

Human Trafficking in India: Examining the Complex Social Issues and Legal Responses

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Abstract

Trafficking is the greatest tragedy of the 21st century. Trafficking is prohibited under the constitution of India. Yet the menace of human trafficking has engulfed India. There are various causes of trafficking. Despite continuous effort to combat it, the trade in person persist and indeed continuous to grow. Thus this paper shall highlight the causes responsible for human trafficking and also the legal responses in India to combat trafficking. Further, the paper shall also examine that unless and until the social issue is not addressed immediately the law how stringent may be will not be able to solve the purpose of combating human trafficking.

Key Words: Trafficking, poverty, unemployment

1. INTRODUCTION

Trafficking is prohibited by the constitution of India¹. Yet the menace of human trafficking has engulfed India. Human trafficking is defined as the sale of a human being, mostly done on large scale. It is generally an organized criminal activity where the human beings are treated as ownership to be proscribed and browbeaten.² The United States (US) Department of State has placed India on tier-II Watch list nation for human trafficking³ as India has failed to take effective measures in combating it.

¹ Article 23 Constitution of India “ Prohibition of traffic in human beings and forced labour .

- (1) Traffic in human being are beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law
- (2) Nothing in this article shall prevent the state from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

² Merriam Webster Dictionary available at www.merriam-webster.com/dictionary/human%20trafficking accessed on 28/7/2015 at 7:50 P.M

³ The release of the 2015 “trafficking in person” report , viewed India as a country that whose government did not fully comply with its trafficking victims Protection Act’s (TVPA) Minimum Standards, but was making significant efforts to bring themselves into compliance with those standards. The report also mentioned that the India’s ranking has been at the Tier II level since 2011 implying that the absolute number of severe forms of trafficking was highly significant or increasing, that there was a failure to provide evidence of increasing efforts to combat severe forms of trafficking in person from the previous year; or that the assessment of its progress in combating human trafficking was based on future commitments made by the Indian government. See ‘India a source, destination, transit country for trafficking’ at www.thehindu.com/news/us-trafficking-in-person-report-for-2015/article7470908.ece accessed on 28/7/2015 at 8:30 A.M

Human trafficking is posing treat to the entire nation it touches as it is expanding as an organized crime worldwide, it not only restricts victim's rights and freedom of movement but also undermines the safety and security of all nations it touches.

Human trafficking is one of the worst crimes that one can do to an individual. Human trafficking has undeviating effect both on physical and mental well being of victims, their movement is often constrained, their personal documentation are withheld by the trafficker, and most of the victim experience significant physical, sexual, emotional and psychological violence. Escaping from this crime is extremely intricate and dangerous. Even if rescued, living a normal life back into society becomes much more difficult because of the stigma, infamy, menace of retribution and trauma the victims had undergone in their past.

The trafficking in particular have severe consequences both at individual⁴ and community⁵ level, undermining the personal development of the victim and also bringing serious problem to the entire communities and state security.

Human trafficking is the greatest tragedy of the 21st century. In the past decades, the volume of human trafficking has grown to the extent that it is now the third largest form of transnational organized crime after firearms and drugs.⁶ In India, the situation is worst as large numbers of people trafficked for the purpose of sexual exploitation is very much in the rise.

2. DEFINITIONS ON TRAFFICKING

Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in person defines Trafficking in Person as the recruitment, transport, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, or 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 removal of organs.

⁴ Individual consequences leads to the Physical and sexual abuse, rape and other physical assault Physical and sexual and psychological trauma; Risk of death and serious diseases; Health risks, such as sexually transmitted diseases, pelvic inflammatory diseases, hepatitis, tuberculosis and other communicable diseases; Spread of the HIV and AIDS epidemic; Unwanted pregnancies, forced abortions and abortion-related complications; Mental and emotional problems, including nightmares, insomnia and suicidal tendencies; Alcohol and drug abuse and addictions; and even suicide and murder; Illegal status in country of destination; Prosecution/deportation for trafficking-related offences; Difficult reintegration; Stigmatization upon return

⁵ Community Consequences involves Growing influence of criminal organizations; other criminal activities, including money laundering, drug trafficking, weapons trade, etc;- Corruption among the government offices; increase in irregular migration; Problems of national security; declining public confidence

⁶ See Anti Trafficking/; Human Right Law Network available at www.hrln.org/hrln/anti-trafficking.html accessed on 27/7/2015 at 8:30P.M

South Asian Association for Regional Cooperation⁷ also defines trafficking. However, it is limited definition which only covers trafficking for commercial sexual exploitation. Trafficking is defined as the moving, selling or buying of women and children for prostitution within and outside a country, for monetary or other consideration, with or without the consent of the person trafficking.

3. LAWS TO PREVENT HUMAN TRAFFICKING IN INDIA

Domestic law in India lacks a comprehensive definition of Trafficking. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol) in Article 5 obligates the State Party to adopt legislative and other measures in order to criminalize the act of committing, 'participating as an accomplice' in and 'organizing or directing other person to commit' trafficking⁸. India has ratified the Palermo Protocol⁹ and in 1956 India passed the Suppression of Immoral Traffic in Women and Girls Act 1956 (SITA). The Act was further amended and changed in 1986, resulting in the Immoral Trafficking (Prevention) Act 1986 also known as ITPA as compliance to its commitment under the Protocol. However the Act does not define trafficking, but it defines 'prostitution' to mean sexual exploitation or abuse of person for commercial purposes, which has elements of trafficking. It has a number of provisions which punish forms of trafficking without actually defining trafficking¹⁰ ITPA only discusses trafficking in relation to prostitution and not in relation to other purposes of trafficking such as organ harvesting, slavery both sexual or otherwise etc¹¹.

The Act in its spirit does not have any definition of the term 'trafficking' and even recently amended in the definition of trafficking in person seen to be restricted to trafficking for prostitution only.¹² Domestic laws even

⁷ South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in women and Children for Prostitution, 2002. It is adopted by Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka, which is relevant for cross border trafficking in South Asia.

⁸ Protocol to Prevent, Suppress and Punish Trafficking in Person Especially Women and Children, Supplementing the United Nation Convention against Transnational Organized Crime the text of the protocol can be accessed on www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx

⁹ India ratified the Protocol on 5th May 2011 see United Nation- Treaty Collection on the Internet available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en accessed on 27/7/2015 at 8:30 PM

¹⁰ Dealt with in the section on Laws relating to Trafficking. Broadly these pertain to: Punishment for keeping a brothel or allowing premises to be used as a brothel in Section 3; Procuring, inducing or taking person for the sake of prostitution in Section 5; Detaining a person in premises where prostitution is carried on in Section 6; and Seduction of a person in custody in Section 9.

¹¹ See Child Protection & Child Rights, IV National Mechanism, Child Related Legislation, Immoral Traffic Prevention Act, 1986 available at www.childlineindia.org.in/Immoral-Traffic-Prevention-Act-1986.htm accessed on 27/7/2015 at 8.44 PM

¹² See, Anand Gover and Tripti Tandon. Wrecking ITPA Proposed amendments to the Immoral Trafficking Prevention Act: More disaster for Prostitution, not Traffickers, 21 (3), Lawyers Collective (2006),p.9. The proposed definition of trafficking in person under the proposed section 5A is restricted to trafficking for prostitution only. The definition reads as follows:

5A. whoever recruits, transport, transfer, harbors or receives a person for the purpose of prostitution by means of:-

(a) Threat or use of force or coercion, abduction, fraud, deception or

now lack a shared understanding of trafficking. We have no legal definition of trafficking at the national level but trafficking is illegal and is prohibited under Article 23, of the Constitution of India¹³. However in the absence of the definition of trafficking these prohibition seems meaningless.

Though right to livelihood¹⁴ is a fundamental right available to all citizen of india. Livelihood is to be acquired first in order to protect that right. Same is the story of right to work¹⁵ one must first have to work in order to avail protection for the right to work.

In a populous country like India where illiteracy, unemployment and poverty are endemic such guarantee becomes a myth.

A similar instance can be seen in the Indian Penal Code which prescribes punishments for procurements, buying and selling of minor for prostitution, importation of girls from foreign country for illicit intercourse¹⁶ but excludes many other activities prohibited by the Palermo Protocol such as recruitment, harboring, transportation, transfer or receiving trafficked children. There has been a sincere attempt to define trafficking in some, recent national legislation, example for the first time by Goa Children's Act 2003¹⁷. This indicates the state's attempt to acknowledge the problem of trafficking and this move towards challenging it through legislative provision. In the absence of a legislative definition of trafficking in line with the Palermo Protocol a comprehensive profiling of traffickers in Indian context is seemingly impossible task.

4. ROOTS CAUSES OF TRAFFICKING

In India a number of factors are responsible for influencing trafficking of men, women and children. The reasons are varied but the root cause of trafficking is poverty. However, despite sixty seven (67) years of independence, the benefit of economic development has not trickled down to the marginalized section of the society. There are millions of people in India who still live below the poverty line.¹⁸

(b) Abuse of power or a position of vulnerability; or
Giving or receiving payments or benefits to achieve the consent of such person having control over another person, commits the offence of trafficking in persons

¹³ Article 23 prohibits traffic in human being and beggar and other similar forms of forced labour providing punishment for contravention of these provision in accordance with law

¹⁴ Narendra Kumar V. State of Haryana, JT (1994)2 SC94; Madhu Kishwar v. State of Bihar, (1996)5 SCC125

¹⁵ Air India Statutory Corporation v. United Labour Union, AIR 1997 SC 645 has held that right to work is not a fundamental right but can be claimed after employment.

¹⁶ See Section 366-A: Procurement of minor girls, Section 366-B: Importation of girls, Section 372: Selling of girls for prostitution, Section 373 Buying of girls for prostitution of Indian Penal Code 1860

¹⁷ Section 2 (z) of the Goa Children's Act defines the term 'child trafficking' as " procurement, recruitment, transportation, transfer, harboring, receipt of persons, legally or illegally, within or across borders, by means of use of threat or use of force or other forms of coercion, of abduction, or fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving payments or benefits to achieve the consent of the person having control over another person, for monetary gain or otherwise".

¹⁸ Poverty line is a level of personal or family income below which one is classified as poor according to governmental standards- Merriam Webster Dictionary

The poverty and hunger makes children and women highly vulnerable to human trafficking. The desire for a better life can easily lure the hapless women and children who becomes a victim of human trafficking without their realization.

Other factors are: many people want to venture out of their place in a desire of better living condition and lack of employment opportunity in their place of origin. These factors tend to exert pressure on victims that “push” them to move out and making them more vulnerable to come into the control of traffickers.

Owing to poverty in most of the cases children are encouraged by their parents to move away from their place of origin to a place where they will have a better life and more opportunities. This in turn makes the children become an easy prey to get into the clutches of the traffickers.

In addition to these factors the issues of porous borders, corrupt government officials, the involvement of international organized criminals groups or networks and lack adequate legislation coupled with commitments by law enforcement officers to control borders makes the issues of human trafficking even more problematic.

5. POLICIES & LAWS TO COMBAT POVERTY AND UNEMPLOYMENT IN INDIA

As discussed above one of the major causes of trafficking is poverty. Poverty¹⁹ is one of the major problems being faced by many countries all across the globe. Poverty is a shameful situation for any independent country. No doubt, India is developing day by day and joining hands with the most economically and industrially advanced countries but poverty continues to remain a huge challenge. One of the main causes of poverty is illiteracy and lack of employment opportunity. Population is another reason for perpetuation of poverty in India. Although, the Constitution of India provides free and compulsory education to all children in the age group of six to fourteen years as a Fundamental Right²⁰. This neither ensures employment nor facilitates control of population.

Unemployment paves the way for poverty²¹. Although all the political parties and even the government promise to provide employment to all but still unemployment is prevailing in our nation. Government’s only response to poverty alleviation and employment generation has been schemes and more schemes from central and

¹⁹ Poverty means living the life below the poverty line having difficulties in survival and is struggling for the fulfillment of the basic needs (food, water and shelter).

²⁰ Article 21-A of Constitution of India inserted by the Constitution (Eighty- Sixth Amendment) Act 2002 and the Right to Education came into effect on 1st April 2010 which provides for free and compulsory education till completion of elementary education in a neighboring school

²¹ The Congress Party under the leadership of Smt Indira Gandhi initiated to eradicate poverty under the slogan “Garibi Hatao” but sadly the government was not able to achieve the same.

state government. Government of India in order to alleviate poverty introduced MGNREGA 2005²² and National Food Security Act 2013²³.

India is the 2nd largest populous country in the world so irrespective of employment generation schemes provided by the centre like MGNREGA the question remains as to how many people such schemes can cater to. One cannot expect such initiatives taken on the part of the government to come to the rescue of all the under privileged sections of the society. Under such circumstances unemployment becomes a major threat and an easy tool for the traffickers to lure the hapless victims.

As discussed above the world today is infested with a huge section of population with no recourse to adequate food and shelter. Poverty, desperation to support family, desire for better living standards coupled with their willingness to accept all forms of job thus creates a vulnerable section of society as a target for traffickers. Poverty and unemployment impacts both the traffickers and the trafficked. A person is not born a trafficker, just as no one is born a criminal. They are a result of social circumstances and trafficker and the trafficked are born from poverty and unemployment

As already pointed out that the Indian legal framework is clearly inadequate to respond to these people. It does not address the issue of

1. Rehabilitation and social transplantation of the victims.
2. The Indian penal code prescribes punishment for the offender but has no special sentencing policy to address them
3. No legislation in India addresses the issue of “trafficking” comprehensively.

Poverty elevation schemes like the NREGS (National Rural Employment Guarantee Schemes) is already and admittedly a hotbed of corruption and not able to reach all deserving families in all places. Midday meals schemes, integrated Child Development Services, Public Distribution Services under the National Food Security Act 2015 are drops in a ocean of poverty and hence very feeble.

The above scheme may supply food, shelter and clothing at minimum basic level but does not quench the human aspiration for better life, higher social status, luxurious life style. Under such circumstances one can get easily trafficked and subjected to sexual exploitation

²² The Mahatma Gandhi National Rural Employment Guarantee Act aims at enhancing the livelihood security of people in rural areas by guaranteeing hundred days of wage-employment in a financial year to a rural household whose adult members volunteer to do unskilled manual work.

²³ The National Food Security Act, 2013 was passed on 10th September, 2013 with the objective to provide for food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live life with dignity.

In the present time of Consumerism when everything is on sale, irrespective of the laws prohibiting sale of human beings still there is no disputing the fact that such practice is prevalent in every society and is very much on the rise.

Human are trafficked for the purpose of sexual exploitation or flesh trade. Although flesh trade is regarded as a social evil and is considered against morality yet it is deep rooted in every society. There is no disputing the fact that it has deeply engulfed our society. Under such circumstances the whole debate on morals and ethics whether is legal or illegal seems worthless. For e.g: a woman may get into flesh trade because of reasons that she has to support her family, raise her children and to sponsor her child's education. So for this woman the question of morality or whether it is legal or illegal may become insignificant because for her the priority will be to feed her hungry child rather than sit and worry about morals and how the society is going to view her.

The law seems inadequate and has neglected to look into this aspect while framing the laws. Unless and until a thorough research and root causes of trafficking is identified and accordingly incorporated into the legislation eradication of evils like human trafficking will remain a distant dream.

6. CONCLUSION

The human trafficking issues are a humanity issue which usually occurs in backward countries. The poor are subjected to various problems making them willing to work anywhere without worrying much about the place of work.

As discussed above the laws to combat trafficking also seems inadequate therefore the policy makers need to re look and work on the laws accordingly. Unless and until the social issues as discussed above is not addressed immediately the laws how stringent may be will not be able to serve the purpose.

Furthermore, they are lack of knowledge and understanding on trafficking amongst the general public. Thus the need of the hour is to sensitize the general public especially the poor people in the rural areas about trafficking. For this purpose the government is required to collaborate with the NGO's working in this field and also the people have to collectively work towards eradicating the evils of Human Trafficking.

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