

Law Relating to 'Traffic in Women' - National and International Perspective

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Abstract

Every human being, man or woman, is the creature of the nature and no one has authority to treat the other person as property or commodity so that claiming ownership & control on them. The evil of Traffic in person is recognized, by International Law, as one of the inhuman acts and it is also regarded as the violation of human rights. Particularly, women and children are the most affected classes of the society in this field. Since nearly 100 years back, from the inception of the League of Nations, attempts have been made by adopting conventions to prevent and suppress such inhuman acts. Our Constitution also guaranteed protection against such evil under Art. 23.

In spite of these measures at national and international level, this evil is still in existence in all over the world and increasing day by day on the large scale. It seems that the present legal system has failed to achieve its objectives. The reasons may be numerous. The present research paper will focus on the various laws relating to traffic in women at national and international level and try to find out the reasons for failure of these laws to achieve its objectives.

KEYWORDS: Traffic in women, International Law, Indian Law, etc.

Introduction

All human beings are born free and equal in dignity and rights. Human being, as a natural and social animal, has right to live his/her life with freely and with human dignified life. In twentieth century, the concept of human rights of individuals identified, recognized and developed at the international level. There are different groups in the society and one group dominates on the other group, for example, men and women, master and servant, rich and poor, strong and weak, major and minor, etc. There basic human rights have been violated frequently by their respective dominant section of the society.

Women are considered as one of the vulnerable classes of society has been always been dominated and discriminated by men class. In the male dominant societies, they have been exploited, mentally, physically, psychologically, sexually, and so, their basic human rights have been violating from the very beginning. In wider society, the movement towards gender equality began with the suffrage movement in western cultures in the late 19th Century, which sought to all women to vote and hold elected office.¹ The first Armenian Republic (1918-1920) was one of the first countries in the

¹ https://en.wikipedia.org/wiki/Gender_equality

world to give women the right to vote and to be elected to public office.² According to the National Crimes Records Bureau of India, incidents of crimes against women are committed every three minutes.

A social evil of Trafficking in person is one of the major issues of abuse of human rights committing generally around the world and women are mostly the victims of Trafficking in person. Hence, it is necessary to study the concept, the causes, consequences, etc. of trafficking in women. The present paper is dealt with the laws relating to trafficking in women from the International and Indian perspective.

Concept of ‘Trafficking in Person’

Generally speaking, the term ‘Trafficking in person’ is the trading of person for the purposes of certain immoral and illegal practices like sexual slavery, or prostitution, or forced or compulsory labour, etc. Person means any human being of any tender age whether men, women or otherwise. Women and Children are mostly used for these purposes. Such evil practices find in all over the world and since long time ago. ‘Trafficking in women’ for sexual exploitation is an International, organized, criminal phenomenon that has grave consequences for the safety, welfare and human rights of its victims.³

Definition of ‘Trafficking in Person’

In 2000, the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime, 1949, 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 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 labor or services, slavery or practices similar to slavery, servitude or the removal of organs.⁴

The Protocol further explains that ‘the consent of a victim of trafficking in persons to the intended exploitation shall be irrelevant or where the victim is a child or an otherwise considered as ‘trafficking in person’.

The above definition has got International consensus and further adopted in number of regional instruments and domestic laws. In early International and domestic laws, trafficking was synonymously with prostitution. Later, it also extended to the smuggling of male or female migrants for economic gain. Thus, the term ‘trafficking in

² <http://www.socialwatch.org/node/12059>

³ <https://www.wikigenger.org/wiki/trafficking-of-women>

⁴ Article 3 of the Palermo Protocol, 2000

women' may mean transportation, recruitment, etc. of women by any means, for the purposes of sexual or other exploitation.

Law relating to 'Trafficking in Women'

As stated earlier, trafficking in women is a criminal phenomenon, it required to be curbed by way of imposing deterrent punishments. It also became one of the international issues. Hence, International Law also attempted to prevent and punish such evils.

International Law perspective

Since last 100 years, various international organs, like League of Nations, International Labour Organization, United Nations, etc. have contributed for adopting various conventions and creating mandates upon State Parties for preventing and suppressing trafficking in persons. Earlier under the auspices of the League of Nations, two Conventions were adopted, *first*, International Convention for the Suppression of the Traffic in Women and Children, 1921, and *second*, International Convention for the Suppression of the Traffic in Women of Full Age, 1933 aimed at ending the white slave trade.

After the Second World War, the United Nations recognized certain purposes under Article 1 of the United Charter. Among various purposes, it mentions that it shall promote respect for 'Human Rights and Fundamental Freedoms'. It also mention this term in various other provisions of the Charter. In order to achieve this purpose, United Nations, through various Conventions and Protocols, tried its best to promote and protect human rights on one hand and to suppress and prevent certain inhuman and immoral practices existed in the World. Currently, under the UN system, following International instruments has been adopted by consolidating two Conventions to curb traffic in persons.

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949

The Preamble states that the prostitution and accompanying evil of the traffic in persons for the purpose prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community. It adopted with respect to the suppression of the traffic in women and children.

In 2000, in order to combat trafficking, the General Assembly also adopted the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplementing the UN Convention against Transnational Organized Crime

It aims to prevent and combating trafficking in persons, paying particular attention to women and children; to protect and assist the victims of such trafficking; and to promote cooperation among States Parties in order to meet those objectives.⁵ The

⁵ Adopted in 2000.

Convention came into force in July, 1951 and it had 74 State Parties as on February, 2002.

Apart from this substantive Convention, there are following various other related conventions adopted under the auspices of the UN.

UN Convention against Transnational Organized Crime

The purpose of this Convention is to promote cooperation to prevent and combat transnational organized crime more effectively.⁶

Some other relevant Conventions

- Protocol Against Smuggling of Migrants by Land, Sea and Air Supplementing the UN Convention Against Transnational Organized Crime;
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990;
- UN High Commissioner for Human Rights Principles and Guidelines on Human Right and Human Trafficking.

SAARC and Law relating to ‘Traffic in Women’

At regional level, the SAARC has adopted two relevant conventions. These are: (i) *SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002*, and (ii) *SAARC Convention on Regional Arrangements for promotion of Child Welfare in South Asia, 2002*.

There are number of other International instruments⁷ under the realm of Human Rights jurisprudence, apart from these above mentioned documents which are directly or indirectly adopted for the prevention and suppression of trafficking in person. This tries to create obligations upon the contracting parties to cooperate and adopt specifically in their domestic laws.

Laws relating to ‘Trafficking in Women’ in India

India has ratified the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others in January, 1973. But before ratifying this Convention, our **Indian Constitution** prohibits ‘traffic in human being’ under **Article 23(1)**. It recognized as one of the fundamental right of the person and thus everyone who is victim of traffic in person is entitled to protection under Part III of the Constitution. It also provides that any contravention of it is an offence punishable in accordance with the law.

⁶ Article 1

⁷ Conventions dealing with Slavery and slavery-like practices, employment and force labour, Women’s Rights like CEDAW, International Bill of Human Rights, etc.

Previously, **sections 366 and 374 of Indian Penal Code** provides for punishments for trafficking. Moreover, a special legislation also enacted in 1956 known as **the Suppression of Immoral Traffic in Women and Girls Act (SITA)**. It prevents sexual exploitation for commercial purposes.

In order to give effect to the International Convention, India has enacted **the Immoral Traffic (Prevention) Act, 1987 (ITPA)**. The purpose of this Act was to eliminate trafficking woman and children for the purpose of Prostitution as an organized means of living. It recognized various offences under sections 3 to 9 of the Act in relation to trafficking in person.

Apart from these, there are many relevant provisions under various other laws in India dealing, directly or indirectly, with the trafficking in women.⁸

Present Scenario

In spite of measures taken for suppressing such evil of trafficking in women through various laws at national, regional and international level, the issue of trafficking is increasing day by day in all over the world. It has been estimated that more than two million people World-wide are being trafficked each year, the majority of whom are women and children and at least 7000 girls are trafficked into India from Nepal for the purposes of brothels in metros, slavery or slave like work.⁹ Around 80% of the human trafficking across the world is done for sexual exploitation and the rest is for bonded labour. India is considered as the hub of this crime in Asia.¹⁰

In a Report of 2016 from UN Office on Drugs and Crime (UNODC), it has stated that the vast majority of all human trafficking victims - some 71 per cent - are women and girls and one third of total victims are children. According to the UNODC Executive Director, Yury Dedotov, "Trafficking for sexual exploitation and for force labour remain the most prominently detected forms, but victims are also being trafficked to be used as beggars, for forced or sham marriages, benefit fraud, or production of pornography".¹¹ The above data has been collected from 155 countries in the world in 2016.

In India, 8132 cases were reported in 2016 across the country compared to 6877 cases in 2015. West Bengal ranked topped in the list where 3579 cases accounting for 44 per cent of total cases. Rajasthan reported second in the list with 1422 (17.5%) cases, followed by Gujarat (548), Maharashtra (517) and Tamil Nadu (434).¹²

⁸ Relevant Laws like, *Bonded Labour System (Adoption) Act, 1976, The Child Labour (Prohibition & Regulation) Act, 1986, Transplantation of Human Organs Act, 1994, Prohibition of Child Marriage Act, 2006, and the recent one the Protection of Children from Sexual Offences (POCSO) Act, 2012, etc.*

⁹ Dr. H. O. Agarwal, *International Law & Human Rights*, 15th Edition, Central Law Publications

¹⁰ Human Trafficking in India: Legal Protection against Human Trafficking in India - By LAWNN.com, March 18, 2018

¹¹ <https://news.un.org/en/story/2016/12/548302>

¹² <https://www.hindustantimes.com/india-news>

Conclusion

In spite of various measures taken through laws relating to ‘trafficking in person’ at national and international level, this evil is still in existence in all over the world and increasing day by day on the large scale. It seems that the present legal system has failed to achieve its objectives. The reasons may be numerous. The trafficking is becoming serious concern even after 70 years of adoption of the Convention at International level and Constitutional guarantee and statutory provisions in India. Despite of these measures, it is increasing tremendously in traditional forms as well as extended in various advanced technological forms through computers, mobiles, internet or digital and social media. The modern issues relating to trafficking in women would also include the issues of pornography, dance bars, pre-natal diagnosis and female Infanticide, surrogacy, live-in-relationship, sexual relation for promise of marriage, recent exposures on “Me too” website, etc.

Human trafficking is considered the third largest organized crime globally.¹³ There may be various causes of human trafficking in India, based on social structure, such as poverty, unemployment, gender discrimination, male dominant society, lack of effective implementation of the laws, etc. Apart from these, there may be various other causes, for increasing trafficking in person, arising from human nature, like greediness, selfishness, egoistic nature of human being, impatience, etc.

In order to prevent this social evil of trafficking in women, many efforts have to be taken at different levels, local to global. Proper, effective and efficient implementation of the existing laws at national level may be the most suitable measure to combat this issue. Punishment for such offences should be severe. Apart from these, various other appropriate measures may also be adopted such as, making awareness of various women’s rights, sincere efforts by NGOs providing assistance to helpless and needy women, enhancing educational standards among people, increasing moral and value education, changing attitude towards women, etc. and at International and regional levels, measures like ratification of relevant conventions by all nations and abiding those mandates, accepting principles of International cooperation and friendly relations among nations, etc. should be adopted.

References

1. https://en.wikipedia.org/wiki/Gender_equality
2. <http://www.socialwatch.org/node/12059>
3. <https://www.wikigender.org/wiki/trafficking-of-women>
4. DR. H. O. AGARWAL, *INTERNATIONAL LAW & HUMAN RIGHTS*, 15th Edition, Central Law Publications
5. <https://www.lawnn.com/human-trafficking-india/>
6. <https://news.un.org/en/story/2016/12/548302>
7. <https://www.hindustantimes.com/india-news>
8. <http://www.fiinnovation.co.in/news>

¹³ <http://www.fiinnovation.co.in/news>