

Human Trafficking in India: An Organized Social Crime

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Human trafficking threatens human security and human development of any country. Trafficking for commercial exploitation of women and children has resulted not only in violation of right, but also has adverse physical, psychological and moral consequences for the victims. Trafficking is a multidimensional problem encompassing a whole range of economical, social and cultural issues, which are varied and highly complex. Majority of sex workers came from regions with "low developmental indicators, limited economic opportunities and ineffective developmental interventions".

The problem of trafficking of women and children for the purpose of sexual exploitation is prevalent at various levels as local, inter-district, inter-State and cross-border. Commercial exploitation of women and children takes place in various forms including brothel-based prostitution, sex tourism, entertainment industry and pornography in print and electronic media.

Majority of the trafficked were economically vulnerable, at the risk of HIV infection and other sexually transmitted diseases. Their unequal power relations in society make them more vulnerable in human trafficking. Human trafficking is an organized crime all over the globe.

The process of human trafficking begins with the abduction or recruitment of a person and continues with the transportation from the place of origin to the place of destination. This is followed by exploitation of the victim who is forced to sexual or labour servitude.

Under article 23, trafficking is prohibited by the Constitution of India. In spite of this India is a source, destination and transit country for human trafficking primarily for commercial sexual exploitation and forced labour, and with the falling sex ratio, trafficking for marriage has become another major factor for trafficking of women and girls. Women and girls in India may be trafficked due to cultural practices such as *devadasi* system, dedicating a girl to prostitution, though ostensibly dedicated to serve a goddess. Some other forms of prostitution are prevalent e.g. *Joginis*, *Mathammas*, *Dommaras* and *Basavis*. Most of the victims have been trafficked with promises of jobs, better career prospects and marriage. Some are abducted forcibly. Some girls are often sold by friends or relatives, sometimes even by their own parents out of greed or desperation. Although parents' complicity in this degrading occupation is difficult to understand, cultural indoctrination and financial desperation are clear motivating factors as apart from trafficking.

India has addressed trafficking both directly and indirectly in the Constitution. Article 23 prohibits trafficking in human beings and *begar* and other similar forms of forced labour and any contravention of this provision shall be an offence punishable in accordance with law. In *People's Union for Democratic Rights v. Union of India*,¹ while considering the emancipation of bonded labour, the Supreme Court defined the meaning of forced labour in the context of Article 23 of the Constitution of India. With increase in labour trafficking across the country the judgment is very relevant in order. The Supreme Court held that it may therefore be legitimately presumed that when a person provides labour or service to another against receipt of remuneration which is less than the minimum wage, he is acting under the force of some compulsion which drives him to work though he is paid less than what he is entitled under law to receive. In *Geeta Kancha Tamang vs State of Maharashtra* C.A. No. 858 of 2009 while denying the release of a women trafficker, on mercy grounds, who had served 14 months imprisonment the court stated that the first aspect that the Court has to consider for such a heinous crime is that trafficking in persons is prohibited under Article 23 of the Constitution of India. It is, therefore, the fundamental right of every Indian citizen not to be trafficked. Such act constitutes the grossest violence of the human rights of the victim child.

Article 39 (e) directs the state to ensure the health and strength of individuals are not abused and that no one is forced by economic necessity to do work unsuited to their age and strength. Article 39 (f) directs the State that childhood and youth should be protected against exploitation.

Due to the serious nature and the wide prevalence of trafficking for sexual exploitation in the region, many laws deal with this form of trafficking. India's Immoral Traffic Prevention Act, 1956 is a classic example. These provisions make India's mandate on trafficking clear, penalizing and tackling trafficking through legislation. The Immoral Traffic Prevention Act, 1956 is the only legislation specifically addressing trafficking. It penalizes trafficking of women and children for commercial sexual exploitation, keeping a brothel, living on the earning of the prostitution of others.

There is no current central legislation in India with regard to organized crime. Maharashtra was the first State to have an Act.² Similar laws now exist in some of other States in India including Andhra Pradesh and Karnataka. In the absence of a specific law on organized crimes, reliance is placed on Indian Penal Code, 1860.³

The provisions of Articles 23, 39 (e) and 39 (f) have been incorporated into the Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA) and the Immoral Traffic in Persons (Prevention) Act of 1986 (ITPA), an amendment to SITA. ITPA supplemented by the Indian Penal Code (IPC) prohibits trafficking in human beings including children and lays down severe penalties. The Juvenile Justice Act, 1986 provides for care, protection, treatment and rehabilitation of neglected and delinquent juveniles including girls. The enforcement of ITPA, IPC and the Juvenile Justice Act is the responsibility of the State Government.

Judiciary plays a very important role in securing a just society. The Indian Judiciary has always commanded considerable respect from the people of this country. Judiciary with its innovative vision has endeavoured to ensure complete justice in all causes of our society as laid down by law by way of pronouncing their new interpretations. Supreme Court in the process laid down several new legal principles to alive and activated the system of justice in order to ensure protection of human rights and social justice.

There have been some principles laid down by the judiciary which have had a positive impact on the approach of the judiciary to cases of trafficking. **Victim's Rights:** In *Prajwala vs. Union of India*,⁴ the implementation of a victim protocol was demanded. There have been cases where compensation has been ordered to be paid by a perpetrator of crimes to victims of the crimes as in *Bodhisattwa Gautam vs. Subhra Chakrabarty*⁵, where a person had promised to marriage to a woman and even went through with a wedding ceremony which turned out to be false.

In *M.C. Mehta v. State of Tamil Nadu*⁶ the Supreme Court laid down various measures which needs to be taken in order provide support to the child labour and his family. The Court said from each offending persons employing child labour their premises needs to be sealed and they be asked to provide fine of Rs 20,000 which will be used for the Rehabilitation of the Child victim. The Court also asked for a national level survey on Child labour. In cases of trafficking too, this principle has been used, as seen in *PUCL vs. Union of India*,⁷ where compensation was ordered to be paid where children were trafficked or bonded for labour.

Directions to State Functionaries to tackle the problem of trafficking: *Vishal jeet vs. Union of India and Others*,⁸ the Supreme Court while putting on record the growing exploitation of young women and children for prostitution and trafficking reported that in spite of the stringent and rehabilitative provisions of law under various Acts, it cannot be said that the desired result has been achieved. It was a landmark decision where the Supreme Court took it upon itself to give directions for the protection and rehabilitation of those who had been dedicated as *devadasi* by their families or communities for cultural reason and were currently in prostitution. While *devadasis* and *Jogins* were from different States in India, this also could apply to Nepali women who are also dedicated, albeit in Nepal, and find themselves in brothels in India. It stated that this malady is not only a social but also a socio-economic problem and, therefore, the measures to be taken in that regard should be more preventive rather than punitive. It was of the view that devastating malady can be suppressed and eradicated only if the law enforcing authorities in that regard take very severe and speedy legal action against all the erring persons such as pimps, brokers and brothel keepers. Apart from legal action, both the Central and the State Governments would have an obligation to safeguard the interest and welfare of the children and girls of this country and had to evaluate various measures and implement them in the right direction.

In *Gaurav Jain vs. Union of India*,⁹ the court affirmed that the State had a duty to rescue, rehabilitate and enable women to lead a life of dignity. The Court has also at times taken serious note of what it referred to as the indifferent and callous attitude of the State administration in identifying, releasing and rehabilitating bonded labours in the country. It observed that whenever it is shown that a laborer is made to provide forced labour, the court would raise a presumption that he is required to do so in consideration of an advance received by him and is, therefore, a bonded laborer. The burden of rebutting this presumption is upon the employer.

In *Neerja Chaudhury Vs. State of Madhya Pradesh*¹⁰ in this case the Supreme Court gave directions on the rehabilitation of Bonded Labours. It stated that rehabilitation must follow in the quick footsteps of identification and release, if not, released bonded labourers would be driven by poverty, helplessness and despair into serfdom once again. Social action groups operating at the grass root level should be fully involved with the task of identification and release of bonded labourers.

In the case of *the Public at Large Vs State of Maharashtra and Others*,¹¹ in *suo motu* notice taken by the court which indicated that the minor girls were illegally confined and forced to be sex workers. The Court passed directions to frame a proper scheme so that the women including minors who are produced for sexual slavery are released from the confinement of their procurers; rehabilitated in the society; and for carrying out HIV tests for the willing sex workers so that the disease may not spread like wildfire in the city.

On the basis of the directions passed by the courts, raids were carried out and about 487 minor girls and child sex workers were rescued by the police and kept in the custody of juvenile homes etc. with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred any fifty rupees, or with both.

Special Protection to Children: The courts have looked at children who have been trafficked themselves and children who are in need of care and protection(those vulnerable to being trafficked).

In the case of, *Prerna Vs. State of Maharashtra and Others*,¹² the Court looked into the issue of violation of rights of trafficked children by various authorities who are supposed to implement the law. Prerna, a registered NGO working in the red-light areas of Mumbai and Navi Mumbai with the object of preventing the trafficking of women and children and rehabilitating the victims of forced prostitution filed a petition to protect children and minor girls rescued from the flesh trade against the pimps and brothel keepers keen on reacquiring possession of the girls. On May 16, 2002, the police raided a brothel at Santa Cruz and arrested four persons who were alleged to be brothel keepers or pimps. Twenty four females were rescued, ten of them were found to be minors. In this case the Mumbai High Court passed the following directions which are of great significance for the children rescued from the brothels.

The Court clearly directed that no magistrate can exercise jurisdiction over any person under eighteen years of age whether that person in a juvenile in conflict with law or a child in need of care and Protection. Any juvenile rescued from a brothel under the Immoral Traffic (Prevention) Act 1956 or found soliciting in a public place should only be released after an inquiry has been completed by the probation officer. The said juvenile should be released only to the care and custody of a parent/guardian if found fit by the child welfare committee, to have the care and custody of the rescued juvenile. No advocate can appear before the child welfare committee on behalf of a juvenile.

In *Bholanath Tripathi Vs. State of U.P.*,¹³ a public interest litigation was filed alleging that a woman was held in confinement and was being used for earning money by prostitution. The Supreme Court directed the Commissioner Appointed to make enquiry and if satisfied *prima facie* about the allegations, to remove her to a safe place and secure her production before the Court. Section 20 permits the removal of prostitutes from any area in the interests of the general public. The Magistrate is further empowered to prohibit the prostitute women from re-entering the place from which she has been removed.

In *Laxmi Kant Pandey vs Union of India*¹⁴, the Supreme Court examined the vulnerability of children being trafficked in adoption rackets due to the lack of an effective protection mechanism. The court went to create an appropriate mechanism to fill the gap, especially in the context of inter country adoptions. The Supreme Court while supporting inter-country adoption stated it is necessary to bear in mind that the primary object of giving the child in adoption being the welfare of the child, great care has to be exercised in permitting the child to be given in adoption to foreign parents, lest the child may be neglected or abandoned by the adoptive parents in the foreign country or the adoptive parents may not be able to provide to the child a life of moral or material security or the child may be subjected to moral or sexual abuse or forced labour or experimentation for medical or other research and may be placed in a worse situation than that in his own country. The court has laid down procedures to check and monitor inter country adoptions so that the children don't end up trafficked.

The Lucknow High Court in a judgment on 13 October 1995, not only directed the release of a 13 year old girl forcibly engaged in the flesh trade but also issued writ of mandamus directing the state of Uttar Pradesh and the Bara Banki District Magistrate to admit her to a primary school and sanction Rs. 10,000 for her

rehabilitation. The Court was of the view that the child should be immediately restored to her parents, whose primary responsibility will be the upbringing and development of the child.

Over the years, the judiciary in India has given various landmark pronouncements in combating trafficking; monitored various scheme of rehabilitation for trafficked victims; issued guidelines to safeguard the rights of victims; and has also set up various panels and committees to ensure that there are various monitoring mechanism in place for the enforcement of rights of trafficked victims and also to ensure implementation of the law.

The Supreme Court has generally considered the problem of trafficking as one of the great concerns warranting a comprehensive and searching analysis and requiring a humanistic rather than a purely legalistic approach.

In 1998 the Central Government, pursuant to the directions issued by this Court in Gaurav Jain case constituted "Committee on Prostitution, Child Prostitutes and Children of Prostitutes and Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children".

In 1998 in a report containing an action plan,¹⁵ which highlighted the problems in addressing issues of commercial sexual exploitation, detailed recommendations were made with a view to arrest the systematic problem, including issues relating to law enforcement and legal reforms.

The National Human Rights Commission (NHRC) should be involved in monitoring the pace and progress of implementation of the law, national policy and programme of action as also directions of the apex Court issued from time to time.

It has also been observed that there are cases of trafficking which are thinly disguised and may not *prima facie* be identified as trafficking. These include, using the open border policy between India and Nepal to bring in Nepali girls and women to India and then selling them to brothels. Such issues need to be tackled seriously and on priority basis.

Another issue is, not all laws like ITPA, 1956 define trafficking. Although India has enacted a specific law on trafficking, it does not define trafficking, but defines 'prostitution' to have the usual attributes of trafficking for sexual exploitation. It is hoped that the amendment that is on the cards would take this into consideration. The Goa Children's Act, 2003 contains a definition on trafficking, but that is limited only to the State of Goa and to child trafficking only. There is a need of comprehensive legislation. Similarly, SAARC countries unanimously accepted definition for cross border trafficking in South Asia, however, it is a limited definition which only covers trafficking for commercial sexual exploitation. Trafficking is defined as the moving, selling or buying of women and children for monetary or other considerations, with or without the consent of the person subject to trafficking.

There is a need to protect the victim of trafficking in cross-border cases. The victim has no special status in the receiving States; very often the victim is treated as an illegal immigrant instead of as a victim of trafficking. States are required to consider adopting legislative or other appropriate measures that permit victims of trafficking to continue to live in the country temporarily or permanently. Where temporary, it is usually for the duration of the anti-trafficking case in which the victim deposes as a witness.

In conclusion, it can be safely said that it is high time that the state governments taken serious steps to prevent forcible pushing of women and girls into prostitution and to prevent the trafficking in women, i.e., buying and selling of young girls. These girls may be victims of kidnapping, they may be victims of various deprivations, and they may be victims of circumstances beyond their control.

The State is to set up homes for rehabilitation of rescued sex workers including children so as to enable these rescued sex workers to acquire alternative skilled in order to enable them to have alternative source of employment. It is the duty of the state of take preventive measures to eradicate child prostitution without giving room for any complaint of culpable indifference. One should not forget that these rescued girls' also fellow human beings who require some support and treatment for getting out of the immoral activities.

The State Government to see that strict vigilance is maintained in the areas where sex workers normally operate and to rescue the child sex workers. Further, adequate steps should be taken to see that those who indulge in trafficking of women should be suitably punished.

1. 1982 (3) SCC 839.

2. Maharashtra Control of Organised Crime Act, 1999.

3. Sections 34, 120-A, 120- B, and 107-120.

4.2006 (9) SCALE 531.

5. (1996) 1SCC 490.

6. 1996 6 SCC 756.

7. 1988 (8) SCC 485

8. (1990) 3SCC 318.

9. AIR 1997 SC 3021.

10. AIR 1984 SC 1099.

11. AIR 1997 4 BOM. CP 171

12. Criminal Writ petition no. 788 of 2002, Mumbai High Court.

13. 1990 Supp SCO 151: 1990 SCC (Cri) 543.

14. (1984) 2 SCC 244.

15. Prepared by the Department of Women and Child Development, Ministry of Human Resources Development, Government of India.