human trafficking requires travelling while smuggling does not requires it. The victims of human trafficking are held against their own will through the act of coercion and exploitation. They are forced to work for others or provide the services to the traffickers.

WHAT IS HUMAN TRAFFICKING?

Human trafficking is the trade of humans for the purpose of forced labour, sexual slavery, or commercial sexual exploitation. Human trafficking can occur within a country or trans-nationally. It is distinct from people smuggling, which is characterized by the consent of the person being smuggled. Human trafficking is condemned as a violation of human rights but legal protection varies globally.

BACKGROUND OF THE STUDY

Getting an idea of what exactly HUMAN TRAFICKING is demands a lot of perspective. This is because every case and situation of human trafficking is unique in its own course. To substantiate this, in a general case of human trafficking it is seen that a person (who later on becomes the victim) is taken from their village or town or city to another place, based on false promises of employment in a promising sector (commonly domestic help or labourer) with a handsome pay. Now this pay is made to look more than what this person gets in her own region. Such lucrative deals are the base or the main reasons for trafficking to start off in a region in the first place. Nevertheless when they arrive at the destination, what welcomes them is a shock of reality. They either never get the job that they were promised in the first place. The pay that they were promised is below their imagination. And from thereon, the situation starts deteriorating. In many cases it is unacceptable. They are handed over to placement agencies where they are further sent to different houses as domestic help and to different industries for different kind of small scale labour jobs. Initially if we see this situation is that of human smuggling. But since the recruiter makes misleading promises, this case is moulded into the shape of human trafficking. In transnational trafficking, it is commonly seen that those people who are taken away from their home country in the pretext of being given good jobs, their passports are taken away from them. There is no escape for these victims. They are held as hostages are drowned in huge debts which can cost them their lives, if they ever tried to escape. Therefore whilst giving a global perspective to Human Trafficking calls for understanding the concept of it as well as educating civilians as to how they must recognize and respond and tackle the traffickers and trafficking happening in their communities and 6 periphery. It is very important even for students of social sciences to open their eyes and broaden their perspectives and vision about human trafficking in a global arena. Identifying these intricate details of the dynamics of human trafficking is much more important than just haphazardly going forward with new laws and policies or whatsoever.

HUMAN TRAFFICKING IN INDIA

In India, human trafficking is considered as a major challenging issue. Though, there are several anti-human trafficking laws which exists in the country but it remains a quintessential problem. Men, women, children are trafficked in the country for different purposes like commercial demand

for sex, labour trafficking, prostitution, etc. Women and girls are trafficked within their own country in those areas where there are large of men or the sex ratio is highly biased in favour of men. While men and boys are trafficked especially for bonded labour or labour trafficking. All the victims including men, women, children, etc. are sexually exploited many a times and are coerced to work as escorts, whores, prostitute, gigolos, massage experts etc. against their will. A large part of trafficked children in the country are forced to work as child labourers, domestic servants, factory workers, beggars, household servants, etc. while infringing their fundamental and basic human rights. Many a times children are kidnapped across the country and are forced to work as armed combatants by various terrorist organisations and insurgent groups. In India, trafficking of young girls into the prostitution in the country are often being initiated by the women who have been trafficked themselves. While as adults, they are capable to use their personal relationships and trust in their villages of origin to recruit the additional girls. The Government of India penalizes the human trafficking for commercial sexual exploitation through various anti-trafficking laws like Immoral Trafficking Prevention Act (ITPA), in which there is a prescribed penalty of seven years to the life imprisonment. There are various other anti-trafficking acts which are being implemented in the country and prohibits the forced and bonded labour like Bonded Labour Abolition Act, Child Labour Act, Juvenile Justice Act, etc. The Indian Penal Code (IPC) also provides sections 366 (A) and 372 to arrest traffickers and these provisions prohibits kidnapping and the selling off minors into prostitution and also prescribes a maximum penalty of ten years' imprisonment along with a fine. An anti-trafficking training program was also introduced by the Central Bureau of Investigation (CBI) of the country. While it was led by Dr. Gilly McKenzie of Interpol Trafficking and Organised Crime Division and it was added into its standard curriculum. While an action plan was also developed by the State of Maharashtra to combat the human trafficking in the country. The Ministry of Labour and Employment publishes various types of advertisements against child labour and human trafficking in the national newspapers at regular intervals. The government has also initiated a pre departure information session for the domestic workers who migrate to some country on the pretext of exploitation. Various other measures which are instituted by the Government of India includes 'Emigration Check Required' (ECR) and 'Emigration Check Not Required' (ECNR) passports. On February 2014, the Government of India also launched an anti-human trafficking web portal. It was launched to serve as an important IT tool for sharing of all

kinds of information across all the stakeholders, states, union territories, civil societies, etc. for the effective implementation of anti-human trafficking measures.

RESEARCH OBJECTIVES:-

The following are some objectives of the Article: –

- ☐ To study about human trafficking in India.
- ☐ To study about the laws for human trafficking in India .
- ☐ To analyze whether the laws for human trafficking in India are properly implemented.
- ☐ To study about the international conventions to prevent conventions.

RESEARCH METHODOLOGY:-

This study is doctrinal in nature. The researcher has used secondary sources. These include books, articles, newspaper articles, web sources and others. For the present paper census and crime data have been analysed. The systematic approach has been adopted for analysis. Both qualitative and quantitative methods have been applied for the data analysis.

CATEGORIES OF HUMAN TRAFFICKING

1. Sex Trafficking:

Sexual trafficking include sexploitation and coercion of a migrant into a sexual act as a precondition for them by the traffickers for allowing or arranging their migration. This type of trafficking often uses physical or mental exploitation and coercion, abuse of power, deception and bondage incurred through the forced debt.

A lot of times, trafficked women and children are being promised to work under service or domestic industry but instead of it, they are taken to brothels or somewhere else where they are required to work as a sex worker. While their passports and other identification documents are being confiscated by the traffickers. In major cases, it has been found out that the victims of sex

trafficking have been beaten or locked up by the traffickers and they were promised their freedom only if they earn through prostitution. It was claimed by the International Labour Organisation (ILO) that around 4.5 million people are affected through sex trafficking in a worldwide. While most of the victims find themselves in a coercive or abusive circumstances and from which escapement is like impossible, difficult as well as dangerous.

2. Labour Trafficking:

They are like unfree labourers which includes all kinds of slavery like debt slavery, serfdom, labour camps, etc. Most of the works are covered under the forced labour and the International Labour Organization (ILO) also defines it as an involuntarily work or service which is performed by the victims under the menace of a penalty.

Labour trafficking is a movement of the workers for the purpose of forced labour or services which involves bonded or child labour, domestic or involuntary servitude. Most of the time, it happens in the domain of agriculture, manufacturing, construction, domestic work, entertainment, etc. While migrant workers and indigenous peoples are especially at the risk of becoming victims. It is more often instituted and enforced on the migrant workers who have travelled long from their houses and came to another country just for earning money. They are easily identified because of their physical, linguistic, cultural or ethnic differences from the common population since they are not capable enough to complain about pathetic situation to the appropriate authorities.

3. Child Trafficking:

Child Trafficking is a major challenge and it is still prevalent in our country. It is defined as the recruitment, transportation, harboring, transfer or receipt of the children for the purpose of slavery, forced labour or exploitation. Exploitation of the child can take many forms like commercial sexual exploitation which includes forcing a child into prostitution or any other kind sexual activity like pornography. According to an estimation released by the International Labour Organisation (ILO), around 1.2 million children are trafficked every year. In 2012, The United Nations Office on Drugs and Crime (UNODC), reported that the percentage of child victims had risen from 20 to 27 percent in a 3 year gap. It was also reported that every year around 3 lakh children are being taken all over the world and sold by the traffickers as slaves.

Article 34 of The United Nations Convention on the Rights of the Child states that State Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. The Hague Convention on Protection of Children is an international convention which deals with international adoption and it aims to prevent child laundering, trafficking and various other abuses which are related to international adoption.

4. Organ Trade Trafficking:

Trade in organs is another kind of human trafficking and it can take place in various forms. There are some cases in which the victims are being forced to give up their organs while in some other cases, the victims agree to sell off their organs in exchange of money or goods but they are not paid at all or paid very less by the traffickers. There are various cases in which the body parts of the victims are being removed without their knowledge especially when the victim is being treated for any other medical ailment. In this case, some people are at extreme vulnerable risk like migrant workers, illiterate or homeless persons and they are especially targeted for the exploitation.

Trade of Organs in human trafficking is considered as an organized crime and involves several kinds of offenders like recruiters, traffickers, buyers, transporters, medical staffs, middlemen, etc. Trafficking of kidneys are often thought to be the main body parts in the organ trade. Also it is a very profitable business for the human traffickers to involve in this because there are already very long waiting lists for patients who all need transplants of the body parts while there is a lack of donors at the world level.

5. Forced Marriage Trafficking:

The United Nations termed forced marriage as an abuse of human rights because it is violating the freedom and autonomy of the victims. According to Universal Declaration of Human Rights (UDHR), it is a central point of their life and dignity that every person has a right to choose their spouse and to enter freely into a marriage.

The Roman Catholic Church considers the forced marriage as a ground for granting an annulment and for the valid marriage, both the parties should consent for the marriage freely. In various situations, a forced marriage qualifies as a form of human trafficking. For instance, if a woman is

being forced to marry someone and sent to abroad and if continuously she is being compelled to engage in sexual activities with her new husband, then her experience would be amount to sex trafficking. In another case, if a bride is being treated as a domestic servant by her in laws or husband, then it would be amount to the labour trafficking.

CAUSES OF TRAFFICKING

Some of the causes or reasons for human trafficking are described below:-

1. Poverty

Trafficking thrives at places where there is widespread poverty. Parents sell their kids because poverty leaves them with no other option often thinking that selling their children will take them to places that are much better and where their lives will improve.

2. Social factors

One of the most vulnerable sections of the society that are more prone to trafficking are young women, and this is because in most societies both socially and culturally women are de-valued and unwanted and as such they are more vulnerable to the practice of trafficking.

3. Migration

The desire to migrate from places where their lives are miserable makes individuals open to approaches from traffickers who in the initial stages lure them with promises of better lives, but once the victims are under their control, coercive measures are enforced to bend them.

4. Other factors

Other causes are porous nature of borders, corrupt government officials, the involvement of international organized criminal groups or networks and the limited capacity of or commitment by immigration and law enforcement officers to control borders.

LITERATURE REVIEW

1. The condition of Indian Women who are the most vulnerable target of human trafficking. The author of this article has discussed the contemporary theories and literatures. The author has found that human trafficking is not a single issue but rooted with multiple aspects.
2. The author in this article has also argues that the significance should be given to the underlying root causes and modes of Human Trafficking in India. It has addressed preventive measures in this article to deal with the problem.
3. Friebel and Guriev (2004) believe that incidences of trafficking has shot up due to the incentives put forward by the traffickers to the vulnerable section of the society. They have limited access to credit sources forces them to remain within the boundations of those who lend money to them for supporting their families. This also applies to those who are illegally immigrated to one place from another.
4. Basu and Chau (2004) asserted that debt creates a bondage situation where people are forced to stay as proletariats under the exploitation of the money lenders. Generally it is seen that children are made to offer their labour as service for such bondages. And this vicious cycle of debt and bondage labour among children is a never ending process. This is seen to get passed from one generation to another which eventually contributes to labour based trafficking. Therefore, assessment of trade permits and endorsements must be made mandatory as policy measure to combat bonded labour.
5. Richards (2004) analyses the mutual connection between corruption and trafficking and how they feed each other at every level. This connection has two sides to itself, one where it heightens the danger faced by those who get trafficked. The other side is, it makes trafficking smooth, as a process to function without interruptions and any hurdles. This is substantiated by the way the allocated resources are utilized for this process. Nothing but corruption helps it to grow.
6. Most of the literature which is accessible to public was widely based on the outcomes of

research studies conducted, newspaper articles, minutes of conferences and workshops that are held pertaining to human trafficking. These conferences and workshops are generally organised by national and international NGOs and government bodies.

RESEARCH GAPS

The analysis on human trafficking in persons suggests that the dominant anti-trafficking discourse is not evidence-based but grounded in the construction of particular mythology of trafficking despite the increased interest in human trafficking, little systematic research has been done on this issue. The body of empirical research on human trafficking is particularly limited. Much of public resources for combating human trafficking has been earmarked almost exclusively for provision of services to trafficked persons and technical assistance to service providers assisting them. Media campaigns have also raised public awareness and concern for the trafficked victims. However, these activities have taken place without a clear idea of the extent of the problem or a uniformed methodology for determining the scope of the issue. Assistance to victims has been provided without the benefit of empirical research aimed to identify their service needs or evaluate rehabilitation programs implemented to integrate survivors of human trafficking into the wider society and prevent repeat victimization.

ANALYSIS AND DISCUSSION

LEGAL FRAMEWORKS TO COUNTER HUMAN TRAFFICKING IN INDIA

There are many steps taken by government by making laws and amendments for countering of human trafficking in India.

The Indian Penal Code, 1860

Interestingly the Indian Penal Code which came into existence in 1860 addresses the problem of human trafficking in human beings. It is addressed in Section 370 and 370 A of the Indian Penal Code. It prohibited trafficking of women and girls and prescribed ruthless punishments for the criminals. It lays down that anyone who buys or sells the person under the age of 18 years for the purpose of prostitution and for sexual exploitation and for other immoral purposes shall be liable

to imprisonment for up to 10 years and also be liable to fine. It also recognizes cross border trafficking into prostitution and whoever imports into India from any country outside India any girl under the age of twenty one years with the intent that she maybe, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

The Constitution of India

The Indian Constitution of India prohibits trafficking in persons and guarantees many of the internationally acknowledged various human rights norms such as the right to life and personal liberty, the right to equality, right to freedom, the right to constitutional remedies. The right to be free from exploitation is also assured as one of the fundamental rights of any person living in India.

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

According to this Act there is no difference between a minor and a child. All the persons under the age of eighteen years are considered children. A child who is a child in need of care and protection (NATIONAL LEGAL RESEARCH DESK 2016). The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 many victims of trafficking belong to marginalized groups. Traffickers target only such area which is backward in social and literacy sense. This gives an additional tool to safeguard women and young girls belonging to scheduled Caste and scheduled Tribes and also to create a greater burden on the trafficker or offender to prove his lack of connivance in the matter. If the offender has the knowledge that victim belongs to these communities then this act can be effectively used to counter the offence of trafficking. Section 3 of this act deals with atrocities committed against people belonging to Scheduled Caste and Scheduled Tribes. It covers some forms of trafficking such as forced or bonded labors and sexual exploitation of women. A minimum punishment of ix months is provided which may extend to five years if the offence is covered under section 3.

The Immoral Traffic Prevention Act, 1986

The government of India ratified the International Convention for the Suppression of Immoral Traffic in persons and the exploitation of the Prostitution of others in 1950. As a consequence of

this ratification of the convention the Government of India passed the Suppression of Immoral Traffic in Women and Girls Act (SITA) in the year 1956. In the year 1986 the act was further amended and changed which was known as the Immoral Traffic Prevention Act, 1986 (PITA).

This is an interesting law because according to its preamble the purpose of this Act is to give effect to the Trafficking Convention and to prohibit the immoral human trafficking. This act deals with trafficking and it has its objective as to abolish traffic in women and girls for the purpose of sexual exploitation.

The offences included are taking persons for prostitution, detaining persons in premises where prostitution is carried on, seducing or soliciting for prostitution, making life on the earnings of prostitution, seduction of a person in custody, keeping a brothel or allowing premises to be used as a brothel, prohibits employment of children in certain conditions of work of children. The Immoral Traffic (Prevention) Amendment Bill, 2006 also focuses on trafficking which is done for the purpose for sexual exploitation. So there is no proper domestic legislation in India which combats all forms of human trafficking.

SIGNIFICANT CASE LAWS

Landmark judgments against human trafficking in India

□ People's Union for Democratic Rights v. Union of India, (1982) 3 SCC 235

In this judgment, the honourable Supreme Court defined forced labour, while discussing the scope of Article 23 of the Constitution of India, stated:

The word **force** must therefore be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage.

□ Bachpan Bachao Andolan Vs Union of India 2011 SCC (5) 1

In this case, the solicitor general of India submitted that an officer who is responsible for the

implementation of laws relating to children shall be appointment by each state government. It was held that no child shall be deprived of his fundamental rights guaranteed under Constitution of India and bring to child traffic and abuse.

□ **Budhadev Karmaskar v. State of West Bengal, (2011) 11 SCC 538**

In this judgment the Supreme Court appointed a panel to monitor and suggest rehabilitation scheme for trafficked sex workers and trafficked victims. While dismissing the appeal by the accused in a case of a brutal murder of a sex worker, the Supreme Court stated: We strongly feel that the Central and the State Governments through Social Welfare Boards should prepare schemes for rehabilitation all over the country for physically and sexually abused women commonly known as prostitutes as we are of the view that the prostitutes also have a right to live with dignity under Article 21 of the Constitution of India since they are also human beings and their problems also need to be addressed.

As already observed by us, a woman is compelled to indulge in prostitution not for pleasure but because of abject poverty. If such a woman is granted opportunity to avail some technical or vocational training, she would be able to earn her livelihood by such vocational training and skill instead of by selling her body.

Hence, we direct the Central and the State Governments to prepare schemes for giving technical/vocational training to sex workers and sexually abused women in all cities in India. The schemes should mention in detail who will give the technical/vocational training and in what manner they can be rehabilitated and settled by offering them employment.'

□ **M C Mehta Vs State Of Tamil Nadu 1996 6 (SCC) 756**

In this Public Interest Litigation, the Supreme Court laid down measures that should be taken to support victims of child labour and their families. The Supreme Court stated:

'We are of the view that the offending employer must be asked to pay compensation for every child employed in contravention of the provisions of the Act a sum of Rs 20,000; and the Inspectors,

whose appointment is visualized by Section 17 to secure compliance with the provisions of the Act, should do this job.

The Inspectors appointed under Section 17 would see that for each child employed in violation of the provisions of the Act, the employer concerned pays Rs 20,000 which sum could be deposited in a fund to be known as Child Labour Rehabilitation-cum-Welfare Fund.

The liability of the employer would not cease even if he would desire to disengage the child presently employed. It would perhaps be appropriate to have such a fund district wise or area wise. The fund so generated shall form corpus whose income shall be used only for the child concerned. The quantum could be the income earned on the corpus deposited qua the child. To generate greater income, fund can be deposited in high-yielding scheme of any nationalised bank or other public body.

CONCLUSION

The laws for human trafficking must be strengthened that it meets all the requirements for preventing human trafficking. People who are in poverty line across the country must be made aware about human trafficking and its consequences in order to prevent them from becoming victims.

Many national and international seminars and conferences can be conducted across the country so that the general people and the government can join hands to prevent human trafficking. The vulnerable sections of the society must be protected by the Government so that they don't fall as victims to human trafficking.

The victims of the human trafficking are only the persons from below poverty line so the offence of human trafficking can be greatly prevented if the Government helps the poor sections of the society and provides them with adequate education and employment. Human trafficking jeopardizes the dignity and security of trafficked individuals, and severely violates their human rights.

Constitutions of India guarantee the equal rights of men and women, but they are often merely

rhetoric when it comes to the question of practical implementation. In order to combat trafficking and thus to protect the human rights of the vulnerable people, strong political will of the government is vital in implementing their anti-trafficking mandates.

Thus, we can say any crime which can be used as business one day becomes a big social evil as in the case of human trafficking. The problem is still in our hands to be solved if the strong steps are taken deliberately and policies are made and implemented strictly. If timely steps are not taken then in very short time, it will remain late but too late.

SCOPE FOR FUTURE RESEARCH

Despite multiple attempts to criminalize Human Trafficking related offenses, the number of such cases remains high. To address this issue, we need to consider revising laws and the government's approach. Here are *some suggestions*:

- The government need to re organize their anti-human trafficking policy in this mean time, we need to think about some more structural factors which effectively can build up a nationwide anti-trafficking plan in our country. Also nothing is exhaustive here nonetheless, the plan would be comprised of most of the well effective factors which we all ask for a better criminal justice framework to address human trafficking as a serious crime. While it is also based upon the approach with respect to human rights norms and standards.
- The domestic legislation for combating human trafficking in India must be strengthened that it must combat all forms of human trafficking.
- The National Human Rights Commission must conduct extensive research throughout the country and should contribute towards the implementation of an effective law for human trafficking. The rights of women and children guaranteed by the constitution must be ensured to women.
- The migration aspects from one country to another must be strengthened in order to prevent transnational organized crime of human trafficking.

- ☐ Many more rehabilitation centres must be established for the welfare of the victims.
- ☐ Not alone women and children also men must be given with adequate means of education and employment which would greatly contribute for preventing human trafficking.

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