

## **“HUMAN TRAFFICKING” IN INDIA BEFORE AND AFTER THE CRIMINAL AMENDMENT ACT, 2013**

*by*

Anusree J & Malu A M Nair

### **Abstract**

*The Criminal Amendment Act, 2013 is a replica of the Justice Verma Committee report on sexual offenses against women. The committee, in its report emphasized the need to criminalize human trafficking in India to prevent it and provide justice to its victims effectively. In a special rapporteur report on the violence against women submitted to the UNCHR<sup>1</sup> in the year 2000, the inadequacy of an appropriate definition of human trafficking has been observed as a loophole in the existing legal system that enables the offenders to escape from criminal liabilities. Later, a suitable definition was formulated under Article 3 of Trafficking Protocol<sup>2</sup> by UN General Assembly and the same was adopted and incorporated by the Indian government under Section 370 of the Indian Penal Code. Through this study, the researchers aim to study the need to have a broad and comprehensive definition for the offense of human trafficking. Further, the authors will adopt a theoretical research method to understand the impact that the criminal offense of human trafficking is having on Indian society.*

**Keywords:** *Human Trafficking, Society, Women, Crime, Law.*

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<sup>1</sup> UNCHR, Integration of The Human Rights of Women and The Gender Perspective, Report of the Radhika Coomaraswamy, Special Rapporteur on Violence against Women (Feb, 29,2000) UN Doc E/CN,4/2000/68.

<sup>2</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime. Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000

## Introduction

Human rights are the basic fundamental rights which can never be taken even during the time of emergency. Each and every human right are indivisible and interdependent too. The violation of human right is emerging as a fundamental crisis of the whole world wherein trafficking is one such violation of human right which is the gravest form of abuse and exploitation of human being and has become a curse in the civilization of this age. Human Trafficking is considered as the one of the factors which curtails the basic human right to live with dignity. The main crux of this problem is because of being a highly secretive and clandestine trade, remains under reported and untraced. Normally trafficking can be viewed in two ways i.e., within a country and cross border trafficking. The foremost factors of human trafficking include structural inequality, cultural sanctioned practices, poverty, organ trade, bonded labor and gender violence.

## Historical Background

The issue of global trafficking began with African Slave Trade in which the Africans were both treated as items of trade as well as the middle men. In that scenario such trade was legalized by the British Government. In 1807, the first law against slavery was introduced by the British Government. After such ban the concept of White Slave came into existence. White Slavery was meant to be the taking of white women against their will for the purpose of prostitution by use of force, deceit, or by administration of drugs. As the issue of white slavery was spreading drastically different international conference were introduced against white slavery in 1899 and 1902 in Paris.

## International Aspects

As the white slave trade was spreading as a social disease it paved way to trafficking as the third largest organized crime in the world. This attracted International attention and it was found essential to frame international guidelines to tackle the issue of human trafficking globally. So United Nations whose purpose is to develop a friendly relation among nations based on respect for the principle of equal rights and self- determination of people and to achieve international cooperation in solving international problem of an economic, social, cultural or humanitarian character and in prompting and encouraging respect for human rights and for fundamental freedoms for all irrespective of race, sex, language or religion<sup>3</sup>. The people

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<sup>3</sup> Ensemble on United Nations, published by institution of United Nations studies New Delhi p28

of United Nation through UDHR affirmed their faith in fundamental human right, in the dignity and in the equal right of men and women. It provides<sup>4</sup> that all human being be born free and equal in dignity and rights, being endowed with reasons and conscience with the obligation to act towards one another in a spirit of unity. The first initiation which has been taken by UN in matter of trafficking was International Convention for the Suppression of the White Slave Trade in 1910 which criminalized white slavery. Gradually the purview of trafficking had widened and covered trafficking for the purpose of sexual exploitation and prostitution too. As a consequence International Convention for the Suppression of Traffic in Women and Children was introduced by United Nations in 1921 in which 33 countries were signatory to it. After the Second World War the first legally binding international agreement on human trafficking was adopted by United Nations i.e., United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others in 1949, in which 66 nations had ratified it. It mainly concentrated on states to punish any person who exploits the prostitution of another. As different conventions and organizations came up it gave a broader definition to human trafficking by adding different forms of exploitation such as slavery, forced labor, organ harvesting. A greater focus was given for trafficking in an international basis so to culminate it United Nations had adopted UN Convention against Transnational Organized Crime in 2000 supplemented by three protocols, one of which was the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children commonly known as Palermo Protocol. Palermo Protocol was known as the first international intervention to address trafficking in an expanded manner including each definition put forward by various conventions and organization. Palermo Protocol had defined trafficking in person <sup>5</sup> as follows:

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(a) The recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation should include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

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<sup>4</sup> Through Article -1 of United Nations Statute

<sup>5</sup> ARTICLE -3 Palermo Protocol

(b) The consent of a victim of trafficking in persons to the intended exploitation by means described in subsection (a) above (force, coercion, abduction, fraud or abuse/use of power) shall be irrelevant.

(c) The recruitment, transportation, transfer, harboring or receipt of child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article.

(d) Child shall mean any person less than 18 years of age.

Article -5 of the Palermo Protocol requires state to criminalize trafficking, attempted trafficking, and any other intentional participation or organization in a trafficking scheme to take comprehensive policy against trafficking for prevention as well as to address vulnerability.

### **India as a signatory in conventions based on Human Trafficking**

India being the founder member of the United Nations has supported the purpose and principles of the United Nations. India through signing and ratifying indicates its willingness or consent to bind with the obligations of different treaties. India is also a signatory in various conventions concerning human trafficking such as UN Convention on the Rights of the Child and as a commitment to this convention India has enacted Juvenile Justice Act 2000 to protect the trafficked child or a child vulnerable to trafficking as a child in need of care and protection. India has also signed on 15 November 2004 Optional Protocol to CRC on Sale of Children, Child Prostitution and Child Pornography. Immoral Trafficking and Prevention Act, 1956 was enacted by Indian Government as a core statute on trafficking for commercial sexual exploitation in which the basis was the convention on the Suppression of Immoral Traffic and of the Prostitution of Others. Palermo Protocol being the most important International instrument in combating trafficking, India has also signed this protocol on 12 December 2002.

In response to the multi dimensional problem of human trafficking and sexual assault the Indian government had adopted to implement Justice Verma's Committee Report wherein the committee was constituted to provide speedy trial and enhance punishments for criminal accused of committing sexual assault against women. The Committee mainly concentrated on laws related to rape, sexual harassment, trafficking, child sexual abuse, medical examination of victims, police electoral and educational reforms. The committee noted that the Immoral Trafficking Prevention Act, 1956 did not provide a proper definition for the word Human

Trafficking. In reviewing the *Bachpan Bachao Andolan v. Union of India*<sup>6</sup> the committee was of the opinion that the main reason for human trafficking is for commercial sexual exploitation of children and women. The committee had taken into notice that the phrases like abuse of power or a position of vulnerability and giving or receiving benefits to achieve consent of a person having control of another person etc are not offences in the eyes of our law. So, it is imperative that these too include on the ambit of offence of trafficking so as to make them culpable. In order to implement it the Indian Government had enacted **the Criminal Law Amendment Act 2013** commonly known as Nirbhaya Act and through this Act the definition of Human Trafficking which has been incorporated in Trafficking Protocol was adopted and incorporated in Section -370 of Indian Penal Code, 1860 by omitting the expression “abuse of a position of vulnerability” this definition gave a wider ambit to Human Trafficking.

### **Crimes related to Human Trafficking in India**

1. Importation of girls from foreign country<sup>7</sup>
2. Procurement of minor girls<sup>8</sup>
3. Buying of minors for prostitution<sup>9</sup>
4. Selling of minors for prostitution<sup>10</sup>
5. Human trafficking<sup>11</sup>
6. Immoral Traffic (Prevention) Act, 1956

### **Indian Judiciary in combating the issue of Human Trafficking**

The Indian Judicial decisions mainly concentrated on the treatment of victims and the constitutional protection of victims. Many studies shows that conviction in such issues is low and that very often victims have been re- victimized in the process<sup>12</sup>. The decisions of High

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<sup>6</sup> *Bachpan Bachao Andolan v. Union of India* 2011 SC 0431

<sup>7</sup> Section – 360B IPC

<sup>8</sup> Section – 366-A IPC

<sup>9</sup> Section-373 IPC

<sup>10</sup> Section – 372 IPC

<sup>11</sup> Section -370 & 370 A IPC

<sup>12</sup> Judicial handbook on combating trafficking of women and children for commercial sexual exploitation , UNICEF (2004)

Court and Supreme Court mainly deals with 3 main concerns they are victim's right, giving appropriate directions to Government, and special protection to the child.

### **Victim's Right**

1. Prajwala v. Union of India<sup>13</sup>

The implementation of victim protocol was demanded by the Supreme Court

2. Bodhisattwa Gautam v. Subhra Chakraborty<sup>14</sup>

In this case compensation was ordered to be paid by a perpetrator of crime to victims of the crime.

3. PUCL v. Union of India<sup>15</sup>

In this case compensation was ordered to be paid where children were trafficked / bonded for labor.

### **Directions upon state to tackle this problem**

1. Vishal Jeet v. Union of India<sup>16</sup>

Supreme court issued direction that all state Government must direct their law enforcing authorities to take appropriate speedy steps against the evil and directed to step up advisory committees with experts from all fields to make suggestions regarding measures for eradicating child prostitution, for care and rehabilitation of rescued girls, for setting up of rehabilitative homes and for a survey of the devadasi tradition.

2. Gaurav Jain v. Union of India<sup>17</sup>

In this case the Supreme Court had affirmed that the state had a duty to rescue, rehabilitate and enable women to lead a life of dignity.

### **Special Protection to Children**

1. Prerana v. State of Maharashtra<sup>18</sup>

It was held that children who have been trafficked themselves should also be considered as children in need of care and protection.

### **Implementation of Criminal Law (Amendment) Act 2013**

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<sup>13</sup> Prajwala v. Union of India 2006(9) SC ALE 531

<sup>14</sup> Bodhisattwa Gautam v. Subhra Chakraborty (1996)1SCC 490

<sup>15</sup> PUCL v. Union of India (1998) (8) SCC 485

<sup>16</sup> Vishal Jeet v. Union of India (1990) 3 SCC 318

<sup>17</sup> Gaurav Jain v. Union of India AIR 1997SC3021

<sup>18</sup> Prerana v state of Maharashtra(2003)MLT105

The Criminal Law (Amendment) Act, 2013 came as a reaction to the atrocities and violence committed against women in different corners of our country. One among the worst being the Nirbhaya Case in Delhi which gave this act the title as Anti- Rape Act. This act amends the Indian Penal Code 1860, The Code of Criminal Procedure 1973, The Indian Evidence Act 1872 and the Protection of Children from Sexual Offences Act, 2012.

Even though the primary objective of this Act is to have access to violence free and safe public space the act advocates its focus on violence against women and to provide stringent punishment to the perpetrators of extreme cases of rapes and gang rapes which give rise to another question as to whether 'longer jail terms' or 'capital punishment' enhance women's safety and security in public although it is been successful in inculcating a sense of fear among the culprits. moreover the act has endeavoured punishable offence for those police officers who fail to register first information report and also addresses penalties for other abhorrent forms of crimes such as stalking, touching, sexually colored remarks, voyeurism, human trafficking and acid attacks whereas the act fails to enforce strict regulations on production, storage, distribution and sale of concentrated chemicals which are available cheaper in our market and sufficiently enough not only to disfigure the victims but also to ruin and isolate their lives. The act also fails to address contentious issues such as marital rape or legal immunity for army officials.

Despite these flaws the act still bears a progressive insight into the offences of violence against women and raised the need for the government to incorporate necessary infrastructure such as buildings fast track women's courts, safe homes, more engagement of women lawyers, women doctors to examine victims etc to deal with the crimes and to supplement it by meaningful reforms taken by judiciary and modernized police system across states in India. Whereas by looking at the practicality in this current government system, it seems to be only in papers and not in application. We can explicitly witness poor implementation of measures in some states in India on the offence of human trafficking even after the implementation of Criminal Amendment Act, 2013.

On a report submitted by United Nations Office on Drugs and Crimes under 'India country Assessment Report on Human Trafficking 2013'<sup>19</sup> Jharkhand was found to be a state in which most of its districts are stuck in the vicious cycle of human trafficking. The report also states the reasons and failure of various governments in the state of fight the vice. The

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<sup>19</sup> Kelly Kislaya, Jharkhand Worst Victim of trafficking, *The Times of India*, July 7, 2013, [indiatimes.com](http://indiatimes.com)

districts of Sahibganj, Dumka, Pukur, Garwah, West Singhbhum, Ranchi Palamau, Hazaribagh, Dhandab, Bokaro, Giridih, Kodarma and Lohardaga are primary targets of the women traffickers. The trafficked boys are girls mainly belong to the tribal communities such as Gond, Munda Oraon, Paharia and Santal. Sanjay Mishra, the director of Bharatiya Kisan Sangh, an NGO in the state says “ There is huge demand for girls from Jharkhand to work as domestic help, labourers and so on and they are sold for as little as one thousand rupees”<sup>20</sup>. Various studies and reports on the cases of human trafficking reveal that they are well planned and well executed crimes. They primarily roam aimlessly in the areas of target; regularly visit weekly markets and village fairs for targeting poor families. Once the family is targeted, traffickers try to come in contact with the family one way or another and become a trusted friend of the family and convince the guardians of poor families. The studies reveal that it is not only men but women are also involved in this gang. In the dream of a good job with good salary and better life, they get entrapped in false promises of human traffickers. Unawareness of the evils of cities and town life is the key weapon used by the traffickers to trap the poor and uneducated tribal kids. It is also understood that the traffickers uses a variety of methods to create a vulnerable condition for the victims so that the victims do not have any other choice but to obey and follow the traffickers. The studies also points out acute poverty, illiteracy, dream for a better life, the key role of intermediaries, lack of job opportunities near home and poor economic conditions and support from the state government as the contributors for rise in human trafficking in the region infested with poor, illiterate, dalits and backward classes in the districts of Jharkhand<sup>21</sup>.

On a study<sup>22</sup> conducted to list out the cases of human trafficking in Assam, the primary data from personnel's included informal discussions and semi structured interviews with seventy seven survivors of sex trafficking and families of sex trafficked women, anti trafficking personals like NGO staffs, government shelter home staff, police and anti trafficking unit officers, peer educators NGO personnel's working on women and child rights, academicians and journalists working on gender issues were collected. It can be concluded from the study

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<sup>20</sup> India Securing Livelihood of safeguard against human trafficking, unode.org, Bharatiya Kisan Sangh is an NGO working to prevent sexual exploitation and human trafficking, especially of women and children in the state.

<sup>21</sup> Dinesh Narayan Verma, *Human Trafficking in Santal Parganas Divison of Jharkhand*, Proceedings of the Indian History Congress, Indian History Congress 2014, Vol 75, Platinum Jubilee (2014), pp.1241-1246, <https://www.jstor.org/stable/44158515>.

<sup>22</sup> Sawmya Ray, *Of Vulnerability and Coercion: A study of Sex Trafficking in Assam*, Sociological Bulletin, September –December 2015, Vol 64, No 3 (September-December 2015), pp.305-324, Saga Publications Inc, <http://www.jstor.org/stable.26290744>.



that survivors belonged to various religions, castes and Adivasi communities of Assam and were mostly illiterate. From the collected data, the nature of human trafficking prevalent in Assam can be categorized into soft trafficking and hard trafficking. In soft trafficking, the girls are duped and lured into sex trade and force is used after the women is brought out of her familiar environment whereas in hard trafficking, the force is involved from the beginning of trafficking. Soft trafficking was found to be more prevalent as compared to hard trafficking in most of the districts of Assam as studies prove that the traffickers are mostly their neighbours, acquaintances, relatives or friends. On the basis of the data collected, it can be analyzed that the causes of sex trafficking ranges from political economic factors such as poverty, conflicts, natural disasters, displacement, forced migration to cultural and social factors such as gender discrimination, gender violence at home etc. other factors as pointed out from the data includes growth of tourism with flourishing resort and hotel industries in Assam and other parts of North east; Mining; Exploitative work conditions in tea gardens; Physical features of women in Assam etc. The victims pointed out that the beautiful physical features of northeast region women such as women with mongoloid features are being sold in international market as Koreans, Chinese and Japanese and not as Indians. In spite of 14 anti trafficking units in Assam, state and non state shelter homes built under Swadhar and Ujjwala schemes, the rates of women involved in sexual violence has not been able to be reduced.

These inhumane ways of treatment are not only prevalent in the disadvantaged states but also in metropolitan and advanced states such as West Bengal<sup>23</sup> also. the district of Medinipur of west Bengal also have listed increasing rates of human trafficking even after the incorporation of the new act of 2013. Out of the 50 case studies that has been observed, the vulnerability of the victims has been divided into five main categories which are vulnerability because of poverty, domestic violence, lack of education, child marriage and caste and culture of dowry prevailing in the districts of west Bengal. In most of the cases, parents or guardians themselves has forced their daughter or sisters into prostitution.

In India, women from dalit community falls prey to human trafficking and sexual exploitation. They face discrimination on the basis of gender, caste and economic situation which forces them to be illiterate and tends them to fall into the vicious cycle of life. Moreover the customary practice adds fuel to the existing exploitation of these women. The practice of

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<sup>23</sup> Sarfaraz Ahmed Khan, *Human Trafficking, Justice Verma Committee Report and Legal Reforms: An Unaccomplished Agenda*, Journal of the Indian Law Institute, October-December 2014, Vol 56, No 4 (October-December 2014), PP 567-580, Indian Law Institute, <http://www.jstor.org/stable/43953729>

Temple prostitutes or Joghinis, Devadasi, Basavi in Andhra Pradesh, Orissa, Maharashtra and Karnataka also encourages sex trade. Under the Devadasi system, thousands of dalit girls are ceremonially “dedicated” or married to a diety or to a temple. Once dedicated, they are forced to become prostitutes for upper caste community members, and eventually auctioned into urban brothels. These customary rules deprive the dalits the benefit of the rights and protection provided to women from offenses of human trafficking.

### **Conclusion and Suggestions**

The existing customary practises and the crimes in this 21<sup>st</sup> century India is a reflection towards how much our country has prioritized the problem of Human Trafficking and to what extent the measures taken by the Indian government were effective enough to tackle this crime, which is technically near to zero. This is the current scenario of the society which proves that the women, children irrespective of boys of girls are not safe in this society. We live in a society where one among the four women have some or any kind of abusive experience in their 20-22 years of livelihood, which is scary. This trend is what we need to take into immediate effect and reduce rather than our negligent attitude leading it to tremendously increase in its number. As a citizen of this nation, I would like to put forth some suggestions which shall be an eye opener and brought to practise with limitations if necessary. They are:

- A commission or a body are to be constituted effectively to address this issue of Human Trafficking. This body shall have the responsibility to expand the ambit of crime as provided under Sec 370 of Indian Penal Code. They shall study on the factors responsible for the crime, the intermediatories involved in the crime, treat the victims and bring them back to normal life. They shall also study on soft and hard human trafficking methods and punish all the individuals found to be involved in this crime irrespective of their status in the society. They shall also have an email address, website, helpline number and a post office address for receiving complaints for those who wish to keep their anonymity also. The body shall consist of trained police persons, officers etc.
- The government shall take the initiative to address this crime more into the local people through social media platforms, advertisement methods, awareness programmes etc so that everyone is themselves made aware of these kind of people and the measure starts from their homes itself.

- The government shall also create a toll free help line number, a ready to help team to help those victims as soon as possible they get the call and thus have a control over this existing crime.
- NGOs shall take the responsibilities for addressing this crime to the localities and also include measures for educating the children also on these crimes and providing seminar lectures in different schools and also self defence steps to protect themselves if placed in these situations. The government shall provide financial assistance or other assistance to the NGOs for implementing these measures in case of needs.
- Police station shall have a unit to register and record the offences of these crimes and immediate measures shall be taken by them irrespective of their status in the society. FIR is to be launched as soon as a missing complaint is brought to their notice.
- The parents are to educate to incorporate friendly talks with their off-springs so that the relationship between parent and child are maintained enough and it shall be made to be introduced in their parenting.
- The children should be made aware of the crime happening against them and shall also be provided with the help desk to address their issues. A counseling body are to be made compulsory in schools and colleges and the students shall be provided with a platform to address their issue and counseling to students in need.

These measures shall be taken into consideration for bringing a change in the present scenario existing in this society which is the need of the hour and which needs utmost importance for protecting ourselves and our children from being victims of these offences and hence breaking the vicious circle of mis-happening existing in this society.



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