

# HUMAN TRAFFICKING IN INDIA: WITH SPECIAL REFERENCE TO WOMEN

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**Abstract:** Human trafficking is one of the worst forms of abuses of human rights worldwide. But it is extremely difficult to evaluate the magnitude of the phenomenon as trafficking is closely related to other forms of abuses such as child labour, bonded labour, child marriage, kidnapping and abduction and prostitution as even though these abuses can exist also independent of trafficking. This paper has attempted to analyze relatively the nature, causes, and modes of human trafficking in a country that has recently become a soft target in the South Asian region for trafficking in women. India has not succeeded to comply with certain international norms to fight the crimes against humanity. The paper throws light on the need of evolving a multidimensional approach and points towards on the basic structural agents of trafficking for recommending thoughtful measures to counter such a social devil.

**Index Terms:** human rights; prostitution; human trafficking; kidnapping and abduction; child labour child marriage;

## 1. INTRODUCTION AND CONTEMPORARY SCENARIO

Human trafficking is the illegal trade and bussiness of human beings mainly for the purposes of commercialized sexual exploitation and organised forced labour. It is the transfer or movement of men, women and children from one place to another through compulsion, mental coercion or clever deception. The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children [known as the Palermo Protocol adopted in November 2000] has also tried to define trafficking as recruitment, transportation, transfer, harbouring or receiving of persons, by means of the physical threat or use of force or other forms of mental coercion, of abduction, of fraud, of deception, of the abuse of power or of position of vulnerability or transferring of payments or emoluments to gain the consent of a person tacitly having control over another person, for the purpose of exploitation. Moreover it states exploitation shall be inclusive of ,the exploitation of the prostitution or other forms of sexual exploitation, compulsive labour or service, slavery or similar practices , servitude or the removal of organ. The problem of human trafficking, specially trafficking in women has arised as an important socio-legal issue in modern times in most of the nation states. Even though trafficking is majorly a transnational organised crime. Trafficking constitutes all acts involved in the recruitment, abduction, transport, harbouring, transfer, sale or receipt of persons; within national or across international borders; through force, coercion, fraud or deception; to place persons in situation of slavery- like conditions. forced labour or services, such as forced prostitution or sexual services, domestic servitude, bonded sweatshop labour or other debt bondage<sup>1</sup>. India among various other South-Asian countries is becoming a major fountainhead, conveyance as well as a destination for the traffickers. The gist of the situation is that human trafficking, being a highly confidential and classified trade, remains majorly under-reported and undiscoverable in spite of the fact that various initiatives and measures at international level have been taken to bind governments into action. Most often, the increasing magnitude of human trafficking is also a major reflection of the lack of political determination on the part of the nation states as evident in the plethora of examples in allocation of inadequate measures and resources fight with the prevailing situations. The situation is therefore much critical and serious than their reportage to the police.

Exploitation of women with mental and physical compulsion is the main aim of human trafficking. According to various studies, most of the youths particularly females, teenagers, orphans and women are the major victims of human trafficking in India. The reason being un-education, non-employment, poverty, weaker laws of border immigration security systems and other socio-legal problems, resulting in increase in vulnerability creating number of victims and advancing human trafficking. Those from India's most undeveloped and disadvantaged socio-economical state are particularly vulnerable to forced or bondage laboring and commercial sexual trafficking. Human trafficking affects every nation states around the globe. Nowadays an international market has been evolved by the human traffickers trading in human beings based on

<sup>1</sup> Amy O' Neill Richard, *International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organised Crime*, Centre for the Study of Intelligence, USA, 1999, p. 22

increased profits and increased demand and supply chain for commercial sex as well as cheap labour. Human trafficking is a booming illegal and immoral international trade, making millions of dollars at the expense of thousands of victims; many of them are teen girls and boys, who are ravished of their dignity, personality and freedom. Although most of the people have not witnessed these crimes yet it happens every day all around the globe. In a secure and highly confidential immoral commercialization of humanity, trafficked victims are used like products for meeting demand and supply chain and are then thrown away.

## 2. PREVALENT CAUSES

The principle factors leading to human trafficking are various and mainly differ from one nation to another. Trafficking is a transnational occurring complex phenomenon that is often motivated or influenced by social, economic, cultural and other factors. Many of these factors are specific to individual trafficking patterns and to the occurring. There are, however, various factors that tend to be usual to trafficking in general or found in a broad range of different specific regions, patterns or cases. One such factor is that the potential victims being desirous to migrate are majorly exploited by the offenders who recruit and gain initial control or cooperation by more coercive measures once the victims have been transferred to another nation State or other region within the country, which may not always be the same to which they had desire to migrate. Some of the usual or common factors are local situations that generate within the populations the feeling to migrate in search of best standard of life. Poverty, suppression, oppression, voidness of human rights, lack of socio-economic opportunity, prevailing dangers of conflict or instability and similar life threatening conditions prevalent in the area. Political instability, Non diplomatic support, militarism, Dictatorship, civil unrest, internal armed rebellion, belligerency and insurgency and natural disasters may result in a massive increase in trafficking. The destabilized displacements of populations increase their vulnerability of exploitation and abuse through trafficking and forced labour. Armed conflict, war and civil strife may lead to massive movements of populations, leaving orphans and street children highly vulnerable to trafficking. These factors tend to exert thrust on victims that “push” them into migration and thus under the control of evil traffickers, but other factors that tends to “pull” potential victims can also be substantially considered. The gap between poverty and wealth which are relatively inter connected concepts lead to both migration and trafficking patterns in which victims move from situation of huge poverty to conditions of less-extreme poverty. In that context, the speedy growth of broadcast and telecommunication media, including the WWW, web, Internet, across the developing globe tend to have increased the desire to migrate to other capitalist or developed countries and, with it, the vulnerability of migrants falling into hands of traffickers increases. According to NCRB report, 2013, more than 10,500 persons were registered as missing from Chhattisgarh, one of India’s poorest state. The majority are believed to have been trafficked out of the state and into domestic work or other forms of labour in cities. Trafficking for sex and other purposes has always existed in India, but trafficking for domestic slavery is a relatively new development.<sup>2</sup>

## 3. FRAMEWORK OF ANTI-TRAFFICKING LAWS IN INDIA

India's obligation to adhere the UN trafficking protocol is the first transnational cross border attempt to curb evil of human trafficking Almost a decade after signing the United Nations Convention against Transnational Organized Crime (UNTOC), India constitutionally ratified the Convention and its three Protocols, including the UN Trafficking Protocol, on May 5, 2011. The process of ratification formally indicated the State's consent and intent to be bound by the terms and provisions of the UNTOC and its Protocols. The Constitution of India discusses provisions on trafficking at two levels, one at the level of fundamental rights which are basic rights available to all, irrespective of caste, creed, sex, place of birth, etc. and two, at the level of Directive Principles<sup>3</sup> Provisions on Anti-Trafficking is also embedded in the Constitution of India Article 23 Fundamental Right prohibiting trafficking in humans and forms of forced labouring Article 39(e) Directive Principle of State Policy indicated at ensuring that health and strength of individuals are not to be abused and that no one is forced by economic necessity to do work not suited to their age or strength Article 39(f) Directive Principle of State Policy stating that childhood and youth should be protected against all forms of exploitation. India's Immoral Traffic Prevention Act, 1956 is one of the prominent legislation specifically addressing and dealing with trafficking. It penalizes trafficking of women and children for commercial sexual exploitation. Keeping a brothel is also made an offence which is punishable. Some of the major elements of trafficking are covered by the enactment. These include procuring, inducing or taking a person for prostitution, detaining a person in premises where prostitution is carried on and soliciting. On the other hand beside ITPA, trafficking of women and children for sexual exploitation is also covered under various other sections of the Indian Penal Code (IPC), such as, 366A (Procuration of Minor Girls Under 18 Years of Age), 366B (Importation of young Girls Under 21 Years of Age From a Foreign nation state), 367 (Kidnapping and Abduction for Slavery, Unnatural Lust, etc.), 372 (Selling of Minor Girls for Prostitution), 373 (Buying of Minor Girls for Prostitutions). There are some other major offences under IPC that have direct nexus with the problem of trafficking. Thus, for instance, trafficked women/girls are very oftenly raped (an offence under section 376) before being sold to the brothel. Also sexual intercourse with a girl child under 16 yrs, even with her consent, is the offence of a rape u/s 374 IPC. Likewise

<sup>2</sup> *Child Trafficking in India: It Was Only after A Few Years I Realised I Had Been Sold*, available at <http://www.theguardian.com/global-development/2015/apr/28/child-trafficking-india-domestic-labour-chhattisgarh>

<sup>3</sup> Durga Das Basu, *Introduction to the Constitution of India*, LexisNexis Butterworths, Nagpur 2008, p. 11

, special legislations like The Child Marriage Restraint Act 1929, Bonded Labour Abolition Act 1976, Child Labour Act 1986, Juvenile Justice Act 2015, Offences Against Children Act 2005 and local legislations like Goa Children's Act 2003 also tries to stop human trafficking.

#### 4. GAPS EXAMINED WITHIN THE PROSECUTION-PROTECTION-PREVENTION MATRIX

Key gaps in the legal framework of the region including Bangladesh have an impact on all three areas of prosecution, protection and prevention. These include:-

- (1) Non ratification of UNTOC and Protocols which is a major stumbling block as many enabling provisions of these instruments cannot be availed of.
- (2) Lack of a comprehensive definition of trafficking, either as a common minimum platform for the States to work on with each other, or even for punishing all forms of trafficking within the countries. The Women and Children Repression Prevention Act, 2000, does not give a comprehensive definition and is restricted to a few forms of trafficking.
- (3) Gender sensitivity is missing even though there are laws for women. This does not translate into a sensitive law, at least in its working, as commercial sex workers also get booked under trafficking law. Victims may be re-victimized during the procedure, and some who are prosecution witnesses may turn hostile.

##### 4.1 KEY GAPS IN PROSECUTION

- (1) There is no uniform definition of who is a child/ minor in terms of age. It varies in different statutes. The Employment of Women and Young Persons and Children Act, 1956, places a child as a person below eighteen, while the Women and Children Repression Prevention Act, 2000, defines a child as a person below sixteen years of age.
- (2) Trafficking is not often seen as an organized crime, and provisions relevant to organized crime are not made use of in trafficking cases although the Bangladesh Penal Code, 1860, does have provisions relating to common intention to commit an offence, criminal conspiracy, and abetment.
- (3) Cooperation mechanisms are ad hoc or non-existent as far as cross border trafficking is concerned. This is so especially concerning:
  - (a) Legal assistance
  - (b) Providing Information
  - (c) Transfer of sentenced person
  - (d) Joint Investigation
- (4) Prosecutions overall are not satisfactory, There are no separate courts dealing with issues of this nature.
- (5) Absence of a comprehensive definition of trafficking leaves space for dishonest police personnel to convert a trafficking case into illegal migration, illegal border crossing, human smuggling, etc.

##### 4.2 KEY GAPS IN PROTECTION

- (1) There is sometimes no adequate distinction drawn between the trafficker and the victims; e.g., in the case of prostitution or in the case of unsafe migration without documents. Although there have been cases where courts have ordered rescue, some of those who migrate may not be treated as Bangladeshis by the country if they don't have documents to prove so.
- (2) There is no positive duty cast upon States to provide sufficient shelters or for rehabilitation or rescue victims of trafficking.
- (3) Civil remedies in tort law are not used against employers who violate labor standards or force employment.
- (4) Financial support for prevailing programs is often insufficient.
- (5) A conducive atmosphere to make it safe for victims to testify is not created. There is no witness protection program, either.
- (6) The focus is on women and children, with inadequate protection for men.
- (7) The focus is also on trafficking for sexual exploitation and punishments for trafficking for labor do not carry the same weight.

##### 4.3 KEY GAPS IN PREVENTION

- (1) Trainings of personnel at different levels are done sporadically, and materials are not revised systematically.
- (2) There are insufficient awareness campaigns and community initiatives, leading to trafficking or unsafe migration which increases vulnerability to trafficking.
- (3) Licensing of recruitment agencies and their monitoring is not satisfactory. Illegal immigration is often resorted to.
- (4) Systems like referrals and identification of support staff and service providers or authorities at different levels is absent.

(5) Absence of skilled police officers having motivation and adequate training in both pro-active and reactive investigation to combat organized crime like trafficking.

## 5. KEY RECOMMENDATIONS IN PROSECUTION

(1) By amendment to specific provisions of statutes wherever a child or minor is mentioned, the definition of a child must comply with the definition under the UNCRC. Every person below the age of eighteen years must be considered to be a child. The Women and Children Repression Prevention Act, 2000, must be amended accordingly.

(2) Trafficking must be seen as an organized crime in criminal procedure and substantive criminal law. Prevailing sound principles of criminal law, such as common intention, object conspiracy, etc., must be used in cases of trafficking.

(3) Cooperation mechanisms must be set up with mutual contacts at different levels to cut through the red tape and make rapid action possible. This must be also done at the regional level through SAARC or some other mechanism.

(4) Prosecutions should be increased.

(5) Corruption among police and border officials must be investigated in order to ensure that cases of trafficking don't figure as illegal migration.

(6) Cases of trafficking should be taken up by designated courts dealing with violence against women, and judges in such courts should be both trained in the law and sensitized towards issues of gender.

(7) There is a need for overall systematic and focused trainings of all the wings of the criminal justice system; namely, the police, the public prosecutors and the judicial officers. There must be more stringent punishments for violations of labor standards.

### 5.1 KEY RECOMMENDATION IN PROTECTION

(1) There must be a clear line drawn between the trafficker and the victim. Victims must not be further penalized, and a distinction must be made between trafficking on the one hand, and prostitution or unsafe migration on the other.

(2) States must accept back their nationals who have been trafficked, even if laws relating to border controls may have been breached by such persons.

(3) Rescue should go along with effective rehabilitation and must be done in a gender sensitive way. The survivors of trafficking should have the right to exercise independent agency, rather than being compelled to do whatever the State thinks is best for them.

(4) Civil remedies like torts, claims and compensation must be created and enforced against traffickers or employers.

(5) States must commit finances for more and better schemes to rehabilitate victims.

(6) Witness protection must be explored to create an atmosphere free from fear within which a victim can testify.

(7) Focus should also be on men who are trafficked for labor.

### 5.2 KEY RECOMMENDATION IN PREVENTION

(1) Anti-trafficking trainings must continue with renewed vigour for different implementing agencies. Trainings must be done continuously and at three levels:

(a) Basic/ Qualification Training

(b) Trainings to in-service personnel

(c) Trainings to those deputed to anti-trafficking squads/ police/ border controls.

(2) Employment and recruitment agencies must be closely monitored by the surveillance agencies.

(3) There must be greater awareness at all stages of source, demand and transit, and whistleblowers must be protected.

(4) Awareness building and community initiatives should be strengthened to prevent trafficking and to ensure that unsafe migration will not take place.

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