
WOMAN: THE PRIMARY VICTIM OF HUMAN TRAFFICKING

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Abstract: Human trafficking is the trade in humans, most commonly for the purpose of economic gain, sexual slavery, forced labor, or for the extraction of organs and tissues, including surrogacy and ova removal. India is a source country of men, women, and children trafficked for the purposes of forced labor and commercial sexual exploitation not only within the country but also cross borders. Women are at greater risk for being abused, trafficked, and coerced into sex slavery. They are not only forced to work in industries, as a domestic labour in metropolitan cities by illegal placement agencies, to the act of surrogate for the other couples but also pressurized to indulge in flesh trade. India is included amongst the Tier-2 countries, as per the US government's 2014 TIP Report. This is the real and widespread problem which is the major cause of concern. The paper will highlight the main cause of the human trafficking in Indian tribal community. It also explores the link between the human rights and the trafficking. After analysis in detail the problem of trafficking face by the trafficked women, the paper will move on to available statues related to the trafficking in person specially for women and then make the suggestions for the prevention and the protection of women from the human trafficking.

Key Words: forced labour, Modern slavery, sexual exploitation, Women trafficking

Introduction: According to the definition of the United Nation *“trafficking is an activity leading to recruitment, transportation, harboring or receipt of person, by means of threat or use of force or a position of vulnerability”*.

The Trafficking Protocol defines the term “trafficking in persons” as follows:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harboring 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 shall 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 organs. It means that three key elements must be present for a situation of trafficking in persons to exist. These are:

1. The movement – recruitment, transportation, transfer, harboring or receipt of people.
2. The control – threat, use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or the giving of payments or benefits to a person in control of the victim.
3. The purpose – exploitation of a person, which includes prostitution and other sexual exploitation, forced labour, slavery or similar practices, and the removal of organs. But in case of trafficking in children (i.e., persons under 18 years of age) the International law provides different definition. Here the “means” element is **not** required in this case. It is necessary to show only: (i) an “action” such as recruitment, buying and selling; and

(ii) that this action was for the specific purpose of exploitation. In other words, trafficking of a child will exist if the child was subjected to some act, such as recruitment or transport, the purpose of which is the exploitation of that child.

It is one of third largest organized crime after drugs and the arms trade across the globe. The International Organization for Migration has reported on cases of trafficking in Southeast Asia, East Asia, South Asia, the Middle East, Western Europe, Eastern Europe, South America, Central America, and North America. And press reports in the past year have included accounts of persons trafficked into the United States from a wide variety of countries. Trafficking affects most of the countries of the world and unfortunately, it is one of the major problems in India as well. In 2014 Trafficking in Persons Report clearly refer to the existing situation of human exploitation and trafficking in India. India is a source, destination, and transit country of men, women, and children trafficked for the purposes of forced labor and commercial sexual exploitation not only within the country but also cross borders. . A report India country assessment Report on human trafficking 2013, by the United Nation Office on Drugs and crime also reveals mostly from the trafficker targets the Northeast State of India.

Types Of Human Trafficking: On the basis of the purpose of exploitation of the person the trafficking can be broad categories as follows:

Sexual exploitation: Sexual exploitation involves any non-consensual or abusive sexual acts performed without a victim's permission. This include escort work and pornography, child sexual exploitation, forced marriage, servile forms of marriage, child marriage and enforced prostitution

Forced labor: Forced labor involves victims being compelled to work very long hours, often in hard conditions, and to hand over the majority if not all of their wages to their traffickers.

The International Labour Organisation [ILO] has identified six elements which individually or collectively can indicate forced labour. These are:

- Threats or actual physical harm
- Restriction of movement and confinement to the workplace or to a limited area
- Debt-bondage
- Withholding of wages or excessive wage reductions that violate previously made agreements
- Retention of passports and identity documents (the workers can neither leave nor prove their identity status)
- Threat of denunciation to the authorities where the worker is of illegal status

Domestic servitude: Domestic servitude involves the victim being forced to work in private households. Their movement will often be restricted and they will be forced to perform household tasks such as child care and house-keeping over long hours and for little if any pay. Victims will lead very isolated lives and have little or no unsupervised freedom.

Organ harvesting: Organ harvesting involves trafficking people in order to use their internal organs for transplant. The illegal trade is dominated by kidneys, which are in the greatest demand. These are the only major organs that can be wholly transplanted with relatively few risks to the life of the donor.

Organ harvesting: Children are particularly vulnerable to exploitation by individual traffickers and organised crime groups. They can be deliberately targeted by crime groups, or ruthlessly exploited by the people who should protect them.

India is included amongst the Tier-2 countries, as per the US government's 2014 TIP Report and it is the real and widespread problem which is the major cause of concern. As Human Trafficking is a grave violation of human rights and one of the most serious organized crimes of the day.

"Trafficking in persons," "human trafficking," and "modern slavery" have been used as umbrella terms for all the acts that involves the recruiting, harboring, transporting, providing, or obtaining a person for compelled labor or commercial sex acts through the use of force, fraud, or coercion. No doubt that men, women and children all are the victim of the human trafficking. However, worldwide the primary victims of human trafficking are the women and young girls. In spite of the growing international awareness of the crime against women, they still continue to suffer violence at hands of the family members, intimate partners, community members

and State agents. The reason behind the trafficking of the young girls and the women is that it is the most lucrative of all the human trafficking. They are typically trafficked into the commercial sex industry. It involves the transport or trade of young girls or the women most commonly for the purpose of economic gain, sexual slavery, forced labor, or for the extraction of organs and tissues, including surrogacy and ova removal. Slavery, servitude, child sexual exploitation, forced marriage, servile forms of marriage, child marriage, enforced prostitution and prostitution related practices that are prohibited under international human rights law eg pornography. Not only this, even in certain regions where female to male sex ratio is highly disturbed these girls are forced to marry in which sometimes their own family members and relatives are involved. Sex traffickers may also operate out of a variety of public and private locations, such as massage parlors, spas and strip clubs. They are taken from their homes and sold in different states of India and abroad for sexual exploitation and to work as bonded labour or domestic labour in metropolitan cities by illegal placement agencies who lure their parents with education, better life, and money for them

Factors Responsible For Human Trafficking:

There are certain factors that can make an individual, a social group or a community more vulnerable to any crime and related exploitation. Social inequalities, discrimination and gender-based violence, imbalance, corruption, economic injustice, regional gender preference, poverty and the demand for the commercial sex and the need of the domestic workers especially in the metro cities are some of the leading factors which increase this crime. They tend to have a different and disproportionate impact on groups that already lack power and status in society, such as women, children, migrants (especially irregular migrants), refugees and the internally displaced.

As already mentioned above the demand for girl domestic workers and for the commercial sex is extremely lucrative, so the traffickers target the young women and girls to fulfill these demands they abduct them or try to buy them from their parents or relatives, who belong to the poor families and where opportunities for education and legitimate employment is very less be limited. Women and girls are trapped in sex trafficking in a variety of ways. Some are lured with offers of legitimate or the lawful work, others are promised marriage, educational opportunities and a better life. Still others are sold into trafficking by boyfriends, friends, neighbors or even parents.

Effect Of Human Trafficking On The Victims:

Human trafficking victims experience various stages of physical and psychological torture. Victims are

often deprived of food and sleep, are unable to move about freely, and are physically tortured. Trafficking victims often pass among multiple traffickers, moving away from their home countries. Typically, once in the custody of traffickers, a victim's passport and official papers are confiscated and held while going to other countries and that make the victims more dependent on the traffickers. These legal insecurities are common for people who travel across borders. This may not only limit people's use of medical services because of the non availability of the legal documents may also lead to unjust deportation or imprisonment. Victims are often kept in captivity and also trapped into debt bondage, whereby they are obliged to pay back large recruitment and transportation fees before being released from their traffickers. Often, before servicing clients, women are forcibly raped by the traffickers themselves, in order to initiate the cycle of abuse and degradation. Some women are drugged in order to prevent them from escaping.

Trafficking has a traumatic effect on the mental, emotional and physical well being of the women and girls ensnared in its web. Beyond the physical abuse, trafficked women suffer extreme emotional stress, including shame, grief, fear, distrust and suicidal thoughts. Victims often experience post-traumatic stress disorder, and with that, acute anxiety, depression and sleeplessness.

Legal Framework Analysis: With Special Reference To India.

Relevant International Statutes and Conventions for Trafficking in Person.: Does International human rights law actually prohibit "trafficking in persons? It is an important question because it can have an impact on the nature of a State's obligations and responsibilities. No doubt that there are number of treaties and international conventions available for the prevention of trafficking. The two major human rights treaties are —The Convention on the Elimination of All Forms of Discrimination against Women (art. 6) and The Convention on the Rights of the Child (art. 35). These contain substantive reference to trafficking. However, the relevant International conventions for TIP in India are;

1. The forced Labor convention of International Labor organization 1930. This convention defines the suppression of "forced or compulsory work" in all its form. India ratified this convention in 1954 and incorporated many of its definition in its National Labor Laws.

2. Convention for suppression for trafficking in person and its exploitation of the prostitution of others, 1949. This convention declares that the enslavement of the women and children subjected to commercial sexual exploitation is in compatible with the dignity and fundamental rights of human person.

3. Supplementary convention on the abolition of slavery, slave trade and institution and practices similar to slavery, 1956. This document includes the criminalization of debt bondage, serfdom, servile child marriage and child servitude.

4. convention on elimination of all form of discrimination against women (CEDAW), 1979. This convention provides the realization of equality between men and women. **5. The Optional Protocol on the sale of the children, child Prostitution and child Pornography, 2000.** This Protocol criminalizes specific acts related to sale of the children, child Prostitution and child Pornography including attempt and complicity.

6. UN Protocol to prevent, suppress and punish trafficking in person especially women and children, 2000. It provides the most internationally accepted definition of trafficking in person and calls upon the states to implement legislations to flight trafficking and protect its victim.

India rectified SAARC (South Asian Association for regional cooperation) convention in 2002. The most important conventions related to the human trafficking on the related subject is South Asian Association for regional cooperation convention on preventing and combating trafficking in women and children for prostitution. This convention was for further strengthening of the existing agreements on the protection of the rights of the children and the women in South Asia and bringing to an end the illegal smuggling of women and children and commercial sexual exploitation in this Region and to promote cooperation amongst the member states to effectively deal with this objective. This convention is only related to the trafficking of women and children for commercial sexual exploitation and not covers the other form of trafficking or trafficking of men.

The United Nations General Assembly and the Human Rights Council have repeatedly affirmed that trafficking violates and impairs fundamental human rights. After the adoption of the Trafficking in Persons Protocol, most of the countries have criminalized most forms of human trafficking in their legislation. The 2012 Global Report on Trafficking in Person shows that, of the 162 countries and territories concerned. However, the use of these laws to prosecute and convict traffickers remains limited and there is a great need to increase both the capacity and awareness of the law enforcement to better respond to trafficking. The Report, for instance, of the 132 countries covered, between 2007 and 2010, 16 per cent did not record a single conviction for trafficking offences and 23 per cent recorded only less than 10 convictions.

India: Laws Relating To Human Trafficking

The Indian Constitution, 1950: The Indian Constitution, 1950 prohibits trafficking under Article

23, which provides that traffic in human beings and “begar” (bonded labour), and other forms of forced labour are prohibited. If a violation of this is made, it is punishable.

The Indian Penal Code, 1860: Under Indian Penal Code, a trafficked girl child can be subjected to a multitude of violations. Such as Displaced from her community, which tantamount to kidnapping/abduction (Sections 361, 362, 365, 366 IPC may apply), procured illegally (S.366 A IPC), Sold by somebody (S.372 IPC), Bought by somebody (S.373 IPC), Imported from a foreign country (if she hails from a foreign country, or even from J & K State, and is under 21 years of age – S.366 B IPC), Wrongfully restrained (S.339 IPC), Wrongfully confined (S 340 IPC), Physically tortured/injured (S.327, 329 IPC), Subjected to criminal force (S. 350 IPC), Mentally tortured/harassed/assaulted (S. 351 IPC), Criminally intimidated (S.506 IPC), Outraged of her modesty (S 354 IPC), Raped/gang raped/repeatedly raped (S 375 IPC), Subjected to perverse sexual exploitation (‘unnatural offences’) (S.377 IPC), Defamed (S 499 IPC), Subjected to unlawful compulsory labor (S.374 IPC), Victim of criminal conspiracy (S 120 B IPC), In some cases, the process of exploitation has proven fatal wherein the victim succumbs to the direct effects of the harm or to the consequential problems arising thereof. This means that the offence of homicide/murder is also attracted.

Immoral Traffic (Prevention) Act, 1956 (ITPA): Immoral Traffic (Prevention) Act, is comprehensive, stringent and effective legislation to address the issues in trafficking and consequent exploitation. It prohibits trafficking in human beings, including children and provides severe and stringent penalties if violated. However, there is no bar in utilizing the provisions of ITPA along with IPC, The Bonded Labor Abolition Act, the Child Labor Act, and the Juvenile Justice Act prohibit the bonded and forced labor in India and other legislations which would apply to the facts and circumstances of the case under investigation. etc.

The Bonded Labor (Abolition) Act, 1976: The Act states that any agreement or any custom requiring any person to do work as a bonded laborer is void and provides the punishment for anyone who compels any person for bonded labor or even advance any bonded debt. The punishment in both the cases is imprisonment upto three years and fine up to two thousand rupees.

The Juvenile Justice (Care and Protection of Children) Act, 2000 (JJ Act 2000): It provides for care, protection, treatment and rehabilitation of neglected or delinquent juveniles, including girls. The Government of India had constituted a Central Advisory Committee on Child Prostitution on the directives issued by the Supreme Court. State

Governments have also been advised to set up committees, to look into the issues of prostitutes and their rehabilitation

Criminal Law (Amendment) Act,2013: In the year 2013, India passed the Criminal Law (Amendment) Ordinance introducing the section 370A criminalizing trafficking in Persons according to the UN Trafficking Protocol. The new legislation introduced in the year 2013 foresees the penalty for the crime of trafficking is between seven years up to life imprisonment depending upon the gravity of the crime. The penalty for the employment of a trafficked person is penalized five years which may extend to seven years and with fine. In the same year, the Ministry of Home Affairs created a specific Trafficking in Persons web portal also.

In any given context, the investigating police officer should file charge-sheet against the accused under the graver sections of all laws which are applicable. When investigation points that she has been sexually exploited against her informed consent, charge sheet be filed against all her exploiters not only under ITPA, but also under the relevant sections of IPC, dealing with sexual assault (376, 377 etc.). Consent obtained under lure, deceit, duress, coercion, compulsion, force etc is not ‘consent’ in the legal sense. Furthermore, if the victim is a girl child, the offence is complete even if there was consent

Some legal regime relevant in the context of trafficking:

- Child labor (Prohibition and Regulation) Act,1986..
- The Goa Children’s Act, 2003 (applicable only in the state of Goa).
- Procedural laws (Criminal Procedure Code i.e. CrPC, The Indian Evidence Act, etc)
- Scheduled Caste and Scheduled Tribe (Prevention of Atrocities)Act,1989
- Transplantation of Human Organ Act, 1994.
- Immigration Carrier’s Liability Act,2000
- Prohibition of child Marriage Act, 2006.
- Information Technology Act, 2000 (trafficked victim is exploited to develop pornographic materials and the porn is circulated through electronic media or internet)

These are few more statutes which are in one or the other way prevents or prohibits the trafficking in person.

Numbers of legislations are available for the prevention of trafficking in person. But still the crime is escalating day by day it is because the widespread corruption and bribe make it easy for the traffickers to commit such serious crime. To eradicate this crime a strict disciplinary action should be taken against everybody involved in it. Every state has one or more laws on human trafficking, but these laws vary greatly across the globe. To end human trafficking,

comprehensive and uniform laws are needed. Criminal laws must enable law enforcement to catch and prosecute victimizers both on the supply side and the demand side of human trafficking. Victim protection and public awareness laws are essential.

Whereas a better education, and other facilities should be provided at native places so that parents do

not opt these ways for their children or for their livelihood.

In societies where women and girls are undervalued or not valued at all, women are at greater risk for being abused, trafficked, and coerced into sex slavery. If women experienced improved economic and social status, trafficking would in large part be eradicated

References:

1. *Shwetha.T.S, Manjula.M.Y*, , Devadasi System and Social Exclusion- A Qualitative Study; Human Rights International Research Journal : ISSN 2320-6942 Volume 3 Issue 1 (2015), Pg 123-128
2. UNODC - India Country Assessment Report on Human Trafficking.
3. Explanatory Report of the Council of Europe
4. Ramandeep Kaur, Human Trafficking in India must end, available at : <http://www.mapsofindia.com/my-india/society/human-trafficking-in-india-must-end>
5. *Dr.Sunitti Ahuja, Devika Ahuja*, Education- A Liberating Force For Women Empowerment In India; Human Rights International Research Journal : ISSN 2320-6942 Volume 3 Issue 1 (2015), Pg 120-122
6. Trafficking of Women and Children in South Asia: Taking Stock and Moving Ahead. A Broad Assessment Of Anti-Trafficking Initiatives In Nepal, Bangladesh and India, Sponsored by Unicef Regional Office Save the Children Alliance at 14-18.
7. The Trafficking in Persons (TIP) Report is the U.S. Government's principal diplomatic tool to engage foreign governments on human trafficking. In the TIP Report, the Department of State places each country onto one of three tiers based on the extent of their governments' efforts to comply with the "minimum standards for the elimination of trafficking" available at :<http://www.state.gov/j/tip/rls/tiprpt/>
8. *Addressing Domestic Human Trafficking*, University of St. Thomas Law Journal. Vol.6.Issue 1,pp 21-27
9. *Dr.Chinmayeesatpathy*, Human Rights Perspective of Women Empowerment; Human Rights International Research Journal : ISSN 2320-6942 Volume 2 Issue 1 (2014), Pg 585-594
10. *Human Trafficking for Begging*, Buffalo Human Right Law Review, Vol.17,pp. 25-74(2011)
11. *Human Trafficking: A Call for Reforms LawNow*, Vol. 36, Issue 6,pp.33-37 (July/August 2012)
12. <https://asiafoundation.org/resources/pdfs/StanfordHumanTraffickingIndiaFinalReport.pdf>
13. <http://www.state.gov/j/tip/rls/tiprpt/countries/2015/243455.htm>
14. <http://indiacode.nic.in/acts-in-pdf/132013.pdf>
15. file:///E:/Trafficking%20in%20Persons%20Report%202015%20What%20is%20Trafficking%20in%20Persons_.html
16. <http://timesofindia.indiatimes.com/city/mumbai/Bombay-HC-Human-traffickers-should-be-denied-bail/articleshow/49940376.cms>
17. <http://gvnet.com/humantrafficking/India.htm>
18. UNODC, Government of India. (2008). *Resource Book on the legal Framework on Anti Huan Trafficking*.(p.137)
19. Phinney A. Trafficking of women and children for sexual exploitation in the Americas. Washington, DC, Inter American Commission of Women (Organisation of American States), 2001
20. <http://www.soroptimist.org/trafficking/faq.html#3>
21. <file:///E:/Human%20Trafficking%20&%20Modern-day%20Slavery%20in%20India.html>
22. *Payal Chandel*, Causes of Marital Discord Amongst Indian Couples; Human Rights International Research Journal : ISSN 2320-6942 Volume 3 Issue 1 (2015), Pg 117-119
23. <http://www.letsendhumantraffickng.org/index.php>
24. The Optional Protocol on the sale of the children, child Prostitution and child Pornography,2000 from available at http://www.unicef.org/publications/pdf/optional_protocol_eng.pdf.
25. *Ivneet Walia, Abha Tiwari*, Theoretical and Policy Approach on Economic; Human Rights International Research Journal : ISSN 2320-6942 Volume 2 Issue 1 (2014), Pg 595-598
26. https://www.unodc.org/documents/data-and-analysis/glotip/GLOTIP_2014_full_report.pdf
27. https://www.unodc.org/documents/data-and-analysis/glotip/GLOTIP14_Country_profiles_South_Asia.pdf
28. https://www.unodc.org/documents/legal-tools/Model_Law_TiP.pdf

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