

HUMAN TRAFFICKING IN INDIA

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ABSTRACT

Human trafficking is a trade carried upon human beings. The offenders traffic human beings, exploit them in various forms for financial earnings. Human trafficking violates many human rights of the victims. The victims of human trafficking face many consequences as they suffer long period of exploitation even after they come out from such status. This paper deals with the human trafficking in India. This paper analyzes the consequences of human trafficking on victims. Transnational organized criminals in human trafficking work as a network among the nations and exploit human beings. There is a United Nations Convention on Transnational Organized Crime (UNTOC) to prevent the human trafficking. This paper studies about the Indian domestic legislations on human trafficking in the light of the International Conventions on the subject matter. In the end, it comes out with measures for preventing human trafficking.

Keywords: Human trafficking, human rights, domestic legislation, international conventions, Transnational Organized Crime.

INTRODUCTION

Trafficking means a trade which is illegal. Human trafficking is carrying out a trade on humans. Humans are trafficked for the purpose of sexual slavery, commercial sexual exploitation, extraction of organs or tissues, forced marriage, forced labor or domestic servitude. Human trafficking after drugs and the arms trade is the third largest organized crime across the world. Human trafficking across the world is mainly done for sexual exploitation where women and children turn as victims to it. Human trafficking is done for a number of purposes but sadly in our country the act which exists against human trafficking is Immoral Trafficking Prevention Act (ITPA) and it only combats against the human trafficking if it is done for the purpose of sexual exploitation. So the legal provisions relating to human trafficking as whole must be strengthened in order to prevent human trafficking in India. There are international conventions for preventing human trafficking of which more of the countries have ratified it. Human trafficking leads to violation of human rights of the individuals and also they are subjected to re- victimization. The laws for human trafficking must be strengthened that it meets all the requirements for preventing human trafficking. People who are in poverty line across the country must be made aware about human trafficking and its consequences in order to prevent them from becoming victims.

REVIEW OF LITERATURE

1. **Jayanta Choudhury & Purbita Gupta** “Trafficking in Women and Children Tripura Perspective”² the author discusses on the different forms of trafficking and also the geographical magnitude of trafficking in India and other regions. It highlights the efforts taken by various international organization and UN agencies like UNIFEM, UNICEF, ILO, UNDP, UNODC etc. towards prevention and combating of trafficking in women and children. It also points out various steps taken by the Government and Non-Government Organization (NGO’s) in India. An empirical investigation on trafficking in women and children in Tripura has been conducted. The authors have opined that the end purpose of trafficking is prostitution which is not true in all cases. The purpose may differ from cases to case.
2. **P.M.Nair, IPS** “Trafficking in Women and Children in India”³ this book is based on the research project commissioned by the National Human Rights Commission (NHRC) and the study carried out with UNIFEM support and conducted by the Institute of Social Science (ISS). In this research trafficker, victims are interviewed; it gives the multidimensional nature of the problem, loopholes in the law, the gaps in the law enforcement, the involvement of organized mafia and the agonies of the victims. It reveals that India serves as a source, transit and destination country where thousands of women and children are exploited every day. The study has illustrated a strong link between migration and trafficking and has established that addressing the vulnerability of the migrants is an important tool for preventing trafficking. The report states that the law enforcement has a critical role to play in combating trafficking, but it is unfortunate that in India, the numbers of law enforcement officials who fully comprehend the human dimension and practice a right approach to the problem are few.
3. **S.K.Ghosh** “The World of Prostitutes”⁴ the author begins with the status of prostitution in ancient civilizations and recounting its historical evolution, the author’s survey of prostitution appropriately focuses on its modern manifestations and confronts us with the rude reality that the story of prostitution is not simply the life history of “fallen angels” but an intricate and worldwide deprivation, exploitation and persistent violation of human dignity. Various International Conventions brought into force for combating evils associated with prostitution is also discussed in detail. The author gives the statistics about the inter-country adoption of child, in some third world countries, unscrupulous intermediaries persuade to sell their child claiming that it will be adopted by well-off couples from rich country, when the child is really intended for exploitation.

Trafficking in Women and Children” Tripura perspective, 1st edn., NABA Chandana Prakashani, Kolkata, . 2012

³ Orient Longman Private Limited Hyderabad , 2005

⁴ A.P.H .Publishing Corporation , New Delhi, 1996

REASONS FOR HUMAN TRAFFICKING

National and State Laws on prevention of trafficking Constitutional provisions relating to immoral trafficking

The Constitution of India, the fundamental law of the land, forbids trafficking in persons. *Article 23* of the constitution specifically prohibits “traffic in human beings and beggar and other similar forms of forced labour”. Other fundamental rights enshrined in the Constitution relevant to trafficking are *Article 14* which provides for equality before law and equal protection of law, *Article 15* states that there shall be no discrimination on grounds of religion, race, caste, sex place of birth, *Article 21* guarantees right to life and personal liberty, *Article 39(e)* gives a direction as to protection of women and children’s rights and states that the health and strength of women and also the tender age of children not be abused and should not be forced to do any work or enter any avocations which is unsuited to their age and strength due to their economic necessity. *Article 30(f)* gives a direction that children should be protected from being exploited and especially the youth should be provided with opportunities and facilities which would assist them to develop in a healthy and dignified manner. *Article 51 A* It imposes a duty on every citizen of India that they should strive for eradicating the derogatory practices which violates the dignity of women, and develop humanism and practice compassion.⁵

International and National Efforts for prevention of human trafficking

In order to deal with the menace of human trafficking several International Instruments were brought into force

- a. International agreement for the Suppression of White Slave Traffic, 1904
- b. International Convention for the Suppression of White Slave Traffic, 1910
- c. International Convention for the Suppression of White Slave Traffic, 1923
- d. Slavery Convention, 1926
- e. International Labour Organization Forced Labour Convention, 1930
- f. International Convention for the Suppression of Traffic in Women of Full Age, 1933
- g. The Geneva Convention of 1949 for the Suppression of the Traffic in Persons and of the Exploitation of Others (1949 Anti Human Trafficking Convention)
- h. Universal Declaration of Human Rights, 1948

⁵ Jain M.P, ‘Indian Constitution Law’, (vol 1&2 Wadhwa & Co., Nagpur, 2003)

Indian Penal Code,1860

Trafficking of women and children for sexual exploitation is covered under several other sections of the Indian Penal Code (IPC) as there is no specific section to deal with trafficking of women and children. Some of the provisions are *Section 366A* (Procuration of Minor Girls under 18 years of age), *Section 366B* (Importation of Girls under 21 years of age from foreign country), *Section 367* (Kidnapping and Abduction for slavery, unnatural lust, etc) *Section 372* (Selling of Minor Girls for Prostitution), *Section 373* (Buying of Minor Girls for Prostitution). There are some other offences under IPC that have direct bearing on the problem of trafficking. Thus, for instance, trafficked women/girls very often are raped (an offence under *Section 376*) before being sold to the brothel.⁶

The Indian Evidence Act, 1872

Section 114 A – provides for presumption as to absence of consent in certain prosecution for rape and *Section 151* forbids the putting of any question which is indecent or scandalous, unless it relates to facts in issue or is necessarily connected with them are relevant in this context. This section is applicable to human trafficking cases where women have become victims of trafficking, innocently given consent to the offer made by the trafficker believing it to be true. The statistics proves that in most of the cases women trafficked are subjected to sexual exploitation.⁷

Criminal Procedure Code, 1973 with *Section 98* empowers a District Magistrate, a Sub-divisional Magistrate of First Class to restore a woman or female under eighteen years who have been abducted or unlawfully detained for unlawful purposes to her lawful custodian or guardian.

The main purpose of this Section is to protect girls and women from detention for immoral purposes, although the section is wide enough to cover detention which is clearly unlawful. *Section 327 (2)* Empowers the presiding Judge of Magistrate, if he thinks fit, order for conducting in camera proceedings in matters related to trial of rape or an offence under section 376, Section 376A, 376 B, 376C and 376D of the Indian Penal Code.⁸

LEGAL FRAMEWORKS TO COUNTER HUMAN TRAFFICKING IN INDIA

Constitution of India, 1949

The Indian Constitution of India prohibits trafficking in persons and guarantees many of the

⁶ Ratanlal & Dhirajlal, *Indian Penal Code,1860*, (ed, 18th Wadhwa & Company ,Nagpur, 1992)

⁷ Ratanla & Dhirajlal, *Law of Evidence,1872*, (ed.25th Wadhwa & Company , Nagpur, 2013)

⁸ Ratanla & Dhirajlal, *Criminal Procedure Code,1973*, (ed, 18th Wadhwa & Company ,Nagpur,2006)

internationally acknowledged various human rights norms such as the right to life and personal liberty, the right to equality, right to freedom, the right to constitutional remedies. The right to be free from exploitation is also assured as one of the fundamental rights of any person living in India (aDvantage).

The Juvenile Justice (Care and Protection of Children) Act, 2000

According to this Act there is no difference between a minor and a child. All the persons under the age of eighteen years are considered children. A child who is a child in need of care and protection (NATIONAL LEGAL RESEARCH DESK 2016).

INTERNATIONAL CONVENTIONS TO PREVENT HUMAN TRAFFICKING

Article 4 of the Universal Declaration of Human Rights

This article provides that a person should not be detained under slavery or servitude. Slavery or servitude trade must be prohibited in all their forms.

International Covenant on Civil and Political Rights

Articles 8(1) and 8(2) of ICCPR respectively states that the person should not be apprehended under bondage and servitude. The trade which is done for domestic slavery and servitude must be prohibited.

International Covenant on Economic, Social, and Cultural Rights

Article 10(3) of the Covenant on Economic, Social, and Cultural Rights (ICESCR) provides that every children and young people should be given a protection and assistance without any discrimination or biasness on the basis of caste, for reason of parentage and any other condition. They should be protected from economic and social exploitation.

ILO Convention concerning forced Labour

This Convention basically calls for the suppression of forced or compulsory labour in all its forms. Forced labour is defined as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. This convention is the most ratified convention among all the ILO conventions.

JUDICIAL APPROACH

The Hon'ble Supreme Court has interpreted this provision to give justice to vulnerable sections of society by directing the state governments to enact suitable legislations to protect the rights of women and children and especially women who are subjected to various forms of exploitation.

In fact Indian Judiciary has significantly contributed for combating human trafficking. With regard to trafficking of women Supreme Court has given landmark judgments in **People's Union for Democratic Rights v. Union of India**⁹ it was held that Article 23 was intended to strike "at every form of forced labour even if it has its origin in a contract voluntarily entered into by the person obligated to provide labour or service". Supreme Court has upheld the basic human rights of bonded labourers receiving minimum wages by passing an order that full wages to be paid directly to the labourers instead of the contractors. Directions to the government were given to take necessary steps for punishing the violations of fundamental rights of citizens guaranteed by Article 23 by private individuals. This direction imposes a duty on the concerned State Government to take the responsibility of protecting the vulnerable sections of the society from being exploited by the employers. This decision has highlighted on the issues which are most prevalent in Indian labour market where labourers are made to work for long hours but they are not paid equivalent wages for their hard labour. The intention of the Supreme Court in this decision clearly provides the actual scenario of labour exploitation and the conditions which the court intends to address.

In **Bandhua Mukti Morcha v. Union of India**¹⁰ there were large numbers of workers in the stone quarries of Haryana who were bonded laborers, in violation of the Bonded Labour System (Abolition) Act, 1976 and that in addition to being held in bondage they were working in inhumane conditions. The Supreme Court directed the State Government to act as a Welfare State and ensure that workers are continuing in work with improved conditions. In this case the court has directed that the Government had the responsibility of protecting the basic human rights of the weaker sections of the society

In **Laxmi Kant Pandey v. Union of India**¹¹ It was alleged that in the guise of adoption Indian children of tender age were not only exposed to the long dreadful journey to distant foreign countries at great risk to their lives but in case they survive they were not provided any shelter and relief homes and in course of time they become beggars or prostitutes for want of proper care. Supreme Court gave directions to all State Governments and the Governments of Union Territories to direct their concerned law enforcing authorities to take appropriate and speedy action under the existing laws in eradicating child prostitution without giving room for any complaint of remissness or culpable indifference.

In **Vishal Jeet v. Union of India and others**¹² This case is considered to be one of the 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 devadasis by their families or communities for cultural reasons were currently in prostitution. The court called for stringent and speedy legal action against the exploiters such as pimps, brokers and brothel owners. The Court has given certain directions to the Central Bureau of Investigation (CBI) to bring all inmates of the red light areas and also those who are engaged in the flesh trade to protective homes of the respective States to provide them with proper medical aid, shelter, education and

⁹ AIR 1982 SC 1473

¹⁰ AIR 1984, S.C. 820

¹¹ (1987) 1 SCC 67

¹² 1989 3 SCC 318

training in various disciplines of life so as to enable them to choose a dignified life and bring up their children along with the other children in the society.

Supreme Court has given life to the letters of the Constitution of India by rendering an effective judgment on the issues of human rights violation and specifically on human trafficking.

The intention of this definition is to facilitate National approaches for the purpose of establishment of domestic criminal offences. This would help to support for international cooperation in investigating and prosecuting trafficking in person cases. One more additional objective of the Protocol is to protect and assist the victims of trafficking in persons with full respect for their human rights.

CONCLUSION

The laws for human trafficking must be strengthened that it meets all the requirements for preventing human trafficking. People who are in poverty line across the country must be made aware about human trafficking and its consequences in order to prevent them from becoming victims. Many national and international seminars and conferences can be conducted across the country so that the general people and the government can join hands to prevent human trafficking. The vulnerable sections of the society must be protected by the Government so that they don't fall as victims to human trafficking. The victims of the human trafficking are only the persons from below poverty line so the offence of human trafficking can be greatly prevented if the Government helps the poor sections of the society and provides them with adequate education and employment.

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