

Legal aspects of woman trafficking in India

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Abstract

Trafficking is a global phenomenon and is unlikely to be eradicated in near future. Though several efforts are made to eliminate this anti-human practice but by the years the numbers are inclining instead of declining especially in India. Half hearted efforts of legislators contribute to increasing woes of victims of human trafficking. The present research is focused on 'Women Trafficking'. This paper presents an overview of international covenants relating to women trafficking. It further gives a brief account of constitutional and statutory provisions and statistical data of women trafficking based on NCRB report and Global report 2016 concerning human trafficking in India. The causes of increasing number of victims are highlighted and analysis of pending bill in parliament on the concerned issue is done. Finally some solutions to combat the evil practices are suggested.

"The swelling epidemic of human trafficking makes a mockery of the law and its protection".

Josh Hawley

Introduction

In the wake of globalisation women trafficking too has become global. Earlier too females were trafficked but within the boundaries of a nation. Gender discrimination and patriarchal mindset has been prominent in India since ages. The Devadasi system¹ still prevails in India.² The reasons for existence of the malignant social evil may differ from case to case. It violates their rights and dignity in various ways. India has become international hub for women trafficking, from India females are trafficked across the borders. As per the estimate of Activists daily about 50 women are trafficked from Nepal to India. The trafficking of Nepalese women to Gulf countries is done via India and it has created a horrendous state of affairs for law enforcement agencies of both the countries.³ Trafficked humans are a "renewable commodity"⁴. The purpose may change after action; the women may be trafficked for sexual exploitation but later may be diverted in bonded labour or organ harvesting. Woman trafficking also leads to social injustice; and gives rise to human rights issues.

Meaning of the term

¹ young girls being trafficked and married off to a 'temple deity' where they have to provide sexual services to priests and higher caste 'devotees'

² Kashi Syal, Blog "*Human Trafficking in India*" <https://www.hart-uk.org/blog/human-trafficking-in-india-guest-blog-for-human-trafficking-awareness-day/> March 21, 2019 4:34 P.M IST

³ Chayyanika Nigam, "*50 women from Nepal are trafficked to India every day*" <https://www.indiatoday.in/mail-today/story/50-women-from-nepal-are-trafficked-to-india-every-day-1357737-2018-10-07> March 21, 2019 3:59 P.M IST

⁴ Renata Konrad, Andrew C. Trapp and Kayse Lee Maass, "*Human trafficking analysis*" <https://www.informs.org/ORMS-Today/Public-Articles/April-Volume-44-Number-2/Human-trafficking-analysis> March 22 2019 12:03 A.M IST

The trade of human beings for exploitative purposes including bonded and forced labour, commercial sexual exploitation and illegal organ-trade is called ‘human trafficking’. Given the nature of the crime, it also involves forceful and illegal migration of the victims who are traded⁵.

The Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons Article 3, (a) defines Trafficking in Persons as, “*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*”⁶.

International Covenants relating to human trafficking

Several efforts have been attempted to eradicate human trafficking at global level. The first legally binding one is The **Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children**, was adopted by General Assembly resolution and was enforced on 25 December 2003. It has provided an agreed definition on trafficking in persons. The definition given by the protocol intends is to facilitate convergence in national approaches with regard to the establishment of domestic criminal offences that would support efficient international cooperation in investigating and prosecuting trafficking in person’s cases; and to protect and assist the victims of trafficking in persons with full respect for their human rights.⁷

Protocol of 2014 to the Forced Labour Convention, 1930 and Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203) A new legally binding Protocol on Forced Labour, supported by a Recommendation (No. 203), aims to advance prevention, protection and compensation measures, and to intensify efforts to eliminate all forms of forced labour, including trafficking in persons.⁸

The other international covenants though exist but lack legally binding effect such as **Forced Labour Convention, 1930 (No. 29)**-it prohibits all forms of forced or compulsory labour and requires that the illegal extraction of forced or compulsory labour be punishable as a penal offence, and that ratifying states must ensure that the relevant penalties imposed by law are enforced strictly.

Constitutional and statutory provisions relating to human trafficking in India

Article 21 of the Constitution ensures right to life with dignity

Article 23 prohibits forced labour in any form

Indian Penal Code, 1860

Provisions relating to the trafficking under IPC are:

1. Section 366 Kidnapping, abducting or inducing women to compel her for marriage, etc

⁵Manju Mohandas, “*Human trafficking in India & the invisible victims*” <https://www.jaagore.com/current-issues/human-trafficking-in-india-and-the-invisible-victims> March 21, 2019 9:42A.M IST

⁶ https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html#What_is_Human_Trafficking March 21, 2019 10:48 A.M IST

⁷ United Nations office on drugs and crimes <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html> March 21, 2019 10:36 A.M IST

⁸ <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/forced-labour/lang--en/index.htm> March 21 2019 8:42 P.M IST

2. Section 367 Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.
3. Section 370 of the Indian Penal Code (IPC) criminalized slavery, servitude, and most forms of sex trafficking and prescribed penalties ranging from seven years to life imprisonment, which were sufficiently stringent and, with respect to sex trafficking, commensurate with those prescribed for other serious crimes, such as rape.
4. Section 372 Selling minors for purposes of prostitution, etc.
5. Section 373 Buying minors for purposes of prostitution, etc.

Immoral Traffic Prevention Act (ITPA), 1956 was enforced in 1958 but due to certain drawbacks it was amended in 1978 and renamed as **Prevention of Immoral Traffic Act (PITA)** as well as it received the current title, **The Immoral Traffic Prevention Act (ITPA), 1986**.

The Government of India applies the Criminal Law (Amendment) Act 2013, active from 3 February 2013, as well as Section 370 and 370A IPC, which defines human trafficking and "provides stringent punishment for human trafficking; trafficking of children for exploitation in any form including physical exploitation; or any form of sexual exploitation, slavery, servitude or the forced removal of organs."⁹ Immoral traffic prevention amendment bill, 2006¹⁰.

Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018,

On July 26, 2018, a comprehensive law to deal with human trafficking titled Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018, was passed by the Parliament. The Bill is one such legislation dealing with all form of human trafficking. It provides for confidentiality of victims, witnesses and complainants, time-bound trials and repatriation of the victims; and proposes to create institutional mechanisms at the District, State and Central levels. Finally it calls for punishment ranging from 10 years of rigorous imprisonment and a fine not less than Rs1 lakhs¹¹.

Statistics of women victims of trafficking

The statistics of the Ministry of Women and Child Development states that 19,223 women and children were trafficked in 2016 against 15,448 in 2015, the highest numbers of victims were from the state of West Bengal.¹² Based a report published by the Government of India, there are approximately 10 million sex workers in India out of which 1,00,000 belong to Mumbai alone which is Asia's largest sex industry center. 300,000 to 500, 00 under 18 years of age children are involved in the sex trade.¹³ The NCRB reported the government's identification of 22,955 victims in 2016, compared with 8,281 in 2015. The NCRB reported 11,212 of the victims were exploited in forced labor, 7,570 exploited in sex trafficking, 3,824 exploited in an

⁹ <https://www.rediff.com/news/report/rediff-labs-human-trafficking-in-india/20180308.htm> March 21 2019 3:53 P.M IST

¹⁰ <http://www.wcd.nic.in/sites/default/files/640ls.pdf>

¹¹ S.SRana and co, "*India: Statutory Law passed prohibiting all forms of Human Trafficking*", <https://www.lexology.com/library/detail.aspx?g=c4e4533b-19ca-4d50-b4eb-5b03bb2bb121> March 21, 2019 11:06A.M IST

¹² Govt. Report suggests, Almost 20,000 Women & Children Trafficked in India in 2016 7 May 2018 <http://www.fiinnovation.co.in/news/govt-report-suggests-almost-20000-women-children-trafficked-india-2016/> March 21, 2019 9:49 A.M IST

¹³ *Ibid*

unspecified manner, and 349 exploited in forced marriage.¹⁴ According to a study done by Maiti Nepal, an NGO fighting trafficking from Nepal in early 2018, the number of victims brought illegally into India from Nepal went up by 500 percent between 2013 and 2017. An average of 12,000 girls and women are trafficked from Nepal into India every year.¹⁵

Causes of Women Trafficking

No doubt the Fundamental theory of demand and supply is applicable to this situation of women trafficking. The demand for cheap labor and for prostituted women, girls and boys drives trafficking. The other relative causes include:

Forced marriage

According to the 2016 National Crime Records Bureau, 33,855 people were kidnapped or abducted for the purpose of marriage. Fifty percent of them were minors. A door-to-door survey by Empower People found 1,352 trafficked wives living with their buyers in 85 villages in north India in 2014.

The report of Office on Drug and Crime in 2013 highlighted that women trafficked for forced marriage were the victims of worst form of exploitation.¹⁶

Bonded labour

Though debt labour is not known much but it is illegal in India and prevalent in our society. Like the bride and sex trafficking trade, forced labor traffickers recruit victims from poor, rural areas of India, promising lump-sum payments at the end of their contracts. Workers are meagerly compensated for their labor, and terrible working conditions provoke illnesses that lead to wage advances and loans that keep the worker in lifelong debt to their contractors¹⁷.

Declining female Ratio

Many parts of India, the second most populated country, have also, for decades, had a sex ratio at birth significantly higher than 105. The consequence is that there are now estimated millions of extra men¹⁸. The declining female ratio gives rise to Human Trafficking.

Lack of proper policy implementation

Human trafficking is essentially a supply chain in which the “supply” (human victims) moves through a network to meet “demand” (e.g., for cheap, vulnerable and illegal labor). Traffickers consciously ensure that such networks are hidden and connections are covert to elude law enforcement. Rapid network adaptations leave law enforcement and analysts with incomplete information. Further complicating the effective development of strategies to identify and dismantle trafficking networks is the high level of diversity affecting network structures.

¹⁴ U.S. Department of State Diplomacy in Action

<https://www.state.gov/j/tip/rls/tiprpt/countries/2018/282672.htm> March 21, 2019 10:02 A.M IST

¹⁵ Avinash Giri, “*What’s Wrong with India’s Efforts to Check Human Trafficking?*,”

<https://thediplomat.com/2019/01/whats-wrong-with-indias-efforts-to-check-human-trafficking/> March 21, 2019 4:08 P.M IST

¹⁶ Elena del Estal, “*I was bought for 50,000 rupees’: India’s trafficked brides – in pictures*”

<https://www.theguardian.com/global-development/2018/mar/07/india-girls-women-trafficked-brides-sexual-domestic-slavery> March 21, 2019 3:39 P/M IST

¹⁷ Jillian Baxter BlogFeb 03,2019 “*Causes of Human Trafficking in India*”,

<https://borgenproject.org/causes-of-human-trafficking-in-india/> March 21, 2019 11:10A.M IST

¹⁸ Simon Denyer and Annie Gowen , Washington Post April 18

2018https://www.washingtonpost.com/graphics/2018/world/too-many-men/?noredirect=on&utm_term=.5639082e7785 March 21 2019 11:50 P.M IST

Challenges ahead

The road towards combating trafficking is full of hurdles. The means to trafficking have become easier. Social Media is playing a vital role by helping Human Traffickers to Lure Victims.¹⁹

Identification of victim is difficult; lack of political will in implementation of policy measures adds to the problem. Poverty and unemployment further aggravates the menace.

Conclusion and Suggestions

India lacks the will to tackle the evil of woman trafficking. The ratio of crimes against women is inclining day by day in India. There is no dearth of statutory provisions at international as well as national level but effective implementation of policy measures still remains as a challenge. Culture, and traditional local customs, is key factor influencing networks of woman trafficking and inefficacy of local law enforcement mechanism further aggravates the problem.

The solution of the problem lies in creating awareness about the dangers of trafficking. Government will is required to eradicate the evil by removing the root causes of crime of woman trafficking. Mere lip service will not suffice the cause proper action and will are essential.

¹⁹ <https://www.techzim.co.zw/2018/06/social-media-helping-human-traffickers-to-lure-victims-un-report/> March 21, 2019 10:55 A.M IST