



Human rights and trafficking in women and children in India

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Abstract

One of the most heinous types of human rights breaches is the trafficking in women and children. Due of its complexity, it has received little attention from the academic community, the legal community, and civil society. Many people have compared it to prostitution, but that only tells half the story. This essay aims to clarify a number of related issues while presenting the patterns and characteristics of trafficking from a human rights paradigm. Additionally, it will provide some insight into how NGOs, civil society, and families function. The paper draws heavily from secondary literature and first-hand knowledge. The discussion of human rights is remarkably silent on this crucial subject, which robs the most disadvantaged population of the majority of their rights. It has immense implications for future course as India is fast becoming a source, transit point as well as a destination for traffickers.

Keywords: trafficking, human rights, crime, prostitution, women and children

Introduction

Human rights are often portrayed negatively in popular discourse, although the concept goes far further than that. Human rights are allegedly supported only by flimsy intellectual foundations and have been reduced to empty platitudes. Many legal theorists and philosophers, including Aristotle, Plato, Hume, Weber, and John Rawls, who discussed natural justice and laws, among other topics, view the rhetoric as mere platitudes and human rights with weaker intellectual foundations. Human rights advocates appear more interested in altering the world than in understanding it. Given the necessity to address the severe sufferings, it is understandable why campaigners are reluctant. Nevertheless, despite all of this, society cannot exist without the A right in its acute sense means the liberty to pursue one's own conception of good. It entails claim to those good needed for one's well-being as opposed to merely the liberty to engage in one's own pursuits. Hamid Ansari, vice-President of India has said in his speech 'Human Rights and Human Wrongs', that introspection is required on some issues of human rights. He further added that despite the presence of intellectual, legal and institutional framework of human rights, there have been continuous questions regarding the efficacy of it in actual implementation.

Transportation, harbouring, or reception of people for the purpose of exploitation by coercion, deception, kidnapping, or threats constitutes human trafficking. The issue of human trafficking, especially that involving women and children, has become a severe social concern and one of the gravest violations of their human rights and dignity. Innocent human lives are being grossly commercialised and reduced to commodities.

Understanding human rights

Human rights have been defined as "the fundamental moral guarantees that people in all nations and cultures possess merely by virtue of being human." Human rights are inherently universal. The moral doctrine of human rights seeks to acknowledge the essential conditions necessary for each individual to live a good life. The Universal Declaration of Human Rights (1948), the European Convention on Human Rights (1954), and the International Covenant on Civil and Economic Rights (1966) are a few declarations and legal treaties that have represented this ambition. These three documents constitute together the centerpiece of a moral doctrine of human rights. Jack Donnelly has regarded human rights as the new standard of civilization. Hence, human rights are inalienable and inherent rights of humans. Let's now move to Indian context of human rights and its legality.

Indian constitution and human rights

The Indian constitution is in congruence with United Nations charter, Universal Declaration of Human Rights (UDHR) and several other international covenants as they all lay emphasis on human dignity. The constitution of India assures dignity of the individual which is a core value in its preamble. Even the constitution of India was drafted at the same time as the Universal Declaration of Human Rights and that is why, it has resonance of similar provisions. This becomes obvious when we look at Article-23 of the Part- III of the Indian constitution and articles 2-21 of Universal Declaration of Human Rights. The Part-IV of the Indian constitution which contains Directive Principles of state policy in the article 38, 39A, 41 etc. also has reflection of articles of 22-28 of the UDHR. So, it can be said that Indian constitution has enormous scope to protect and promote human rights and the Supreme Court of India has been at forefront to protect the human rights inherent in fundamental rights. The importance of fundamental rights can be imagined by that is not only available to citizens of India but also non-citizens and it establishes the relevance of rights in the times we are living.

Understanding human trafficking

According to Oxford dictionary, 'Trafficking' means deal in something especially illegally. It also offers new terms like drugs trafficking, arms trafficking and human trafficking. The conceptual meaning of human trafficking refers to "to the criminal practice of exploitation of human beings where they are treated as commodities for profit and after being trafficked, are subject to long term exploitation". Human trafficking (HT) has become one of the three most lucrative types of organized crimes, there are drugs and arms. This organized crime of human trafficking has reached 'a scary magnitude' because the extent of violations of human right is unbelievable and unimaginable. The sad part is that there is very little awareness of this crime among the masses. It is also because of its highly secret and clandestine nature. It has become such mind-boggling problem that it has become difficult to arrive at any consensual data as different agencies project different numbers. It has been termed as modern day slavery.

The Palermo Protocol (UN 2000) was the first point which defined trafficking from a wider perspective as a matter of international law. It took into account the pre-existing individual crimes such as abduction, kidnapping, forced prostitution and slavery. It highlighted three important areas and presented clarity on these:

- A. It recognized that any human can be trafficked, not just women and children
- B. HT is not just for sexual exploitation, it is for labor and other areas also.
- C. It categorically mentioned that force, coercion or deception must be present.
- D. The intent to exploit and control another human being is central to the crime of trafficking. So, the instance of defining and criminalizing trafficking as a specific crime validated the fact that, as to the level of egregiousness, the whole of trafficking in human beings is greater than sum of its parts (Bullard, 2008, p. 114). It can be said that trafficking in human beings is specifically egregious crime as those who set out to do this exploit people during their most vulnerable times often in inconceivably inhuman ways.

The Protocol requires the states to:

- A. Criminalize the trafficking in persons
- B. Provide assistance and protection to victims in countries of origin, transit and destination
- C. Provide assistance in the repatriation of victims
- D. Have management on migration to prevent and detect trafficking
- E. Have thrust on training, research and information to prevent trafficking
- F. India signed the protocol on December 2, 2002 and ratified recently on May 13, 2011. As a signatory to the protocol, India is bound to comply with the laws conforming to UNTOC and protocol's mandate.

Problems in defining human trafficking

The Palermo Protocol definition is unquestionably comprehensive and impartial. Even the prior comparison of prostitution and trafficking was taken a step farther. But it does have detractors. It has been said that this concept leans more towards crime prevention and excludes human rights from its purview. The procedure is also criticised for being lax in providing victims with protection and compensation. Additionally, by focusing on sexual exploitation, the Protocol approved of trafficking for forced labour. There are also legitimate worries that, in order to have a better understanding, trafficking in women and children should be dealt with separately rather than combined. With changing social scenario, trafficking has become more organized and sophisticated and it requires a new articulation. Thus the debate is continuing and new definitions being suggested and adopted by several bodies in the trafficking fraternity. The other problem in defining is that as trafficking is a multi-dimensional problem and has various attributes and variables, a uniform definition will be elusive only. Hence there is no single definition upon which everyone agrees and a quest for all inclusive definition is on. Also, Palermo Protocol has recorded that trafficking is understood to take place only if three main constituents are present which process (transportation, recruitment etc.) are means (force and coercion); purpose (exploitation, labour or servitude).

Trends and dimensions in human trafficking

Possibly most country in the world and most state of our country are grappling with the issue of human trafficking as their geographical areas become places of origin, transit or destination of victims. Trafficking of persons has been termed as modern day slavery as it encircles the life and dignity of the victims. In this context, former UN Secretary- General has mentioned that slavery was actually the first international violation of human rights. Humans are trafficked for various purposes such as commercial sexual exploitation, slavery, for organs, forced marriages, labour and adoption. Human trafficking is not occasional crime but it is rampant and affecting every state of the country. It not only crosses national and international level but has street level occurrence also. The victim of the trafficking can be an acquaintance and trafficker can also be a familiar person. India in a continued seventh time remained on the Tier 2 watch list and in the Trafficking in Persons (TIP) report 2014, which is issued by the US state department annually, received lowest rank.

Dimensions of human trafficking

Human trafficking is a multi-dimensional problem. There is not only significant rise in trafficking but also increase in its magnitude. The literature on trafficking carries conflicting layers of understanding with trafficking equated with prostitution and migration. Any reliable statistical information is absent in terms of quantification of almost any aspect of trafficking, from the number of people trafficked to the amount of money earned but it is estimated by UNICEF that it is around 5 to 10 billion dollars earned per year by traffickers.¹⁰ The United Nations estimated the number of trafficking victims at more than 30 million, with the largest number originating in Asia and an estimated 1, 50, 000 annually in South Asia alone.⁹ The Indian government's Ministry of Women and Child Development estimated the number of persons trafficked for commercial sexual exploitation in India to be around 2.8 billion and about three million prostitutes in the country. It is said to be 'acquiring grave dimensions worldwide in the recent context of globalisation'.⁶ Also, there is rise in the 'global sophistication, complexity and consolidation of trafficking networks' which is said to having diverse and sophisticated mechanisms.⁶

According to 'Report on Trafficking in Women and Children India' by Sen and Nair,⁶ the overall major trends are:

- A. Trafficking major purpose is commercial sexual exploitation
- B. There is a repeated preference for younger children and inclusion of men.
- C. Trafficking is becoming extremely lucrative business, sometimes exceedingly doing well than arms and drug trafficking.
- D. There is strong nexus between traffickers and public officials with the participation of corporate, sex and tourism industry.
- E. Majority of women and children are trafficked through deception and false promises

All these trends are enormously prevalent in India as well as in the global context. Let us now move to analyse the factors which contribute in the above mentioned trends and also discuss other aspects which coalesced and contribute to these trends. According to Ghosh¹¹ human trafficking in India can be classified into three groups: (a) for commercial sexual exploitation, (b) for exploitative labour and (c) for other forms of exploitation like organ sale, begging, etc. A quick analysis of the available records and reports on trafficking reveals that the trafficked women and children are pressed into activities like prostitution in brothels, massage parlours or beer bars, pornography, dancing, petty crimes, domestic help, agricultural labour, begging organ trade and drug trafficking.

Factors contributing to trafficking

Trafficking in women and children in India

Violence against women and children has crossed all limits in the present social scenario. Human trafficking is one of crime which not only dehumanizes women and children but also a shame for society. The rising cases (reported only) of procurement of minor girls, 53 per cent in 2013 according to NCRB speak volumes of the mess women and children are in. Assam, Bihar and West Bengal has witnessed the growing movement of traffickers and trafficking. In the case of women trafficking in India, sexual exploitation is the major purpose and the girls are put into prostitution. But these days, trafficking for bride has pricked our conscience. Girls are bought as brides from the states of Kerala and West Bengal and transported to Haryana, Punjab and parts of Uttar Pradesh and Rajasthan. Girls from the poor community are selected and targeted for this form of human trafficking. It is well known that these women are treated as sexual commodity and child-producing machines. The reason for this increased surge in bride trafficking is the complete skewed sex ratio of these states which purchase women and girls as brides. M. Shafiqur Rhaman Khan, who is a Delhi-based activist working on the issues of Human Rights, focusing on prevention of Human (bride) trafficking and honour-killing in India mentions in his piece of article that Panipat and Sonipat are the main transit points of the trade. A large number of “placement agencies” are working in this area to facilitate bride trafficking. Their main job is to bring the girls from the poverty-stricken states and supply in different parts of the state. A large number of people of Haryana works as truck drivers and also involve themselves simultaneously as network for procuring girls from the source area. This is one aspect of women trafficking where women from the poor areas are promised good job and marriage but sold for few bucks. There are many more situations like bar dancers of Mumbai where lives of thousands of women are at stake and caught in the web of trafficking.

Children are the major victims of human trafficking as they protest less and can be silenced easily. According to 2010 TIP report, there are 12.3 million adults and children are in forced labour, bonded labour and forced prostitution around the world, although many see this number as less representative of the problem. They claim it to be around 27 million which gives us the idea of the grave problem of human trafficking (Satyarthi, 2013). There are studies and strong evidences which establish that there are huge numbers of child labourers who are working in garment factories and other sectors across India. The children are easily lured away by the traffickers and brought to the destination point. All this is done by a complete network of placement agencies which supply these girls and children as domestic helps and garment factories. Also, children are trafficked as there is enormous demand for them. There are also instances of trafficking which goes with the practice of adoption and surrogacy. As the web of human trafficking traps any children, they pass on from one place to another place which is tantamount to re-victimization of the child again and again.

Child trafficking continues to be divided between ministries and departments. There is a lack of coordinated effort by the stakeholders. The point is that all the institutions concerned focuses majorly on post-harm situation that is when children is already trafficked or harmed. There must be aims towards prevention. In their path-breaking study, Sen and Nair⁶ have also studied the various aspects of traffickers. Interestingly, thirty-nine percent of traffickers viewed trafficking as social evil while forty percent of them have said that it cannot be solved. This reflects the mentality of the traffickers and can be helpful in law framing.

Role of the non-governmental organisations (NGOS)

The report of the ‘Trafficking in Women and children in India’ by Sen and Nair presents a mixed picture of the NGOs. At one point of *study of survivors* of commercial sex exploitation, they were asked about the NGOs. Majority of them has appreciated the functionalities of the NGOs. But when the victims were asked to respond regarding the role of NGOs, a good number of victims were unaware of the NGOs engagement in the field of trafficking while few mentioned it’s functioning in HIV prevention. In the present times, lot of NGOs are actively engaging themselves in the field of trafficking namely Human Rights Watch, Amnesty International, OXFAM, Save the Children, the Red Cross, Action Aid and Shakti Vahini. They have been indulging in social monitoring and advancing the knowledge of human rights.

Trafficking and human rights

The human rights discourse is profoundly silent on this grave issue which requires immediate attention and further deliberation. The Immoral Traffic Prevention Act, 1956 which was later amended in 1986 has not taken human rights of victims in its ambit. It also fell short on deterrent punishment leave alone the sensitive handling of rescue and rehabilitation of victims. Due to poor condition of rehabilitation homes and lack of medical and psychological support to traumatised victims, they become source for re-trafficking. Also, with the low-levels of poverty and high-levels of corruption, India has become the worst sufferer. Trafficking in humans is a serious affront to their dignity and human rights. It is a gross violation of victims’ rights particularly all the basic fundamental rights like freedom and liberty, free speech and expression, education, right to life with dignity. It becomes a sordid tale of modern day slavery.

The brothels are the dens of violations of human rights. Women and children who have been trafficked and thereafter subjected to commercial sexual exploitation are “living embodiments of the ultimate violation of human rights”. The survivors are the largely helpless souls of grim tale of trade. When the victims are arrested as accused, prosecuted and even convicted, the meaning of rights becomes absurd. What was meant to redress their grievances becomes tool of continuous victimization. This chilling tale of affairs calls for stern action by proper and effective use of the available legal provisions.

Trafficking has become an emotive issue about which much has written passionately rather than objectively because it touches the core of our beliefs about morality, justice, gender and human rights. It must be the priority area of the academia, legalists and the civil society. Human rights are the lifeline of any democratic society. It can never be loose talk. What is of urgent importance is that there should be equal emphasis on interpretation and change rather than latter taking over former.

Combating human trafficking

Mishra¹³ has mentioned that any country largely has two approaches in combating human trafficking. These are:

Accused oriented: law and order problem: From very long time, human trafficking has been seen from a law and order perspective. It means that human trafficking problem can be tackled easily if law is fully implemented or policies are put in place. The central argument is that trafficking is legal problem and its perpetuation is because of poor law enforcement. Consequently, when the matter reaches the legal institutions, the traffickers are punished according to the suitable sanctions. So, here accused is the prime target and given huge consideration.

Victim oriented: human rights violation: This approach has many merits and essential to even our argument that human trafficking must be seen as human rights violation in the first place. The central thought of this approach is that victims should be of prime importance and must be given adequate attention. The concentration area must be the protection and rehabilitation of the victims.

Conclusion

Human rights embodied in the Indian Constitution are justifiable. All these rights now have the support of a large number of international conventions and human rights covenants dealing with human rights. Even the courts have used these international covenants to widen the scope of the human rights in the constitution of India. As a result, it is possible to judicially enforce a large number of human rights violations embodied in international covenants also. But the constitutional-cum-international mandate needs to be accompanied by correct social perceptions, support services and a basic change in family and societal values. A proper enforcement of these rights thus requires, educating people in these human rights so that these rights are respected and observed in practice. A soothing culture of human rights has to be developed in our country. National Human Right Commission has a greater role to play in dealing cases and need to recommend and take compensatory measures. People also need to aware about the commission and it is now for the people to take help of these available institutions in order to inculcate human rights values in the home, in the community, in the society and in the public. Also all the three pillars of the government i.e. legislature, executive and judiciary must now respect and promote this culture of human rights specially for the women, the weaker section of the society so that trafficking in women and children can be tackled in a greater extent. Even the NGOs, welfare agencies, legal experts, civil society and social workers have to play an important role to secure the rights of the women, child through advocacy, providing legal aids and legal education in the grass-root level to top.

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