

SHORT COMMENTS: HUMAN TRAFFICKING AND ITS LEGAL STATUS IN INDIA

Priyanka*

I am writing short comments on Human Trafficking and its legal status in India. Human trafficking is one of the main problems in India. Human trafficking is the third largest gangland in violation of basic human rights.¹

I believe that this issue should also be conceivable one in this present era. Here, I am analyzing the existing and proposed regulations (legislation, policy, and so on) on this issue, including present status in Parliament, salient features, and important gaps. Also, in this piece of work, I would like to discuss the present development in Bihar regarding Human Trafficking.

While analyzing the issue, I found that there is no specific law to affect this crime yet. During this context, we first got to know what's the term "human trafficking" and to develop a deeper understanding of those points, which are the legal provisions in our country.

According to the Oxford Dictionary of English language - the word "smuggling or trafficking" means a kind of deal or trade, which is against the law, like trafficking of narcotics, smuggling of arms, or illegal trafficking of citizens from one place to another. Therefore, this idea of trafficking refers to humans as 'a criminal practice of exploitation of humans', during which they're used as an object of profit and that they are exploited for an extended time after smuggling.²

It is unfortunate that till now there's no legal definition of 'human trafficking' at the national level. But Article 23 (1) of the Indian Constitution has been declared illegal and prohibited. It states that human trafficking and made labour and other similar forced labour are prohibited and any violation of this provision is going to be an offense punishable by law. The exception to Article 23 (1) in Article 23 (2) provides that nothing during this Article shall prevent the

* Advocate @ Civil Court Bettiah (Bihar), Contact: +91-9304121669

¹ 18 Million- Women and Children are involved in Sexual slavery in India.

200000- Women and Children are forced into prostitution through threats and coercion each year.

6500 Children- Below the age of 16 are trafficked each year. Some of them are as young as 5ys.

90% Trafficking- In India happens inter-state. Only 10% of trafficking is international. Available at: PRAJWALA: <https://www.prajwalaindia.com/index.html> (Accessed on: 08.10.2020)

² Gonsalves, Colin (June 2006): *Trafficking & The Law*, New Delhi: Human Rights Law Network, p3. Available at: <https://hrln.org/publication/trafficking-and-the-law> (Accessed on: 08.10.2020)

State from imposing compulsory service for public purposes. In imposing such service, the state won't make any distinction on the idea of faith, descent, caste or class or any of them.

Also, Article 39 (e) and Article 39 (f) there are associated with the vulnerable section of the society. The above-mentioned articles fall under Part Three (Fundamental Rights) and Part Four (Directive Elements of State Policy) respectively of the Indian Constitution, during which the difficulty of human trafficking has been accepted very closely.

It is known that while the elemental rights are directly justifiable and enforceable by the court, this is often not the case with the Directive element of state policy. However, they play a crucial role in shaping the policies of the state and providing the idea for legislation. Article 23, which is described partially 3 of the Constitution, prohibits trafficking and made the labor of citizens. Article 39 (e) and (f), which is described partially 4 of the Constitution, emphasizes the misuse of the health and power of workers.

India became a signatory nation of the International Convention for the Prevention of Immoral Traffic on 9 May 1950, also as India developed a selected act called the Immoral Traffic Prevention Act, 1956 (ITP Act) against trafficking. Even during this Act, the definition of trafficking is unclear and it only mentioned the commercial sexual exploitation of girls and youngsters.

It is the sole act specifically associated with human trafficking. A number of the key elements of human trafficking are incorporated by this Act. These include the acquisition of citizens, inducing or taking an individual for prostitution, detaining an individual on the premises where a lady is being taken for prostitution, and being implicated.

The Act provides for rescue on the difficulty of rescue and rehabilitation, on the instructions of a magistrate. Also, consistent with this act, to save lots of the rescued women from harassment, two female cops should be present during the search process. And at an equivalent time, a lady officer also has the proper to inquire during this order.

Additionally, under sections 15 and 16 of the Act, there's a provision to stay women and youngsters rescued from human trafficking in safe places far away from the reach of individuals who may adversely and adversely affect them. The Immoral Traffic Prevention Act (ITPA), 1956 also has many flaws, that the Immoral Traffic Prevention Amendment Bill,

2006 was brought.³

Although, there are various provisions in Indian laws to punish the trafficking of persons, all of them lack a comprehensive definition.

Apart from all of the above mentioned legislations, recently the Union Cabinet approved the Trafficking of Persons (Prevention, Protection, and Rehabilitation) Bill, 2018

The proposed bill provides for all times imprisonment for people convicted of human trafficking from 10 years to a minimum of 1 lakh rupees. There's a provision for quick protection and rehabilitation of the rescued people.

The Union Cabinet has approved the introduction of the Trafficking in Persons (Prevention, Protection, and Rehabilitation) Bill, 2018 on 28 February 2018. The bill was chaired by Prime Minister Narendra Modi.

*Salient features of this bill:*⁴

1. The bill provides solutions to the trafficking problem in terms of prevention, rescue, and rehabilitation,
2. Serious forms of trafficking include forced labour, begging, giving a person a chemical substance or hormone for premature sexual maturity, trafficking under marriage or deceit of marriage, or the trafficking of women and children after marriage,
3. To obtain clearance and necessary documents from stickers and government agencies as evidence of registration, registration, or compliance of government requirements for creating, printing, issuing, or distributing forged certificates to promote the trafficking of persons and assist in trafficking there is a provision of punishment for the person committing forgery,
4. This bill, keeping confidentiality by not revealing the identity of victims, witnesses, and complainants. Confidentiality of the victim is recorded by recording his statement through video conferencing,

³ Available at: <https://wcd.nic.in/act/2316> (Accessed on: 08.10.2020)

⁴ JAGRAN JOSH, 1 March (2018), Available at: <https://www.jagranjosh.com/current-affairs/cabinet-approves-the-trafficking-of-persons-prevention-protection-and-rehabilitation-bill-2018-in-hindi-1519883332-2> (Accessed on: 08.10.2020)

5. There is a provision for speedy protection and rehabilitation of the rescued people. For dealing with physical, mental trauma, the victim is entitled to interim assistance within 30 days and appropriate relief will be provided within 60 days from the date of filing of the indictment.
6. For the first time, a rehabilitation fund was created, in which it would be used for the physical, psychological, and social care of the victim. This includes his education, skill development, health care, psychological support, legal aid, and safe residence, etc.
7. Special courts will be arranged in each district for speedy trial of cases.
8. The bill creates a dedicated institutional structure at the district, state, and central levels. It will be responsible for trafficking prevention, security investigation, and rehabilitation work. The National Investigation Agency (NIA) will undertake an anti-trafficking bureau at the national level under the Ministry of Home Affairs.
9. The proposed bill provides for life imprisonment for people convicted of human trafficking from 10 years to a minimum of one lakh rupees.
10. There is a provision for attachment of property and confiscation of money received from crime to break up organized alliances at the national and international levels.
11. The purpose of this bill is to tackle the problem of child labour, child abuse, organ trade, child use in war and internal disturbances, illegal adoption, and to prohibit any form of slavery, purchase of women, drug abuse, etc.

*An analysis of these bills:*⁵

This bill is incomplete in the sense that it does not cover all the scope of human trafficking. The Criminal Law (Amendment) Act, 2013 amended sections 370 and 370-A of two new sections under the Indian Penal Code, 1860 to deal with human trafficking, where section 370 deals with all types of misdemeanour crimes or trafficking of a person, which can be

⁵ S, Aatif 23, *Law Against Human Trafficking In India: A Critical Analysis*, Available at <http://www.legalserviceindia.com/legal/article-2150-laws-against-human-trafficking-in-india-a-critical-analysis.html#:~:text=Under%20the%20Indian%20Constitution%20the,has%20been%20dealt%20with%20specifically.&text=As%20per%20Article%2023%20which,workers%20should%20not%20be%20abused> (Accessed on: 08.10.2020)

understood from the Explanatory section of this section. Also, according to section 370 (2), there is a provision of punishable punishment of a minimum sentence of seven years for the crime of misdemeanour which can be up to ten years.

In this bill, once again, the word ‘trafficking’ is not defined. But the bill includes ‘trafficking’ in a separate category, that is, a serious and extreme form of ‘trafficking’, including forcible labour, marriage, childbearing and begging, trafficking. For which penalty of minimum imprisonment for ten years has been approved, this can be up to life imprisonment. Furthermore, the surprising point in this bill is that ‘trafficking’ or trafficking for sexual exploitation does not fall within the definition of the so-called ‘trafficking’ extreme form of trafficking. It is known that trafficking for sexual exploitation is counted among the top three major causes of human trafficking in India. According to various government and non-governmental organizations, more than 30 percent of people were rescued from groups that engaged in human trafficking, which were originally related to the crime of sexual exploitation. Despite all this, ‘trafficking’ for the crime of sexual abuse is not mentioned in the above bill which is surprising.

Also, there is no mention of any special provision in this bill for the victims or victims of trafficking during natural disasters (floods, earthquakes, etc.). The National Crime Records Bureau (NCRB) in its 2016 data said that the police registered 10,357 cases of forced labour trafficking, 349 cases of forced trafficking for marriage, and 71 cases of trafficking for begging. This bill has failed to address all classes equally.

On the issue of resettlement too, this bill is reflected in other current laws of the country mimicking the imprisonment method of rehabilitation, which has proved inadequate anyway. At the same time, the bill has also failed to alter the existing mechanisms of checks and balances on the investigating authorities and neither holds them responsible for improper training or any other defect.

There is another flaw in this proposed legislation that the bill burdens the accused with the principle of acquittal to prove his innocence without any valid and clear grounds until he is proved guilty.

Apart from this, the Bill also interferes with other penal statutes such as Section 383 of the Indian Penal Code 1860 and the legislative sphere of many other offenses. Hence, it can be said that no legal goal can be grounded in formulating this proposed legislation has been

made.

Human Trafficking in Bihar:

As we know, the state of Bihar has always been in the role of a fighter in the race to get its development. In this series, through this article, I am going to discuss some important aspects related to the serious crime of "human trafficking" growing in this state.

If we look at the statistics of 2017 of the National Crime Records Bureau (NCRB), we find - Bihar is third in the country in human trafficking cases⁶. Unfortunately, legislations and schemes such as Bihar Children Act, 1970 and Human Trafficking Prevention Program (2007) have been reported to at the state level for the prevention of human trafficking crime in Bihar for a long time⁷.

An initiative towards the prevention of the crime of human trafficking and this problem in Bihar:⁸

In this sequence, a study conducted by a joint team of America and India has shown that the spread of this crime in Bihar is spread in three categories - (1) Bonded and forced labour, (2) Sex trade, (3) Disordered forms of child labour.

Bonded and forced labourers: According to the 2011 census, there are an estimated 2.9 million adult labourers in rural Bihar, who are mainly forced labour. The problem of debt bonding is also responsible for the pathetic condition of such labourers.

Sex trade: Unfortunately, no official data is available on the number of sex workers in the state of Bihar. Following the information received by the UNAIDS, we find that there are an estimated 56,554 sex workers in the state of Bihar. However, the estimated total number of sex workers by the local NGO and community agency is 9, 0000. This crime of prostitution is present in Bihar.

⁶ Ramashanker, *Bihar police to book traffickers under tougher laws*, The Times of India, 15 March 2020, Available at: <https://timesofindia.indiatimes.com/city/patna/bihar-police-to-book-traffickers-under-tougher-laws/articleshow/74631230.cms> (Accessed on: 08.10.2020)

⁷ Policy Briefs on Trafficking of Persons (Prevention, Protection, and Rehabilitation) Bill, 2018; Available at: <http://www.swaniti.com/nexus-2/> (Accessed on: 08.10.2020)

⁸ Research Innovation, *Human Trafficking in the Indian State of Bihar: Prevalence and Characteristics*, 12 June 2020, Available at: <https://delta87.org/2020/06/human-trafficking-indian-state-bihar-prevalence-characteristics/#:~:text=Those%20who%20worked%20in%20another.of%20sex%20trafficking%20at%202.7%25> (Accessed on: 08.10.2020)

Disordered forms of child labour: According to the 2011 Census of India, information obtained from a survey conducted in urban centres estimated the number of about 167,000 child labourers. On the other hand, according to the Indian Child Labour Law, it is estimated that 91% of child labourers in the state of Bihar are involved in illegal and dangerous wages. Also, there is an excessive burden of work time on them.

Recently, the Bihar State Police is making hard efforts on its own in the absence of specific legislation for the prevention of the crime of human trafficking. The Bihar state police headquarter has been directed to all the Superintendent of police to file a case on persons arrested in the crime of human trafficking under laws such as Juvenile Justice (Care and Protection of Children) Act 2015 and Protection of Children from Sexual Offences (POSCO) Act 2013 in addition to the Unlawful Trafficking (Prevention) Act (ITPA) 1956. The rationale behind this drastic step of Bihar Police is that such crimes are not easily available for bail and such cases can be disposed of by proper judicial process.⁹

Therefore, I believe that many social efforts also are needed to prevent the crime of human trafficking in our country. Also, ensuring the collective initiative of various government and non-government organizations to focus on improving the education and economic conditions of youth, women, and children in this direction will prove to be an inevitable task.

⁹ Supra note 6