

HUMAN TRAFFICKING: THEY ARE NOT FOR SALE

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Human Rights are one of the most serious organized crimes of the day, transcending cultures, geography and time. Trafficking in human beings is a global phenomenon that has gained momentum in recent years. It is the modern equivalent of slavery. Human trafficking is the third form of organized crime after arms trafficking and drugs (UNODC, 2000). No wonder, vulnerable sections have become more prone to trafficking. The series of incidents reported in different parts of the country, where thousands of children remain untraced, is a symptom of the serious dimension of trafficking. This research aims to provide an analytical framework for the design of more effective laws against trafficking in human beings. The paper in the first place, examines the human trafficking operations in India and the efforts of the Indian government, nongovernmental organizations, and international organizations to put an end to trafficking by prosecuting traffickers and providing assistance to the victims of trafficking. The second section examines the causes of human trafficking that make India both a source and destination of human trafficking, as it continues to grow globally. There is a need to empower law enforcement agencies, including the police, prosecutors, judicial, correctional administrators, development directors and the social activists and the media so that they are fully empowered with knowledge, skills and the right attitude. The legal protection regimes human rights and dignity of women and children in the Indian context and the efforts that the government should take to eradicate this evil are suggested. This research is a purely theoretical work and consists of a simple search to find a particular statement of law or a more complex analysis and depth of legal reasoning.

Keyword: Human trafficking, Prostitution, Children, Labour, Poverty

Introduction

Trafficking in women and children is the most abominable human rights violation. Perhaps not many crimes are as horrific as trade in human misery. Human rights that are guaranteed by the Constitution of India are inalienable, non-negotiable and universal. Trafficking in women and children is a violation of several human rights, including the right to life, the right to freedom and human dignity, and security of person, the right to freedom from torture or cruel, inhuman or degrading treatment, the right to a home and family, the right to education and adequate employment, the right to health care and everything that makes for a decent life.

A detailed definition of trafficking is available in the Goa Children's Act 2003. Though it is focused on child trafficking, the definition is comprehensive. Under section 2 (z), "*child trafficking*" means "*the procurement, recruitment, transportation, transfer, harbouring or receipt of persons, legally or illegally, within or across borders, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power*

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or of a position of vulnerability or of giving or receiving payments or benefits to achieve the consent of a person having control over another person, for monetary gain or otherwise”.

Trafficking in women and children is increasing. And yet, redressed mechanisms are woefully inadequate and the way several governmental agencies have addressed this serious violation of human rights has left much to be desired. This dichotomy requires a deep understanding of the dimensions of trafficking in India as well as the need to create a database of authentic data, helping to design appropriate measures to protect human rights more vigorously.

The investigation revealed the multidimensional nature of the problem, loopholes, and gaps in law enforcement, the involvement of organized mafia and the agony of the victims. Also it revealed that India serves as a source, transit and destination, where thousands of women and children are exploited every day. It also reveals that trafficking network is efficient coordination of what appears to be a fragmented process.

The three elements are clearly involved: firstly an intended action, secondly the means and finally the purposes. Therefore, if a person is trafficked or not is indicated by whether if he or she has been subjected to the means mentioned above.

The common understanding of trafficking as something like ‘prostitution’ was one of the main reasons for violations of human rights inherent to trafficking were never understood. The complexity of the phenomenon, its multidimensional character, its rapid spread and the confusion surrounding the concept made the need for deeper understanding of trafficking a priority. The reasons for their persistence and proliferation were not very clear. Therefore, there is an urgent need for greater understanding of the various aspects.

There was a strong indication of the available information that women and children were becoming vulnerable to trafficking because they were not able to survive with dignity for lack of livelihood options. Lack of awareness of human rights, economic and social private people at the grassroots level have become easy to trade trafficking. Migration populations have become more vulnerable to exploitation by traffickers. The fact that despite this harsh reality, such grave violations of human rights remains a low priority area of law enforcement, make it imperative that this area need to be investigated.

Human trafficking differs from people smuggling, which involves asking a person voluntarily or hiring another person to smuggle them across an international border, usually because the person smuggling was refused entry into a country through legal channels. Although illegal, there can be no deception or coercion. After the entry into the country and on arrival at their final destination, the smuggled person is usually free to find their own way. According to the International Centre for Migration Policy Development (ICMPD), human smuggling is a violation of national immigration laws of the destination country. The victims of trafficking are held against their will through acts of coercion, and forced to work or provide services to the trafficker or others. Labour or services may include something bonded labour or forced commercial sexual exploitation. Trafficking in human beings, on the other hand, is a crime

against a person because of the violation of victims' rights through coercion and exploitation. Unlike most cases of people smuggling, victims of human trafficking are not allowed to leave for their destination.

The most common form of human trafficking that results in bondage is the recruitment and transportation of persons in the international sex industry. Sexual slavery involves men and women, adults and children, and is about 58 percent of all trafficking activities. It consists of various types of servitude, including forced prostitution, pornography, child sex rings, and occupations related to sexuality such as nude dancing and modelling. Forced prostitution is a very old form of slavery, and recruiting in this way of life is often a booming business for commercial sex providers. Victims of sexual slavery are often manipulated to believe they are relocated to work in legitimate forms of employment. Those who enter the sex industry as prostitutes are exposed to inhuman conditions and life-threatening, especially with the prevalence of HIV / AIDS. In addition, some countries, including India, Nepal, and Ghana, have a form of human trafficking as a known ritual (religion-based) Slavery, in which young girls are provided as sex slaves to atone for the family members of sins. Around, 40 per cent of the persons investigated for trafficking in persons in India were females¹.

Children are often sold or sent to areas with the promise of a better life but face various forms of exploitation. Domestic servitude places children 'extra' (children too big families) in domestic service, often for extended periods of time. Other children are trafficked in entertainment industry and often forced sex work in small-scale cottage industries, manufacturing operations, and they are often called to work for excessive periods in extremely hazardous working conditions and little or even no pay. Sometimes they become "street children" and are used for prostitution, theft, begging or drug dealing. Children are sometimes trafficked into military service as soldiers and armed combat experience at a very young age.

Another recent and very controversial event involving human trafficking is kidnapping or deceit resulting in the involuntary removal of body organs for transplantation. For years, there have been reports from China that human organs were taken from executed prisoners without consent of family members and sold to transplant recipients in different countries. In addition, there were allegations that poor people sell organs such as kidneys for money or collateral. Although there were some human foetuses trafficking allegations for use in the cosmetics and medicine industry, these reports are not supported. In recent years the Internet has been used as a way for donors and recipients of organ trafficking.

International laws, like the Convention for Elimination of all Forms of Discrimination against Women (CEDAW), Convention for the Suppression of Traffic in Persons and of the Exploitation of Prostitution of Others², have brought a positive change in the definition of prostitution. Prostitution, now, is 'sexual exploitation or abuse of persons for commercial purposes'. Thus, hiring the body of any person is not considered as an offence but only the

¹ Global report on trafficking in persons, 2014

² <http://www.ohchr.org/Documents/ProfessionalInterest/trafficpersons.pdf>.

exploitation of it. If a woman puts her own body for hire, for promiscuous sexual relationship and another person exploits her, she is not a prostitute. The person who exploits her is engaged in prostitution. However, due to aberration caused due to the inadvertence in not amending the corresponding provisions of the act, has caused a commotion, even in judicial interpretations.

Research Motive

The research motive is to provide an analytical framework for the design of more effective laws against trafficking in human beings. Human trafficking is a modern-day equivalent of slavery. It is a phenomenon that is growing and is now the third largest form of organized crime, after arms trafficking and drugs.³ Although the crime of trafficking in human beings for both under-recorded and under-reported, (TIP) report estimated at less than 600,000 to 800,000 women and children are trafficked across International borders each year, most of them were trafficked into commercial sexual exploitation.⁴

This article examines the causes of trafficking in human beings deep makes India, both a source and destination of trafficking in persons as it continues to grow globally. Human beings are trafficked for various services such as forced labour, removal of organs and sex. Women and children have been described as the most vulnerable to this curse mainly due to ignorance, harmful traditional and cultural practices, greed, poverty and discrimination. This paper is a piece of empirical research aimed at in-depth analysis of trafficking and the legal perspectives to it.

NCRB (National Crime Records Bureau) data in India shows the high incidence of trafficking in the states of Tamil Nadu, Andhra Pradesh, Karnataka, Maharashtra, Kerala and Delhi. This article examines the interrelationship between human rights and laws and attempts to understand aspects of human rights jurisprudence in India, where there is a disparity in each step. The legal protection regimes human rights and dignity of women and children in the Indian context and the efforts that the government should take to eradicate this evil are suggested.

Causes and Effects

The causes of trafficking are various and often vary from country to country. Trafficking is a complex phenomenon that is often motivated or influenced by social, economic, cultural and other factors. Many of these factors are specific to individual traffic models and the state in which they occur. There are, however, many factors that tend be common to trafficking in general or found in a wide range of different regions, units or case. Trafficking in humans is done primarily to fulfil the purposes of forced labour, bonded labour, sex work and trafficking organs. Of these, human trafficking for sexual purposes known as sex trafficking,

³ United Nations Office on Drugs and Crime

⁴ US Department of Health and Human Services [US DHHS], Human trafficking fact sheet: Trafficking Victims Protection Act of 2000.

is the largest subset⁵. Trafficking in persons, a global phenomenon thrives on the weakness and vulnerability of persons. Vulnerability arises due to poor economic conditions, existence of gender-based violence and political instability (wars, internal disturbances, etc.). Conflict-ridden areas have actual war or the mere presence of military bases create demand. These areas are characterized by the presence of sex workers and child soldiers.

Economic and social circumstances like poverty and the social and cultural exclusion that poverty can cause, is a major problem. Income, poverty, unemployment, hunger, disease and illiteracy are rampant and widespread. Employment, education, vocational training and economic opportunities are in chronic shortage. As a result, school dropouts and unemployed youths are reduced to vulnerability and thereby become easy targets to human traffickers. More vulnerable are those who migrate from rural areas where opportunities are even rare to urban areas in search of employment for various opportunities.

The increased globalization of the world economy means clustering that high volumes of people, goods and services are crossing international borders, both legally and illegally. Operatives of organized crime internationally have positioned themselves to exploit such situations. People want to migrate for different reasons (to seek refuge or better employment opportunities) but are restricted for various reasons as immigration procedures have become more stringent. The decision to immigrate illegally puts them at an increased risk to be exploited. Therefore, the causes can be divided into three categories: economic, socio-cultural and legal and political.

We see that victims of trafficking are usually come from poor countries where the lack of employment opportunities and perpetual poverty are crucial issues. These people are easily convinced that they are given an opportunity to move forward in life. Another cause of trafficking is the removal of human organs or cheap labour used in plantations. Lack of literacy and awareness makes it impossible for victims to reasonably assess what they agree. Several reports show that girls from poor economic backgrounds are brought to metropolitan cities to be forced into prostitution.

Bonded labour is a treacherous way to capture free labour. A debt or a bond is used to control working poor and to keep them in service. Work is launched for repayment of this obligation. Thus, the worker receives no compensation for a very long period of time. If a worker is unable to pay his debts to his children are forced to work to the creditor for repayment. Thus, children are born and grow up in debt only to repay this debt. There is no possibility for them to escape as most of them are illiterate and unaware of their rights and relief organizations. They believe it is their duty to serve the customary owners of upper/employers castes. This servitude continues for generations. Physical and sexual abuses are common means threatening workers and forcing them to continue working. Rich people are usually the perpetrators of these atrocities. Children are more sensitive to debt bondage as they have no means of escape.

⁵ Hodge, D.R. (2008). Sexual trafficking in the United States: A domestic problem with transnational dimensions. *Social Work*, 53(2), 143-152

The societal preference for boys over girls and the general view of men being superior to women leads to the exploitation of women. The lack of satisfactory legislation, administrative apparatus is working properly and an effective judicial system are the most obvious causes of trafficking in human beings. Women are considered culturally subordinate to men in some societies. This is derogatory to women treating the root cause of men using culture as a tool to prove their superiority to oppress and exploit women. Many countries show huge disparities in the level of literacy, education opportunities, employment opportunities, inheritance and poverty. When it comes to issues like sex trafficking and prostitution of women are again oppressed and controlled by men to help them acquire capital. Men buy women in the same way they buy goods or labour, own and control every day.

In India, a large number of children are trafficked not only for sex "trade" but also for other forms of non-gender based operating that includes bondage of various types, such as industrial labour, domestic work, agricultural work, trade of begging organs and fake marriage. Child trafficking is increasing, and nearly 60% of trafficking victims are under 18 years old.

Therefore, the sectors most vulnerable to trafficking are poor, marginalized and uneducated people who are less aware that there is a danger of being trafficked. Many people simply do not have access to information and have not been made aware of the phenomenon. These people do not have access to information and technology or it is limited. People do not know the complex, specialized and organized crime of human trafficking nor are they aware of their rights and the various laws available to protect them. They therefore do not know whom to contact and where to go when the problem surfaces.

Laws for Trafficking

The Indian Constitution, the supreme law of the land from which all legislation originates guarantees equality and freedom of all citizens under the fundamental right. Traffic is explicitly prohibited, because it is opposed to these basic principles of the Constitution. Article 23 (1) of the Indian Constitution explicitly prohibits trafficking in human beings, beggar (a form of forced labour) and all other forms of forced labour. Furthermore, Article 24 prohibits the employment of children under 14 in factories, mines and other hazardous work. These constitutional guarantees have been implemented through several central and state laws.

The Immoral Traffic (Prevention) Act, 1956 (ITPA) [23], originally enacted as the '*Suppression of Immoral Traffic in Women and Girls Act, 1956*', is the most important part of legislation to prevent and combat trafficking in human beings in India. However, till date, its key aim has been to inhibit / abolish trafficking in women and girls with the intention of forcing them into prostitution as a means of earning a living. The provisions of ITPA is criminalizing people who acquire, traffic and gains from trade, but does not provide a clear definition of 'trafficking' per se in humans. India enacted the Immoral Traffic (Prevention) Act (ITPA) in 1956, to ratify the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (signed in New York on May 9, 1950).

Before ITPA, several state laws existed which were, however, neither sufficient nor uniform in their approach to the tip. Therefore, the need for strict and uniform central law of nature rose. The ITPA provisions provide punishment for immoral trafficking, punish traffickers, punish people keep a brothel (Section 3), punishing people who live off the income of a woman (Section 4), and provides measures being focused towards rehabilitation of sex workers. The emphasis is on punishment for owner's clients / pimps / brothels, etc., and not the commercial sex workers. It notes that in the case of *Sushila v. State of Tamil Nadu*⁶ the Madras High Court held that an instance of isolation of prostitution in a place not somewhere a brothel.

The Criminal Law (Amendment) Act 2013⁷, was approved by both houses of Parliament in March 2013. The amendment of the Indian Penal Code, Evidence Act and the Code of Criminal Procedure on related laws are expected to offense sex. Section 370A of the Indian Penal Code, which criminalizes trafficking, is added. The definition provided in the new section is not limited to prostitution, but also includes other forms of trafficking. This is evident in the use of the word 'exploitation' instead of 'prostitution' section. Thus, the scope of the section has been expanded. The strictest punishment has been under the amendment. A traffic offense shall be punished with imprisonment for a term of at least seven years but which may extend to ten years and shall also be liable to fine. When the offense involves trafficking more than one person, it shall be punished by imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and may also be subject to a fine.

Buying and selling of minors for prostitution i.e. trafficking is a serious offense under the Indian Penal Code (IPC) sections 372 (sale of minors for prostitution, etc.) and 373 (buying juvenile prostitution), and merits maximum punishment of 10 years. The same quantum of the sentence is granted under section 366 which deals with the abduction of a woman to compel her to marry or is forced to illicit sexual relations. Sections 342, 352, 360, 362, 365 368 and 506 deal with punishment for wrongful confinement, punishment for assault or criminal force otherwise than on grave provocation, removal of India, kidnapping legal guardianship, abduction, kidnapping or abducting with intent secretly and wrongfully confine person wrongly hide or detain the person and the penalty removed or removed for criminal intimidation respectively, and can be invoked in the case of human trafficking. The amendment in 2013 provides for a more severe penalty for minors. When a minor is victim, trafficker faces imprisonment of at least ten years to life.

In the case of *Prerana v. State of Maharashtra*⁸, the Bombay High Court said that cases relating to sex trafficking must be disposed of quickly. Trial courts should take the victim's statement in the month and complete the trial within six months of the charge sheet is filed. India has a fairly wide range of prohibition and protection laws against trafficking. Some of them are listed below.

⁶ 1982 Madras 702

⁷ <http://mha.nic.in/pdfs/TheCrimnalLaw030413.pdf>.

⁸ (2003) 2 BOMLR 562

- Section 21 of the Indian Constitution guarantees the right to live in dignity.
- Article 23 of the Constitution guarantees the right against exploitation. It prohibits trafficking in human beings and forced labour, and makes it convenient punishable by law.
- Article 24 of the Constitution prohibits the employment of children under 14 in factories, mines and other hazardous employment.
- Under the Indian Penal Code, twenty-five provisions are related to trafficking. Important among these are:
 - Section 366A: purchase of an underage girl (under 18) of part of the country to another is punishable.
 - Section 366B: importing a girl under 21 is punishable.
 - Article 374 establishes penalties for any person to work against his will.

Conclusion

Human Trafficking touches every country and countless industries worldwide, and while there are many individuals and organisations working globally to combat this problem, it may take time before it is fully realized just how huge this issue is. The issues of human trafficking are an issue of humanities generally happens in backward countries where the poor are involved exploited by those who initially promised income if accepted to the workplace and according to the sector and the living and the narrowness needed. The poor often have complex financial problems, and this makes them willing to be placed anywhere without investigating the background and basic information that will be his work. Moreover, they are also the lack of knowledge, because ignorance of their rights and the importance of understanding how to defend themselves deceived because they are unable to leave when hit by this problem. At the same time also, they are the lack of exposure and are more easily deceived. Therefore, it measures the best solution is integral, especially the involvement of governments in the formulation and development of laws that can protect people from falling prey to problems. Moreover, the involvement of NGOs to help the government solve this problem is timely and appropriate because NGOs can perform the functions that cannot be undertaken by the Government. Projects where employing the use of contemporary artists to bring the attention of taboo subjects to the forefront of society, helps put pressure on governments to instil the better infrastructures and economic opportunities needed, along with making changes to laws, enabling the prosecution of perpetrators and provision of aid to victims.