



Research Paper

Human Trafficking in India: A Brief Legal Study

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Abstract

For many years, human trafficking has been a significant issue within society. It represents a plight on the entire nation, resulting in perpetual suffering that diminishes not only the physical well-being but also the mental health of individuals. The concepts of growth and development are foreign to their existence. They endure extensive discrimination and humiliation. This matter is a critical contemporary issue concerning social justice and human rights. A recent report from the U.S. government estimated that approximately 27 million individuals globally are victims of human trafficking. It is crucial to safeguard their fundamental human rights and create an environment that fosters their ongoing development while shielding them from the world's atrocities. Currently, despite the existence of various laws and government policies aimed at improving the conditions for these individuals, numerous obstacles remain. Consequently, there is a pressing need to cultivate a deeper understanding of such issues to ensure effective solutions.

Keywords: Human Trafficking, Issue, Society, Growth, Development, Discrimination, Victims, Human Right

I. INTRODUCTION

Human trafficking which is for the cause of sexual harassment and plethora of other forms of exploitation is becoming an increasingly major menace around the world. Human trafficking means practice of illegally transporting, recruiting, harbouring or receipt of person from one area or country to another, in the form coercion, threat or other forms of force.¹ The purpose includes sexual exploitation, forced labour, marriage, begging, drug smuggling, forced criminality or services like that of slavery or the extraction of the organ. The victims are being exploited in various forms due to the major factors like poverty, religious/traditional prostitution, lack of employment opportunities, child marriage, sex-tourism and other challenges that directly leads to human trafficking. Not only women and children are subjected to the menace of human trafficking but it has its much impact on men Human trafficking not only violates the legal right, but it also infringes the human right of the victim. Against the increasing cases of human trafficking in India, existing laws to deal with the same are not adequate and lack enforcement mechanism due to numerous flaws in it.²

In India, The Act which punishes human trafficking is “Immoral Trafficking Prevention Act (ITPA)”, 1956 which only deals with “human trafficking” done for the purpose of sexual exploitation.³ This Act in itself shows major redundancy in legislation as human trafficking does not restrict itself to mere sexual exploitation but the other forms of exploitation of human beings which need certain stringent laws and statutes. The repercussions for the crime of human trafficking are adverse with an incalculable human cost and signifies one of the degrading and shameful actions of the globalized world. ⁴The lenient legislation and statutes of the developing nations, grossed with factors like lack of education, gender-dis-

¹ Veerenda Mishra (ed.), *Human Trafficking: The Stakeholder's perspective* 21(SAGE Publications 2013).

² intervention opportunities Saddika Hameed, “Human Trafficking in India: Dynamics current efforts and for the Asia Foundation” *The Asia foundation* (2010).

³ Devin Brewer, “Globalization and Human Trafficking: The Collision of words “9 *Josef Korbel School of international Studies, University of Denver* (2009).

⁴ Gaurav Hooda and Gauri Shrikahande, “Critical Analysis of Laws Against Human Trafficking in India” 4 *Asian Journal of Medical Science* 23-25 (2019).

crimination, un-employment and other ill factors gives the widest scope for potential traffickers with an opportunity to trafficked victims that are the major cause towards the up liftmen of this menace. Advancement in technology has also led to the increase in the menace of human trafficking. With the increase in the usage of social media and other related platforms, it becomes easy for the traffickers to exploit people, due to the availability of the information without any much hindrance.

According to the UNODC, analysis of most of the victim of human trafficking reveals that most of them are trafficked for the purpose of commercial sexual exploitation.⁵ It has been mostly understood that the trafficking of the person is more between the countries, but the report reveals that 75% of The trafficking happens within the country itself. According to the report, the most affected and prevalent states in India where the trafficking of women for the purpose of sexual exploitation and that of children for domestic work or forced labour are West Bengal followed by Jharkhand, Assam and Chhattisgarh. Being, recognized as the third most organized and challenging crime in the world the term “human trafficking” has not been mentioned clearly anywhere in the Indian laws.⁶ which is in itself a great impediment for the Indian judiciary to deal with this menace. Hence, there is urgent need to strengthen the laws of human trafficking, so it incorporates all the aspects of preventing and combating human trafficking. People below the poverty line and public in general, must be made aware about the human trafficking, violation of rights, its consequences in order to prevent them from becoming victim of such impediment.

1. Meaning:

Human trafficking is the act of recruiting, transporting, transferring, harboring, or receiving individuals through force, fraud, or coercion for the purpose of exploitation.

This exploitation may include forced labour, sexual slavery, or other forms of commercial sexual exploitation. It is considered a serious violation of human rights and a form of modern slavery.

2. Types of Human Trafficking:

(a) Child Trafficking

According to an estimation released by the international labour organisation(ILO), around 1.3 million children are trafficked every year. Child trafficking, in straightforward terms, refers to the act of removing children from their home environments and exploiting their vulnerabilities for the sake of exploitation.⁷ In 2014, The United Nations Office on Drugs and Crime(UNODC),reported that the percentage of child victims had risen from 25-30 percent in a 3 year gap. Notably, child trafficking at both national and international levels is closely associated with the demand for inexpensive and compliant labour in industries where the treatment of children and working conditions severely infringe upon their rights.⁸ Such settings are primarily marked by unacceptable and hazardous working conditions for children, which adversely affect their health and overall development. Child trafficking encompasses various forms, including bonded labour, child domestic labour, prostitution, sexual exploitation for commercial gain, camel jockeying, child soldiering, and slavery-like practices within the informal industrial sector. It was also reported that every year around 4 lakh children are being taken all over the world and sold by the traffickers as slaves.⁹

(b) Women Trafficking

This type of trafficking specifically targets girls and women who are in the most disadvantaged and vulnerable situations. Women, in particular, represent the most at-risk group for human trafficking within society as a whole. Primarily, women and girls are trafficked for the purposes of commercial and sexual exploitation. Prostitution stands out as one of the most prevalent reasons for the trafficking of women today.¹⁰ Traffickers frequently recruit women or purchase them from impoverished areas under the guise of offering them employment or other deceptive promises. In reality, these women are subjected to abuse and rape by their recruiters, after which they are sent to brothels or clandestine prostitution networks. Women who are sold into prostitution are

⁵ “Global Slavery Report” Walk Free Foundation 2016.

⁶ NALSA Report on Sex Trafficking and Rehabilitation of Victims 2016.

⁷ *ILO’s International Programme on the Elimination of Child Labour (IPEC) “Child Trafficking Essentials”*. Geneva: ILO 2010.

⁸ Child Trafficking Statistics, US and International, Ark of Hope for Children, 2013.

⁹ “Human Trafficking Statistics, Help Erase Child Trafficking” Erase Child Trafficking, 2016.

¹⁰ *The Interpol Working Group on Trafficking in Women for Sexual Exploitation* INTERPOL, 2002.

often prohibited from using contraception, which makes them high-risk individuals for the transmission of various sexually transmitted diseases.¹¹

(c) Organ Trafficking

Organ trafficking is a significantly under-discussed aspect of human trafficking, primarily due to its covert and complex nature. This form of trafficking represents a profitable global enterprise and occupies a crucial position within international organized crime, driven by high demand and limited oversight from law enforcement agencies. The practice of organ trafficking exposes both donors and recipients to potential exploitation and enduring health issues. Operating within a clandestine environment, the illicit organ trade leaves behind a financial trail that serves as the sole evidence capable of revealing the identities of organ traffickers. According to estimates from Global Financial Integrity (GFI), approximately 10% of all organ transplants involve trafficked organs. Kidneys are the most frequently traded organs, while corneas, lungs, hearts, and livers also fall within the scope of this illicit trade.¹² The organ trafficking network is so discreet that it can operate in plain sight, often concealed behind reputable hospital chains in major urban areas; however, makeshift operating rooms in private residences serve as the primary venues for these illegal transplants. The organs are typically obtained from donors who are often part of vulnerable, impoverished communities or are in dire financial need. Additionally, organ traffickers may source organs from individuals who are victims of other forms of human trafficking, including those exploited for sex or labour.¹³

(d) Labour Trafficking

They resemble unfree labourers, encompassing various forms of slavery such as debt bondage, serfdom, labour camps, and more. The majority of these activities fall under the category of forced labour, which the International Labour Organization (ILO) defines as work or service performed involuntarily by victims under the threat of punishment.¹⁴ Labour trafficking refers to the movement of workers for the purpose of forced labour or services, which may include bonded labour or child labour, as well as domestic or involuntary servitude. Frequently, this occurs within sectors such as agriculture, manufacturing, construction, and domestic work, as well as entertainment.¹⁵ Migrant workers and indigenous populations are particularly vulnerable to becoming victims. This exploitation is often more prevalent among migrant workers who have travelled long distances from their homes to another country in search of employment. They are easily recognizable due to their physical, linguistic, cultural, or ethnic differences from the local population, which renders them less capable of reporting their dire circumstances to the relevant authorities.

(e) Debt Bondage

This constitutes a type of Human Labour Trafficking and represents the most prevalent method of coercing individuals into slavery. Typically, individuals obtain loans from traffickers to obtain a job abroad that is falsely advertised. Upon arrival at their destination, their passports are confiscated, either through deception or by force, and are withheld until they repay an exorbitant, perpetually escalating debt. Consequently, this leads to debt bondage, which often endures for a lifetime.

3. Causes of Human Trafficking:

The United Nations characterizes human trafficking as "the recruitment, transportation, transfer, harbouring, or receipt of individuals through force, fraud, or deception, with the intention of exploiting them for profit." This issue permeates nearly every sector, including domestic labour, agriculture, mining, fishing, manufacturing, and commercial sex work. Additionally, victims of human trafficking may be coerced into marriage and armed conflict. While victims may receive payment (which is often not the case), their earnings are so minimal that they are effectively enslaved. What are the reasons behind the existence of human trafficking? Gaining insight into the underlying factors of trafficking can assist the global community in tackling this issue.

Below are some of the primary causes:

¹¹ *Information Kit on Trafficking in Women and Children*, NHRC 2002.

¹² "Trafficking for Organ Trade" Un gift Organization 2014.

¹³ "Types of Human Trafficking" INTERPOL 2016.

¹⁴ *Trafficking for Forced Labour* Un gift organization 2013

¹⁵ "Difference between Smuggling and Trafficking" Anti Trafficking Net 2012.

- I. Poverty
- II. A lack of education
- III. Gender Inequality
- IV. Demand for cheap labour and sexual Exploitation
- V. Cultural Norms and Traditions
- VI. Weak Law Enforcement
- VII. Immigration and Migration
- VIII. Natural Disasters

4. Effect of Human Trafficking:

The effects of human trafficking on victims and survivors differ based on the type of trafficking and the individual circumstances involved. However, research has highlighted a variety of challenges that victims and survivors may face. Victims of trafficking frequently endure severe and extreme physical conditions, which include excessive labour, work without adequate protection and equipment, or coercion by their traffickers. Furthermore, victims may encounter health hazards, such as HIV/AIDS, infections, and substance abuse. They often suffer from significant mental health issues as a result of being trafficked, leading to anxiety, insecurity, fear, and trauma.¹⁶ Numerous studies reveal elevated levels of Post-Traumatic Stress Disorder (PTSD) among survivors. Trafficking can also result in cognitive decline, memory impairment, depression, and even suicidal tendencies. Minors who are trafficked are particularly susceptible due to their age. The act of trafficking, in any form, significantly affects the healthy emotional, physical, and psychological development of a child. Additionally, victims face the risk of social exclusion. They frequently find themselves isolated from their social networks, which hinders their ability to connect with their community or seek assistance. In cases of international trafficking, victims may struggle to ask for help or attempt to escape because of language barriers, geographical obstacles, and a lack of cultural understanding.¹⁷

Furthermore, trafficked individuals are sometimes compelled to participate in illegal activities as a direct consequence of their victimization. If law enforcement does not adequately distinguish between a victim and a perpetrator, survivors may face prosecution and conviction for circumstances they were coerced into. Having a criminal record can complicate the process of rebuilding their lives after trafficking, making it more challenging for survivors to secure housing, obtain employment, or access financial support for education.

II. HUMAN TRAFFICKING IN INDIA

Human trafficking is regarded as a significant and challenging issue. Although there are several anti-human trafficking laws in place within the country, it continues to be a fundamental problem. Men, women, and children are trafficked for various purposes, including commercial sex, labour trafficking, and prostitution. Women and girls are often trafficked within their own country, particularly in regions with a high male population or a severely skewed sex ratio favouring men. Conversely, men and boys are primarily trafficked for bonded labour or labour trafficking. All victims, regardless of gender or age, frequently face sexual exploitation and are coerced into working as escorts, prostitutes, gigolos, or massage therapists against their will. A significant number of trafficked children in the country are compelled to work as child labourers, domestic servants, factory workers, beggars, and household help, thereby violating their fundamental human rights. Often, children are abducted across the nation and forced to serve as armed combatants for various terrorist organizations and insurgent groups. In India, the trafficking of young girls into prostitution is frequently initiated by women who have themselves been trafficked. As adults, they leverage their personal relationships and trust within their home villages to recruit additional girls.¹⁸ The Government of India imposes penalties for human trafficking related to commercial sexual exploitation through various anti-trafficking laws, such as the Immoral Trafficking Prevention Act (ITPA), which prescribes penalties ranging from seven years to life imprisonment. Additionally, there are several other anti-trafficking laws enforced in the country that prohibit forced and bonded labour, including the Bonded Labour Abolition Act, the Child Labour Act, and the Juvenile Justice Act.

The Bharatiya Nyaya Sanhita, 2023 (BNS) includes sections 96 and 70, which are designed to apprehend traffickers. These provisions prohibit the kidnapping and sale of minors into prostitution, imposing a maximum penalty of ten years' imprisonment along with a fine. Additionally, the Central Bureau of Investigation (CBI) has introduced an anti-trafficking training program, led by Dr. Gilly McKenzie from the Interpol Trafficking and

¹⁶ S. Delta Human Trafficking Fact, Web.

¹⁷ ILO's International Programme on the Elimination of Child Labour (IPEC) "Child Trafficking Essentials" Geneva: ILO 2010.

¹⁸ Trafficking in Persons Report 2008. U.S. Department of State, 4 June, 2008.

Organised Crime Division, which has been incorporated into its standard curriculum. Furthermore, the State of Maharashtra has developed an action plan to address human trafficking within the country. The Ministry of Labour and Employment regularly publishes various advertisements in national newspapers to raise awareness against child labour and human trafficking. The government has also initiated pre-departure information sessions for domestic workers migrating abroad under the guise of exploitation. Other measures implemented by the Government of India include the issuance of 'Emigration Check Required' (ECR) and 'Emigration Check Not Required' (ECNR) passports. In February 2014, the Government of India launched an anti-human trafficking web portal, intended to serve as a crucial IT tool for the sharing of information among all stakeholders, including states, union territories, and civil societies, to ensure the effective implementation of anti-human trafficking initiatives.¹⁹

III. JUDICIAL VIEW OF HUMAN TRAFFICKING IN INDIA

Human Trafficking constitutes a breach of numerous individual and community rights. The involvement of law enforcement agencies is critical in regulating and maintaining peace, as well as in safeguarding against the exploitation of rights by those who are unaware of them. While Trafficking itself is a criminal offense, the act of exploiting an individual who has been trafficked is also a criminal offense. The judiciary within the Indian legal framework has been instrumental in the fight against the scourge of human Trafficking. It guarantees that the rule of law is applied uniformly, holding all individuals accountable to the same legal standards without discrimination, whether they are lawmakers or leaders, thereby preventing the arbitrary exercise of power. The judiciary in India holds a prominent position, serving as the protector of the constitution.

Some of the notable landmark decisions made by the judicial system to combat and prevent human Trafficking in our country include:

Vishal Jeet v. Union of India & Others (AIR 1990 SCC 318)

In this significant ruling, the Supreme Court acknowledged Trafficking as a form of organized crime and provided a definition aligned with the optional protocol of the United Nations Convention against Transnational Organized Crime (UNTOC). Furthermore, the court mandated a complete prohibition on the involvement of children in circuses. It was also determined that no child should be stripped of their fundamental rights as enshrined in the Constitution of India, nor should they be subjected to child trafficking and abuse, whether physical or emotional.

M.C. Mehta v. State of Tamil Nadu (AIR 1996 SC 699)

The Supreme Court, acting in the Public Interest, has issued directives aimed at offering assistance to victims of human trafficking. The highest court determined that employers who utilize child labour on their premises must be fined 20,000 rupees, and their premises are to be sealed. The fines collected are to be deposited into the anti-trafficking and rehabilitation fund for victims.

Madhu Kishwar v. State of Bihar (AIR 1996 SCC 125)

The Supreme Court, in this case, examined and affirmed the numerous provisions of the "Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW)," and determined that these provisions are essential to the fundamental rights and directive principles of state policy.

Bachpan Bachao Andolan v. Union of India (AIR 2011 SC 3361)

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IV. CONCLUSION

In summary, effectively combating human trafficking necessitates a comprehensive approach that includes prevention, protection, and prosecution strategies. By emphasizing education and awareness initiatives, offering extensive support to survivors, and enhancing legal frameworks, we can aspire to create a society devoid of the blight of human trafficking. It is crucial to maintain collaboration with various stakeholders, such as government entities, law enforcement, civil society organizations, and the global community, to jointly tackle the intricate issues surrounding human trafficking and work towards a world where every person is shielded from exploitation and coercion.

The quest for a fair and equitable society requires a steadfast dedication to these essential strategies, and through persistent efforts, we can achieve significant progress in fighting human trafficking and upholding the rights and dignity of all individuals.

¹⁹ Janie Chuang "Beyond a snapshot: Preventing human trafficking in the global economy" *13 Indian Journal of Global Legal Studies* 159 (2006).

V. SUGGESTIONS

- I. Addressing the absence of underground economic activities and enhancing trafficking controls.
- II. Improving job prospects for women by creating business opportunities for small and medium-sized enterprises (SMEs). This includes organizing training programs specifically aimed at high-risk groups.
- III. Implementing strategies to elevate social protection levels and generate employment opportunities for everyone.
- IV. Tackling all types of discrimination against minorities by developing programs that provide livelihood options, basic education, literacy, communication skills, and reducing obstacles to entrepreneurship.
- V. Fostering gender awareness and education regarding equal and respectful relationships between genders, thereby preventing violence against women.
- VI. Ensuring the establishment of policies that grant women equal access to and control over economic and financial resources.
- VII. Encouraging flexible financing options and access to credit, including low-interest microcredit.
- VIII. Advocating for good governance and transparency in economic dealings.