



The Challengers of Countering Human Trafficking in India with Social and Legal Aspects

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Abstract

The recent controversy in Bangalore where the city police has registered 45 cases of human trafficking out of which 40 are registered under the immoral traffic (prevention) act (ITPA), 1956. “The police have rescued 111 women victims, and arrested 134 people, including 28 women in these cases”. The thing came into the limelight when the police found a 16-year-old minor girl who was trafficked from Bangladesh to Dubai and from there to India. The victim told the police that hundreds of young women from her country have been trafficked to India by this network. This immoral act made the whole nation question as to what the restriction should be placed for the prevention of the human trafficking even when the strict laws are in implementation. whether the laws should be made stricter for such an immoral behavior is a matter of question?

Introduction

Human Trafficking is a crime against humanity. It involves an act of recruiting, transporting, transferring, harboring or receiving a person through a use of force, coercion or other means, for the purpose of exploiting them. Every year, thousands of men, women and children fall into the hands of traffickers, in their own countries and abroad. Every country in the world is affected by trafficking, whether as a country of origin, transit or destination for victims.

It’s hard to imagine that a world which talks about love, peace and brotherhood amongst fellow human beings has a dark secret staring and mocking at its true reality. India is listed in the Tier II list of the UN which includes countries which have failed to combat human trafficking. The concept of trafficking denotes a trade in something that should not be traded in.

Human trafficking as defined by the UN is, “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 service, slavery or practices similar to slavery, servitude or the removal of organs.”

Human Trafficking In India

It is a really sad situation which India is facing. In almost every city there are certain parts filled with brothels. Human trafficking includes sexual exploitation, labour trafficking, etc. Nowadays even cross-border human trafficking is prevalent. India has a huge population and because of that and our dwindling economy many people live below the poverty line. The smugglers and traffickers promise them a better life- a ray of hope, jobs as domestic servants, in the film world or in factories. They can offer them money, pleasure trip invitations or false promises of marriage.

The main targets are the people who lack job opportunities, who have been victim to regional imbalances or social discrimination, mentally disturbed, or the people who have growing deprivation and are from the marginalized communities or people caught in debt bondages or because their parents think that their children are burden and sell them off – in simple words- the poor, helpless people are the ones who are exploited the most.

It has now become an organized institution and we as youth have to do everything to remove this social vice from our country because the deliberate institutionalized trafficking of human life is the greatest degradation to the dignity of human personality. Human trafficking happens because of a simple concept which the traffickers believe in- that the human body is an expendable, reusable “commodity”. Several things happen during a “human being sale” from selecting, tricking, intimidating and deception of the victim to the transportation of them to the “location”. Then comes the possible change to the “central place” where the actual trafficking takes place in large numbers, there are many elements involved.

The recruiters are the first in the chain –often called as the “Dallas” – they may be parents, neighbors, relatives or lovers or people who have been trafficked before. The dalals move to the “potential sites” for victims which mostly are the poverty-stricken areas where there has been no proper rehabilitation and then they haunt the bus stops, railway stations, streets, etc. The period they choose for trafficking depends on if that place has suffered a drought or social or political disasters recently, so that it would be easier to lure in the already suffering victims. The dalals use drugs, abduction, kidnapping, persuasion or deception to bag the targets.

The dalals usually happen to know many languages, including the local one, so that they become closer to the victim. Because in India corruption is so deep rooted, the network of such people sometimes includes the police, the visa/passport officials, taxi/auto rickshaw drivers, etc. They hand the victims to the brothel owners, escort services, or managers of a sex establishment. The reasons for human trafficking are many, despite 60 years of independence, the benefits of economic development have not trickled down to the marginalized sections of



the society and millions of people still live below the poverty line. The poverty and hunger makes children and women belonging to the poor sections of the society highly vulnerable to human trafficking. Social and religious practices too have been a big cause. There is an inexplicable apathy in the approach of law enforcement agencies when it comes to dealing with human trafficking. Purposes include forced prostitution, marriage, domestic labour, bonded labour, agricultural labour, industrial labour, entertainment, begging, adoption, drug smuggling and peddling and organ transplants. As India sees towards the world, it leaves behind the scars on its ground –the poor who are exploited.

We can take help of the media-spread awareness. The government, in association with the NGO's, is taking steps to improve the situation but this much is NOT enough. We as youngsters should stop this. Even little things like helping out the malnourished, poor or treating the house maids properly can make a difference because they form the major causes for human trafficking. Multinational enterprises that enter the Indian economy can lead by example. They can refuse to do business with companies that knowingly engage in the inhumane practices of employing bonded laborers.

The Indian government has laid down laws in the Constitution like the Suppression of Immoral Traffic in Women and Girls Act, 1956, The Immoral Traffic (Prevention) Act, and many others. In September 2006, the Indian government responded to the trafficking issue by creating a central anti-trafficking law enforcement “nodal cell.” The nodal cell is a federal two-person department responsible for collecting and performing analysis of data related to trafficking, identifying the causes of the problem, monitoring action taken by state governments, and holding meetings with state-level law enforcement. In 2007, three state governments established anti-trafficking police units, the first of this kind in India.

The emerging scenarios are certainly positive but displaying full-page advertisements against child labour, women slaves, etc in national newspapers at periodic intervals is not enough. We have to wake up before it's too late. We can take up community surveillances which will help check ongoing trafficking activities. Establishing women's groups which will help take care of the women in the underprivileged societies since women and girls are the most affected victims. We as the youth can take up initiatives to spread awareness programs in villages, local schools, among kids of the poor society and children suffering from parents and poor conditions where help can be provided.

Another initiative which can be taken up is the involvement of the trafficked victims and helping them tell their story so that this kind of inhuman treatment doesn't happen to others. Human trafficking lowers the value of human life; it brutalizes the society and violates our belief in the human capacity for a change. So let's work for a better future for our country and CHANGE- something that India only talks about, let's turn it into reality.



Child Trafficking in India

Trafficking in human beings, especially in women, and children has become a matter of serious national and international concern. Women and children – boys and girls – have been exposed to unprecedented vulnerabilities and commercial exploitation of these vulnerabilities has become a massive organized crime and a multimillion dollar business. Nations are attempting to combat this trade in human misery through legislative, executive, judicial and social action.

Trafficking of children is a worldwide phenomenon affecting large numbers of boys and girls every day. Children and their families are often lured by the promise of better employment and a more prosperous life far from their homes. Others are kidnapped and sold. Trafficking violates a child's right to grow up in a family environment and exposes him or her to a range of dangers, including violence and sexual abuse.

In India too, over the last decade, the volume of human trafficking has increased though the exact numbers are not known, it is one of the most lucrative criminal trades, next to arms and drug smuggling undertaken by highly organized criminals.

Unless a public opinion is built laws are effectively designed and implemented, the situation is constantly monitored and the nexus of traffickers is exposed, children will continue to be trafficked. Coordinated efforts are required to stop and prevent child trafficking.

In 2005, a study was conducted by the National Human Rights Commission of India (NHRC) after they received an alarming number of reports from the press, police, and non-government organizations (NGOs) about the rise of human trafficking within India. They found that India was fast becoming a source, transit point and destination for traffickers of women and children for sexual and non-sexual purposes. The areas of the greatest concern were poverty stricken areas such as Andhra Pradesh, Bihar, Karnataka, Uttar Pradesh, Maharashtra, Madhya Pradesh, Rajasthan, Orissa and West Bengal.

The Oxford English Dictionary defines traffic as 'trade, especially illegal (as in drugs)'. It has also been described as 'the transportation of goods, the coming and going of people or goods by road, rail, air, sea, etc. The word trafficked or trafficking is described as 'dealing in something, especially illegally (as in the case of trafficking narcotics)'.

The most comprehensive definition of trafficking is the one adopted by the UN Office of Drugs and Crime in 2000, known as the "UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children," 2000 under the UN Convention against Transnational Organized Crime (UNTOC). This Convention has been signed by the government of India.



Article 3

- A) Trafficking in persons shall mean 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 of receiving of payments or benefits to achieve the consent of a person having control over another person's, 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 services, slavery or practices similar to slavery, servitude or the removal of organs;
- B) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- C) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in sub paragraph (a) of the article;
- D) Child shall mean any person less than eighteen years of age.
What are Children trafficked for?
Labour
Bonded Labour
Domestic work
Agricultural Labour
Construction work
Carpet industry, garment industry, fish / shrimp export as well as other sites of work in the formal and informal economy.
- Illegal Activities
Begging
Organ trade
Drug peddling smuggling
Sexual Exploitation
Forced prostitution
Socially and religiously sanctified forms of prostitutions
Sex tourism
Pornography



Entertainment and Sports
Circus, dance troupes, beer bars etc.
Camel jockeys

For and through marriage
For and through adoption
As child soldiers or combatants in armed conflicts

Magnitude of the Problem

In India, a large number of children are trafficked not only for the sex 'trade' but also for other forms of non-sex based exploitation that includes servitude of various kinds, as domestic labour, industrial labour, agricultural labour, begging, organ trade and false marriage.

Trafficking in children is on rise, and nearly 60% of the victims of trafficking are below 18 years of age (NCRB, 2005).

According to NHRC Report on Trafficking in Women and Children, in India the population of women and children in sex work in India is stated to be between 70,000 and 1 million of these, 30% are 20 years of age. Nearly 15% began sex work when they were below 15 and 25% entered between 15 and 18 years (Mukherjee & Das 1996).

A rough estimate prepared by an NGO called End children's prostitution in Asian Tourism reveals that there are around 2 million prostitutes in India. 20% among them are minors.

A study conducted in 1992 estimates that at any one time 20,000 girls are being transported from one part of the country to another (Gupta, 2003).

National Crime Data

It should be noted that there is no available information on the scope of trafficking for purposes other than prostitution / commercial sex workers in the available sources and literature.

A starting point for the analysis of available data is National Crime Record Bureau of the Indian Ministry of Home Affairs that collects data on trafficking through State Crime Report Bureaus and Union Territories, Subsidiaries of the NCRB that obtain data from District Crime Report Bureaus. This presents an indication of the level or reporting of trafficking within India. Data available through NCRB is collected through first information reports (FIRs), lodged in police stations. FIRs can be lodged by victims, NGOs and any member of civil society.

National data from the NCRB provides an analysis of trends in various Indian Penal Code (IPC) crimes, including: importation of girls, kidnapping and abduction of girls, and offences under the Immoral Trafficking Prevention Act (ITPA), which are consolidated from information provided by State and Union Territories.



Given the criminal nature of the act, it is no surprise that there is very little data on the extent of trafficking. According to one estimate, 50% of the trafficked victims worldwide are children.

Legal Framework

India has a fairly wide framework of laws enacted by the Parliament as well as some State legislatures, apart from provisions of the Constitution which is the basic law of the country.

Legal Framework to Address Trafficking in India

Article 23 of the Constitution

Guarantees right against exploitation; prohibits traffic in human beings and forced labour and makes their practice punishable under law.

Article 24 of the Constitution

Prohibits employment of children below 14 years of age in factories, mines or other hazardous employment.

Indian Penal Code, 1860

There are 25 provisions relevant to trafficking; significant among them are:

Section 366A – procurement of a minor girl (below 18 years of age) from one part of the country to the another is punishable.

Section 366B – importation of a girl below 21 years of age is punishable.

Section 374 – provides punishment for compelling any person to labour against his will.

Immoral Traffic (Prevention) Act, (ITPA) 1956 [renamed as such by drastic amendments to the Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA)

Deals exclusively with trafficking; objective is to inhibit / abolish traffic in women and girls for the purpose of prostitution as an organized means of living; offences specified are:

Procuring, including or taking persons for prostitution;

Detaining a person in premises where prostitution is carried on;

Prostitution is or visibility of public places;

Seducing or soliciting for prostitution;

Living on the earnings of prostitution;

Seduction of a person in custody; and

Keeping a brothel or allowing premises to be used as a brothel.



Child Labour (Prohibition and Regulation) Act, 1986

Prohibits employment of children in certain specified occupations and also lays down conditions of work of children.

Information Technology Act, 2000

Penalizes publication or transmission in electronic form of any material which is lascivious or appeals to prurient interest or if its effect is such as to tend to deprive and corrupt persons to read, see or hear the matter contained or embodied therein. The law has relevance to addressing the problem of pornography.

India has also adopted a code of conduct for Internet Service Providers with the objective to enunciate and maintain high standard of ethical and professional practices in the field of Internet and related services.

Juvenile Justice (Care and Protection of Children) Act, 2000

Enacted in consonance with the Convention on the Rights of the Child (CRC); and Consolidates and amends the law relating to juveniles in conflict with law and to children in need of care and protection.

The law is especially relevant to children who are vulnerable and are therefore likely to be inducted into trafficking.

Karnataka Devadasi (Prohibition of Dedication) Act, 1982

Act of dedication of girls for the ultimate purpose of engaging them in prostitution is declared unlawful – whether the dedication is done with or without consent of the dedicated persons.

Andhra Pradesh Devadasi (Prohibiting Dedication) Act, 1989

Penalty of imprisonment for three years and fine are stipulated in respect of anyone, who performs, promotes, abets or takes part in Devadasi dedication Ceremony.

Goa Children's Act, 2003

Trafficking is specially defined;

Every type of sexual exploitation is included in the definition of sexual assault;

Responsibility of ensuring safety of children in hotel premises is assigned to the owner and manager of the establishment;

Photo studios are required to periodically report to the police that they have not sought obscene photographs of children;

Stringent control measures established to regulate access of children to pornographic materials.



International Laws

International laws lay down standards that have been agreed upon by all countries. By ratifying an international law or convention or a covenant, a country agrees to implement the same. To ensure compatibility and implementation, the standards set forth in these international conventions are to be reflected in domestic law. Implementing procedures are to be put in place as needed and the treaties must be properly enforced.

The following are the most important International Conventions regarding trafficking of children:

The Convention on the Rights of the Child, 1989.

The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000.

The Convention on the Elimination of All forms of Discrimination against Women, (CEDAW) 1979.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

Declaration on Social and legal principles relating to the Protection and Welfare of Children, with special reference to Foster placement and adoption nationally and internationally, 3 December, 1986.

SAARC Convention on Regional Arrangement for the Promotion of Child Welfare, 2002.

Factors Leading to Trafficking

“Poverty is not the only cause”

SUPPLY FACTORS

Poverty

Female

Foeticide / Infanticide

Child marriage

Natural Disasters (floods, cyclones etc.)

Domestic violence

Unemployment

Lure of job / marriage with false promises

Domestic servitude

Traditional / Religious prostitution (Devdasi)

Lack of Employment Opportunities



DEMAND FACTORS

Migration

Hope for jobs / marriage

Demand for cheap labour

Enhanced vulnerability due to lack of awareness

Creation of need and market by sex traffickers for 'experimental' and 'tender' sex.

Sex tourism

Internet pornography

Organized crime generates high profits with low risk for traffickers.

Combating of Trafficking

Prevention of human trafficking requires several types of interventions. Prevention as a strategy to combat trafficking has to focus on areas of sensitization and awareness among the public, especially those vulnerable pockets of trafficking at source areas as well as convergence of development services to forestall conditions responsible for it.

Role of State

Governments at the local level and source areas should create compulsory high quality education, employment opportunities and income generation programmes.

Government should produce relevant IEC materials; promote sensitization programmes for teachers in government schools, parents and community workers.

Government should include gender centered education curricula in schools and introduce subjects of child sexual abuse and trafficking.

The Government of different nations must share the information with each other to evolve a programme that will help both the countries in preventing trafficking.

Role of NGOs

The community should be sensitized about trafficking and the community members should be motivated to keep a watch in the community for irregular movement of child victims to and from area their possible traffickers and hideouts.

NGOs working in the rural areas should ensure that parents are aware of safe migration practices.

Role of Media

Media attention reaches several hundred thousand viewers and should therefore serve the following important functions:



The media should transmit appropriate messages to ensure that the victims learn that they are not alone.

Victims can be made aware of places and institutions where they can seek help.

Create awareness that human trafficking is inappropriate and illegal and has negative consequences.

Wide publicity should be given regarding the legal, penal provisions against trafficking and the modus operandi of the traffickers through radio, television etc.

Awareness and Advocacy

Awareness and advocacy is required at the policy level i.e. National Planning Commission, bureaucrats, politicians and the elite of the society. Awareness at the local level, in the community through workshops, songs, drama, poems, meetings, leaflets and posters especially in the rural areas is also required.

The role of gender in daily life and training programmes and activities for gender sensitization must be conducted by NGOs. The key to prevent trafficking in children and their exploitation in prostitution is awareness among the children, parents and school teachers.

The government must launch media campaigns that promote children's right and elimination of exploitation and other forms of child labour.

Police advocacy is an important intervention that has to be fine-tuned.

Action against trafficking

Although there is an Immoral Traffic Prevention Act in place to aide in the immorality of human trafficking, "it only refers to trafficking for prostitution hence does not provide comprehensive protection for children. Nor does the Act provide a clear definition of "trafficking". Also, India has failed to uphold the The Palermo Protocol, which provides protection to children against trafficking. It is estimated that 200,000 persons are trafficked in India every year. Only 10 % of human trafficking in India is international, while almost 90 % is interstate. Nearly 40,000 children are abducted every year of which 11000 remain untraced according to a report by the National Human Rights Commission of India.

Conclusion

Trafficking in human beings, especially children, is a form of modern day slavery and requires a holistic, multi-sectoral approach to address the complex dimension of the problem. It is a problem that violates the rights and dignity of the victims and therefore requires essentially a child rights perspective while working on its eradication. In the fight against trafficking government organizations, non-governmental organizations, civil society, pressure groups, international bodies, all have to play an important role. Law can not be the only instrument to take care of all problems.