

# HUMAN TRAFFICKING: A LEGAL STUDY

## ABSTRACT

Human trafficking is a multifaceted issue which requires a multidisciplinary approach. This study is aimed at exploring the causes, current efforts and challenges faced in this context. The objective of this study is to examine the incidence of human trafficking and its underlying factors in the Sundargarh district of Odisha. Sundargarh is an industrially expanding district which can open up employment opportunities for the tribals who are immensely affected due to various reasons. To analyse the experiences of the victims of human trafficking, indepth case study method has been adopted. Finally examining the role of local NGOs in combating human trafficking is a major thrust in this study. The sample of the study includes five (5) case studies of the trafficked victims. The respondents also included the members and staff of the NGOs, different officials of the district administration and family members of the victims. The results indicated that an inclusive approach is what India needs in order to combat trafficking. These approaches should be right-based because Human Trafficking violates human rights. So every endeavour should be directed towards protection of these rights. Protection measures should be directed to both men and women.<sup>1</sup>

*Key words: Trafficking, human rights, rehabilitation, convergence, inclusive*

## INTRODUCTION

An intergovernmental impromptu body was established in December 1998 by the United Nations General Assembly and was bestowed with the responsibility of devising a legal system which would combat transnational organized crime. This ad-hoc body finally completed the work that was assigned to it in October 2000 after 120 states had assembled for eleven times. The main feature of this new legal framework was the 'Convention Against Transnational Crime'. There were three pacts which were an adjunct to this Convention. These pacts dealt with *Smuggling of Migrants, Trafficking in Persons -- Especially Women and Children, and Trafficking in Firearms*.

A conference which was held at Palermo, Italy in December 2000 opened the Convention to be signed by member states. Because the General Assembly had already espoused these three adjunct pacts in November 2000. In an international context it is seen that, Vienna process can be accredited for initiating the fight against the evil of worldwide organized crime (Gallagher, 2001).

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<sup>1</sup> Nair, P. M., & Sen, S. (2005). *Trafficking in women and children in India*. Orient Blackswan. Orhant, M., & Murphy, E. (2002). *Trafficking in Persons. Reproductive Health and Rights: Reaching the Hardly Reached*. Washington, DC: PATH.

Henceforth, the definition of Human Trafficking was quoted. United Nations' Palermo Protocol defines Trafficking in person as, "the recruitment, transportation, transfer, harbouring 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 labour or services, slavery or practices similar to slavery, servitude or the removal of organ." (United Nations, 2000).

## BACKGROUND OF THE STUDY

Human Trafficking is demands a lot of perspective. This is because every case and situation of human trafficking is unique in its own course. To substantiate this, in a general case of human trafficking it is seen that a person (who later on becomes the victim) is taken from their village or town or city to another place, based on false promises of employment in a promising sector (commonly domestic help or labourer) with a handsome pay. Now this pay is made to look more than what this person gets in his/her own region. Such lucrative deals are the base or the main reasons for trafficking to start off in a region in the first place. Nevertheless when they arrive at the destination, what welcomes them is a shock of reality. They either never get the job that they were promised in the first place. The pay that they were promised is below their imagination. And from thereon, the situation starts deteriorating. In many cases it is unacceptable. They are handed over to placement agencies where they are further sent to different houses as domestic help and to different industries for different kind of small scale labour jobs. Initially if we see this situation is that of human smuggling. But since the recruiter makes misleading promises, this case is moulded into the shape of human trafficking.

## REVIEW OF LITERATURE

**Hameeda (2010)** reported that, the dynamics of Trafficking in India was very much multifaceted in nature. The efforts for prevention of trafficking by NGOs, donor agencies, government needed more intervention and with better recommendations. Through this qualitative study it was seen that these recommendations were properly implemented by The Asia Foundation in India for combating Human Trafficking. A detailed analysis of the Indian legal framework was done thoroughly. It is seen that the legal framework is highly blemished in India. The reasons which have flawed the legal framework are massive corruption which is deep seeded, overstrained judiciary system which is as slow as a snail and the weak safety services which is almost non- functional. The major flaw of the legal machinery is the

improper or almost no- implementation of the laws which are formulated for the prevention of trafficking and criminalization of those (it includes the trafficker, the agents, the perpetrators, the buyers, the profiteers) who are the culprits.

**Skeldon (2000)**<sup>2</sup> studied that, trafficking is an essential business and showed its difference from human smuggling in context of Asia and how things are relevantly perceived. There is a clear distinction between human trafficking and human smuggling because there is usually a lot of confusion between these two phenomena. The major reason for this confusion is the lack of clarity in the definition of borderlines of these regions and there is a lot of conflict over these regional borderlines. Owing to these confusions, there are many numbers of refugees, immigrants and similar groups crossing borders. Labour trafficking is a normal sight in Asia. And it is maximum in the regions which are already industrialized or are in the transitional phase of industrialization. Such regions and countries over all need to formulate appropriate laws and regulations so as to protect the labourers who are exploited and victimised. Subsequently, the culprits should also be brought under the books of the judicial system.

**Van Impe (2000)**<sup>3</sup> discussed the outcomes of a study of trafficking which was conducted between Philippines and Belgium. It edges over the need for a multidimensional approach to devise methods to deal with this menace of trafficking in persons (especially women). There are multiple causes which act upon and finding an all encompassing solution becomes a difficult task. The amalgamated effect of these causes cannot be curbed by simple measures. Instead what is more crucial is to have amendments in the judicial thread, so that the incidences can be kept low.

**Miko and Park (2003)**<sup>4</sup> investigated that how inclination, favouritism and differential treatment towards boys and men generally seen in almost every society is a major reason for trafficking. This is where we know that patriarchy prevails and thus aggravates the situation for women who are adversely affected and exploited in every possible manner. There are many factors which renders human trafficking. Lack of effective legal machineries, bestiality of legal enforcers and dysfunctional institutions administering the states and regions where prevalence of trafficking in persons is seen, are some of the factors. Most

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<sup>2</sup> Skeldon, R. (2000). *Trafficking: a perspective from Asia*. *International migration*, 38(3), 7- 30.

<sup>3</sup> Van Impe, K. (2000). *People for sale: The need for a multidisciplinary approach towards human trafficking*. *International Migration*, 38(3), 113-191.

<sup>4</sup> Miko, F. T., & Park, G. (2003, March). *Trafficking in women and children: The US and international response*. *Congressional Research Service, Library of Congress*.

countries lack these machineries. India is one of them. Even if there are legislations, they are not implemented as they should be. These are the major hurdles in the face of prevention of human trafficking.

## CONCEPTUAL FRAMEWORK

Every study has a conceptual framework, which helps in giving clarity to the cause. United Nations Office on Drugs and Crime is a custodian of the United Nations Convention against Transnational Organized Crime (UNTOC). It also aids in the implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, which is also known as Trafficking in Persons Protocol. Paragraph (a) of the Protocol's article 3 has defined Human Trafficking in three contexts namely, the act of trafficking, the means through which trafficking is carried out as a process and lastly the purpose of human trafficking for which it is carried out. This study is based on this definition of the United Nations. There are other definitions of different other bodies though. Since migration and trafficking are mostly confused with each other. To avoid this kind of ambiguity, only one definition has been used as a background for this study. The 'act' of trafficking talks about what is done. The 'means' of trafficking talks about how it is done.<sup>5</sup>

## HUMAN TRAFFICKING AND ITS PREVALENCE IN SUNDARGARH

To study the prevalence of Human Trafficking in Sundargarh district secondary data was required. These data were available with the CHILDLINE Sundargarh centre who is actively involved in anti-child trafficking activities in the district.

An estimate made by the Department of Health and Human Services, USA and the U.S. Department of State says that around 600,000 to 800,000 people get baited by the traffickers and end up as victims of human trafficking by crossing international borders. The estimate says that more than half of these numbers are children.

According to the CHILDLINE Sundargarh records, in the year 2012, there were 37 cases of trafficked girls from the district. About 17 of them were rescued and repatriated. Out of 37 girls, 24 of them were taken to New Delhi for purposes like domestic servitude. 3 girls each were taken to Jalandhar and Goa and 1 girl each to Pune, Bangalore, Mumbai and Gurgaon. 24 out of 37 girls were below 18yrs of age, 4 girls were above 18yrs and 6 girls were 18 yrs when they were trafficked. All the girls belong to tribal

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<sup>5</sup> Richards, K. (2004). The trafficking of migrant workers: what are the links between labour trafficking and corruption? *International Migration*, 42(5), 147-168.

families.<sup>6</sup>

## JUDICIAL APPROACH

### A case of domestic servitude (Female)

**Kiran was born in a village in Sundergarh district, Odisha.** She was born into a poverty stricken family. Her father was an alcoholic and her mother was falling sick frequently. By the year 2007, her mother breathed her last after delivering a girl child. In 2010, her father also died due to severe alcoholism. She was in the 4<sup>th</sup> grade in her village school when her mother died. Her younger sister was sent off to one of her distant relative's place, because there was no one else to take care of her. After her parent's demise, her uncle's got her elder sister married in 2012 June. Soon after her elder sister's marriage, she started getting visitors at her house, since she lived alone then. She used to feel threatened by their untimely visits. She had to cook for herself and the amount of food available was barely enough for her survival. She had very few friends in the village. She lived alone. After almost 10-15 days after her sister's wedding, her friend Sunita visited her. Sunita tried talking her into going out of the village for work. After having tried for a few times, Kiran finally gave into her repeated persuasion since she felt lonely at home. She had no source of income to support her studies further. So she decided to go with Sunita to New Delhi. The thought of going to a new metropolitan city caught her fancy.

### A case of domestic servitude (Male)

Shankar was trafficked when he was 13 years old. An aunty of his took him to New Delhi to work as a coolie in 2013 April. He belongs to a slum in the outskirts of Rourkela. After the demise of his father, his mother has been looking after him. She works as a maid servant (washing dishes) in a restaurant in Rourkela. Presently he works on a fast food stall assisting another man. Shankar's mother looks older for her age, because of extreme hard work and tedious labour. She works from 4am in the morning till 11pm in the night. That accounts for 16-19hours per day. Shankar is a playful young boy who would play around with boys of his slum. They could barely have two squares of meal a day. Sending Shankar to school is a farfetched dream for his mother. During the summers of 2013, one fine day, Shankar's aunt (not family related), Meera told him that he could work as a coolie in New Delhi. She said that this was a very good

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<sup>6</sup> Nair, P. M., & Sen, S. (2005). *Trafficking in women and children in India*. Orient Blackswan. Orhant, M., & Murphy, E. (2002). *Trafficking in Persons. Reproductive Health and Rights:*

*Reaching the Hardly Reached. Washington, DC: PATH.*

opportunity for him if he wanted to earn more money and buy good clothes and a fancy mobile phone. Considering the age he was in, all of these goodies were what he wanted. She lured him into this and took him away along with 5 other boys. They went to New Delhi by train and were accompanied by a man who they addressed as Uncle. This man had looks that scared them so they never asked him where exactly they were headed to. The first destination before going to New Delhi was a village nearby Rourkela. This was the village where Meera lived in.

### **A case of Transnational Trafficking**

This is a case of transnational human trafficking. A minor girl from one of our neighboring country was trafficked through international waterways and land route into India for the purpose of being sold into flesh trade. She was supposed to be taken to Gujarat for this purpose in the pretext of being employed in a textile industry, with a handsome pay scale of Rs.10, 000 per month. The agents who trafficked her out of her district had first tried to convince her parents to allow her to work during her summer vacations. She was in her 10<sup>th</sup> grade before she got trafficked. When her father did not accept the offer, the agents (a man and a woman from their neighboring village) directly contacted her. She saw the benefit of stepping out of home for such an amount and agreed to come along with them without informing her parents or her brother

## **FINDINGS IN INDIAN LEGAL SYSTEM REGARDING HUMAN TRAFFICKING**

Trafficking in Women and Children was commissioned by the NHRC with the aim of understanding the trends and patterns of trafficking, studying the demand situations and the vulnerability factors, and looking into the response by the various concerned agencies. The preceding chapters have presented the analysis of the data collected by interviewing 4,006 persons falling under seven categories, coupled with the qualitative data that was gathered from more than 150 case studies on different issues, as well as the inputs and knowledge that came from the feedback during the many focus group discussions and several training programmes attended by judicial officers, police officers, other government officials, NGOs, social activists, lawyers, academicians, media personnel, etc.

There are many important aspects that can be flagged as a contribution of this research. Firstly, this study has explored new vistas which were hitherto unexplored. The study has, for example, interviewed 160 traffickers and 582 clients. So far, no other study is available in India, or known to be available elsewhere, which has made efforts to fathom the world of exploitation by venturing into a detailed, structured interview of these exploiters. The second important aspect is the validation of certain beliefs. The study has confirmed that among the trafficked persons, the majority are girl children. This and other similar findings provide a sound database for initiating appropriate intervention programmes. A third important feature of this study is that it has negated certain popular myths. A popular conception is that the clientele

who visit the brothels or abuse trafficked girls are men who live away from their families and, therefore, look for options to satisfy their sexual urges. However, the study shows that among the respondents, 45.5 per cent are married and, among them, 72.9 per cent are living with their spouses. Therefore, this data provides appropriate indicators for various agencies, governmental and non-governmental, to reorient their policies, programmes and projects accordingly.

## CONCLUSION

Human trafficking is a concern for the development professionals. To address trafficking in persons, a need and rights-based approach is required. This issue is complex as it encompasses socio-economic and political aspects of a social system. The major findings of this study are:

There is a large gap to be bridged between the laws existing and the laws being implemented. The traffickers are not being convicted according to the actual number of people being trafficked. Due to dearth of resources for the law enforcement officers, this gap exists. The mandates available or provisioned are not enough to curb trafficking. Odisha as a state lacks victim protection laws, regulations and policies. The shelter homes and short stay homes existing do not function well, so they should be monitored. The partial behaviour of the district administration towards the local NGOs and the tribal people does not solve the problem rather it worsens it. Police personnel and law enforcement officials lack the belief that child trafficking and trafficking in person is a serious crime. They lack sensitization and awareness. The sense of duty for the public should be instilled in the minds of every stakeholder. Dysfunctional rehabilitation measures are a failure. Not much importance is given to the issue of human trafficking in this industrial district, when it is being addressed at the state level. There is no rehabilitation scheme for the males who get trafficked. That is a major setback.

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