

## HUMAN RIGHTS PERSPECTIVES OF PROBLMES OF WOMEN TRAFFICKING WITH SPECIAL REFERENCES TO INDIAN SCENARIO

**Banshanlang Dkhar\***

### ABSTRACT

Trafficking in women and children is one of the most despicable forms of violations of human rights. Being a complex issue, it has been given short shrift from the academia, legal field and the civil society. It has often equated with prostitution but that is the half story. This paper is an attempt to present the trends and dimensions of trafficking from a human rights paradigm and demystify several issues surrounding it. It will also shed some light on the role of NGOs, the civil society and the family. The paper is based amply on the secondary literature and primary experiences. The human rights discourses is profoundly silent on this major issue which snatches away most of the human rights from the most vulnerable group. It has immense implications for future course as India is fast becoming a source, transit point as well as a destination for traffickers.

Keywords: Trafficking, human rights, crime, prostitution, women and children

### INTRODUCTION

Human Trafficking is a modern day slavery which was condemned in the early 20th century by almost all super powers but sadly the misery of this is haunting us ever since. Trafficking in human beings is a complex crime. The law enforcement measures may confront a variety of practical challenges in their efforts in detecting trafficking, identifying the trafficked victims, investigating the offences and contributing to the successful prosecution of the offenders. Trafficking is often misunderstood and confused with human smuggling and both these terms are being used interchangeably<sup>1</sup>. Both these forms of crimes are closely related but there are some prominent distinctions between the terms – human trafficking and human smuggling. The scope of human

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\*Student, law College Dehradun, Uttaranchal University, Uttarakhand, Dehradun, India.

<sup>1</sup> Sadika Hameed, Human trafficking in India, Dynamics Current Efforts and Intervention, March 12, 2010.

trafficking into sexual slavery is very broad although the actual scope of trafficking into slavery is unknown. Absence of centralized database from which an accurate determination of the scale of human trafficking can be readily available makes it very difficult to measure the extent of human trafficking. Though, there is a database on Human Trafficking Trends established by the United Nations Office on Drugs and Crime (UNODC), the information available is incomplete and non-exhaustive.<sup>2</sup>

### **AN INTERNATIONAL HUMAN RIGHTS PERSPECTIVE**

The human rights framework for trafficking draws upon international human rights standards, which have been normalized in a number of international treaties, covenants and protocols since the Universal Declaration of Human Rights was drafted in 1948. Other relevant international treaties include the International Covenant on Civil and Political Rights (1966) that proclaimed “no-one shall be held in slavery and servitude;” as well as the International Covenant on Economic, Social and Cultural Rights (1966), which recognizes the right to work as well as to just and favorable working conditions.

Since December 2000, the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime serves as a legal framework for nation-state legislation across the globe. The Protocol is intended to ensure that trafficked persons are not treated as criminals but as victims, and therefore entitled to specific human rights protections. These include temporary resident status and temporary shelter, medical and psychological services, access to justice as well as compensation or restitution.<sup>3</sup>

### **Human Rights–Based Approach to Trafficking**

A human rights–based approach is a conceptual framework for dealing with a phenomenon such as trafficking that is normatively based on international human rights standards and that is

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<sup>2</sup> UNODC. Global Programme Against Trafficking in Human Beings. Toolkit to Combat Trafficking in Persons, United Nations Publication (2006).

<sup>3</sup> Dr. S.K. Kapoor, International Law and Human Rights, Central Law Agency, 19<sup>TH</sup> Edition, 2014.

operationally directed to promoting and protecting human rights. It requires an analysis of the human rights violations that occur during trafficking as well as of States' obligations under international human rights law. It seeks to identify and redress the discriminatory practices and unjust distributions of power that underlie trafficking, that maintain impunity for traffickers, and that deny justice to victims of trafficking.

Adopting a human rights-based approach implies that national, regional, and international responses to trafficking be anchored in the rights and obligations of international human rights law. The key points of this approach include the following:

- The main objective of policies and programs should be to promote and protect rights. Victims of trafficking encounter several violations of their rights all through the cycle of trafficking. They might be deprived of their liberty, their right to choose an occupation, etc. Policies aimed at combating trafficking should address the violations of these rights.
- Identification of rights-holders (e.g., trafficked persons, potential victims, those accused or convicted of trafficking-related offenses), their entitlements, and the corresponding duty-bearers (usually States) and their obligations is required in order to strengthen the capacities of rights-holders to claim their rights and of duty-bearers to meet their obligations. States' obligations stem from the well-established principle of due diligence, which means that States have the responsibility to respect, protect, and fulfill the rights of all individuals, including victims of trafficking.
- Principles and standards derived from international human rights law (such as equality and nondiscrimination, universality of rights, and the rule of law) should guide all stages of the response to human trafficking.

## **CHALLENGES TO FIGHT AGAINST HUMAN TRAFFICKING**

### ***i) Poverty & Globalisation***

Although counter-trafficking initiatives have been improved several inherent features of human trafficking prevent it from being eliminated fully. Human trafficking continues to operate at endemic levels as the supply and demand for trafficked individuals is facilitated by the sustained existence of conditions that are far out of the control of law enforcement and arguably any branch

of the security sector. Widespread inescapable poverty coupled with lack of legal migration and employment opportunities, perceived notions of greater prospects through migration, gender-based discrimination and violence produces vast numbers of potential victims that are both willing and easy to exploit. Supply is consistent and sustainable, and the demand for low-paid, unregulated, foreign workers continues to rise. Meanwhile, modern developments such as globalisation and technological advancements, including the rise of the global internet, and social media have increased international interconnectivity and the entrepreneurialism of criminals. These developments have made it increasingly simple for traffickers to outsource trafficking and disguise activities through money laundering. In turn, this has exposed modern states to novel vulnerabilities and the improved the capabilities of non-state actors operating transnationally to exploit these vulnerabilities. As a consequence of globalisation, transnational organised crime has increased in profitability, geographic scope and capacity. For human trafficking specifically, globalisation has eased the transportation of victims, and the dark web has proven to be an indispensable tool in the migration and sale of trafficked humans.

### ***ii) Treatment of Victims***

Trafficking victims are controlled by fear of punishment by their captors or law enforcement. Although the Palermo Protocol stresses that victims of trafficking should not be held accountable for their immigration offences, this is not always upheld and many fear further punishment or deportation. Inappropriate treatment of trafficking victims by the authorities contributes to a distrust of law enforcement and disinterest in cooperation with the police. Although awareness and understanding is improving and anti-trafficking programmes are being implemented, most organisations are inexperienced, unable to recognise the signs of trafficking and remain unequipped to deal with this problem. In turn, this prevents traffickers from being detected, and lowers risks associated with trafficking, further fuelled by low convictions rates.

### ***iii) Hope For The Future***

Trafficking victims are perhaps the most valuable unexploited resource in the fight against trafficking; unlike other smuggled cargo trafficking victims can provide rich qualitative detailed intelligence, if their relationship with law enforcement officials can be improved. The overwhelming majority of academic discussion into counter-trafficking efforts is preoccupied with

legal and judicial proceedings, neglecting to discuss the utility of intelligence in any great detail. Intelligence may be the key to overcoming a number of the inherent challenges of human trafficking as it is the prerequisite to effective prevention, protection and prosecution, whilst also contributing prediction abilities. If combined with improved cooperation between states it is possible this can reduce enough pressure to permit the development of a more victim-centred approach, thus reducing the self-facilitation of human trafficking by increasing victim trust in law enforcement, increasing risk to traffickers thereby reducing supply and demand for victims of trafficking. Conversely, if low prosecution rates are maintained the economic benefits of trafficking will continue to outweigh the cost of potential law enforcement involvement.

## **LEGAL FRAMEWORKS TO COUNTER HUMAN TRAFFICKING IN INDIA**

### **Indian Penal Code 1860:**

Interestingly the Indian Penal Code which came into existence in 1860 addresses the problem of human trafficking in human beings. It is addressed in Section 370 and 370 A of the Indian Penal Code. It prohibited trafficking of women and girls and prescribed ruthless punishments for the criminals. It lays down that anyone who buys or sells the person under the age of 18 years for the purpose of prostitution and for sexual exploitation and for other immoral purposes shall be liable to imprisonment for up to 10 years and also be liable to fine.

It also recognizes cross border trafficking into prostitution and whoever imports into India from any country outside India any girl under the age of twenty one years with the intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

### **Constitution of India, 1949**

The Indian Constitution of India prohibits trafficking in persons and guarantees many of the internationally acknowledged various human rights norms such as the right to life and personal liberty, the right to equality, right to freedom, the right to constitutional remedies. The right to be free from exploitation is also assured as one of the fundamental rights of any person living in India.

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

According to this Act there is no difference between a minor and a child. All the persons under the age of eighteen years are considered children. A child who is a child in need of care and protection (NATIONAL LEGAL RESEARCH DESK 2016).

### **The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989**

Many victims of trafficking belong to marginalized groups. Traffickers target only such area which is backward in social and literacy sense. This gives an additional tool to safeguard women and young girls belonging to scheduled Caste and scheduled Tribes and also to create a greater burden on the trafficker or offender to prove his lack of connivance in the matter.

If the offender has the knowledge that victim belongs to these communities then this act can be effectively used to counter the offence of trafficking. Section 3 of this act deal with atrocities committed against people belonging to Scheduled Caste and Scheduled Tribes. It covers some forms of trafficking such as forced or bonded labors and sexual exploitation of women. A minimum punishment of ix months is provided which may extend to five years if the offence is covered under section 3.

### **Immoral Traffic Prevention Act 1986**

The government of India ratified the International Convention for the Suppression of Immoral Traffic in persons and the exploitation of the Prostitution of others in 1950. As a consequence of this ratification of the convention the Government of India passed the Suppression of Immoral Traffic in Women and Girls Act (SITA) in the year 1956. In the year 1986 the act was further amended and changed which was known as the Immoral Traffic Prevention Act, 1986 (PITA).

This is an interesting law because according to its preamble the purpose of this Act is to give effect to the Trafficking Convention and to prohibit the immoral human trafficking. This act deals with trafficking and it has its objective as to abolish traffic in women and girls for the purpose of sexual exploitation.

The offences included are taking persons for prostitution, detaining persons in premises where prostitution is carried on, seducing or soliciting for prostitution, making life on the earnings of prostitution, seduction of a person in custody, keeping a brothel or allowing premises to be used

as a brothel, prohibits employment of children in certain conditions of work of children. The Immoral Traffic (Prevention) Amendment Bill, 2006 also focuses on trafficking which is done for the purpose for sexual exploitation. So there is no proper domestic legislation in India which combats all forms of human trafficking.<sup>4</sup>

## CASE STUDY-1

The case of *Upendra Baxi Vs. State of Uttar Pradesh*<sup>5</sup> shows how deeply entrenched is the market for sex trafficking. The Agra Protective Home was constituted by and functioned under the penal law, **The Immoral Traffic (Prevention) Act, 1956**. In a letter to the Indian Express a member of the Board of Visitors of the Agra Protective Home described the pathetic condition of the Home in which the girls were kept. According to this letter, a letter was written to the then **Justice P.N. Bhagwati** who treated it as a writ petition. The judgment transcending **from 1989 to 1998** saw three phases and ultimately the Supreme Court transferred the case to the National Human Rights Commission with certain guidelines recorded by the Supreme Court. The guidelines were far reaching in the changes they proposed to the existing framework while staying within the framework of the Immoral Traffic Prevention Act and the Constitution. They required the person who is either “**removed**” under Section 15(4) or “**rescued**” under Section 16(1) of ITPA and produced before a Magistrate to be heard either in person or through a lawyer (**assigned by the Legal Aid Committee of the District Court concerned**) at every stage of proceedings including admission to a Protective Home, Intermediate custody as well as discharge. The Supreme Court further lay down that in camera trial be held and that it should be the duty of the court to ensure the presence of lawyers of both sides. If under section 15(4) and section 16(1) it was a child, the child should be placed in an institution recognized or established under the Juvenile Justice Act, 1986.

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<sup>4</sup>Gupta, J., Reed, E., Kershaw, T., Blankenship, K.M. History of sex trafficking, recent experiences of violence, and HIV vulnerability among female sex workers in coastal Andhra Pradesh, India. Int J Gynaecol Obstet. 2011;114:101–105.

<sup>5</sup> Dr. Upendra Baxi (I) vs State Of Uttar Pradesh And Anr. on 31 July, 1981, Equivalent citations: 1982 (1) SCALE 502 a, (1983) 2 SCC 308

The guidelines also required Magistrates to maintain a list of those who have been given safe custody of persons rescued or removed on furnishing undertakings .In the event of it being brought to the Magistrates' notice that such person has returned to prostitution, the giver of the undertaking, after an enquiry, would be debarred from finishing any undertaking in any proceeding under the ITP A. It was further suggested that the post of special police officer shall, wherever possible ,be held by a woman police officer and that there should be in place an Advisory Board consisting of five leading social workers to be associated with the special police officer.

## CASE STUDY-2

Apart from the Agra Protective Home case, *in Radha Bai Vs. Union Territory of Pondicherry*<sup>6</sup>, the petitioner's protests against the Home Minister of Pondicherry alleging that he was misusing the protective home for women for immoral purposes landed her in deep trouble. The Commissioner suggested the closing down of such homes immediately .Two decades later she got relief from the Supreme Court.

In *Bholanath Tripathi Vs. State of U.P.*<sup>7</sup>, a public interest litigation was filed alleging that a woman was held in confinement and was being used for earning money by prostitution .The Supreme Court directed the Commissioner. Appointed to make enquiry and if satisfied prima facie about the allegations, to remove her to a safe place and secure her production before the Court. The Police and the other authorities of the State Government concerned were also directed to afford assistance to the Commissioner.

## CASE STUDY-3

In the case of *The Public at Large Vs State of Maharashtra and Others*<sup>8</sup>, the petition arose due to suo motu notice taken by the court of a newspaper article which indicated that the minor girls were illegally confined and forced to be sex workers .The respondents were directed by the court

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<sup>6</sup> AIR 1476, 1995

<sup>7</sup> 1990, SCC151

<sup>8</sup> 1997 (4), 171

to show cause as to why action had not been taken under Sections 366' and 339' of Indian Penal Code, and Sections 5 and 6<sup>®</sup> of the Suppression of Immoral Traffic in Women and Girls Act 1956. The Court passed directions as under;

- To frame a proper scheme so that the women including minors who are produced for sexual slavey are released from the confinement of their procures;
- For implementing this scheme, a proper cell, also involving social workers, be created so that by regular checking, minors and others can be released and rehabilitated in the society; and
- Considering the spread of the dreaded disease of AIDS, the state of Maharashtra shall frame a proper scheme with the active assistance of the Municipal Corporation of Greater Mumbai for carrying out HIV tests for the willing sex workers so that the disease may not spread like wildfire in the city.

### **CONSEQUENCES OF HUMAN TRAFFICKING**

The victims in the process of trafficking in persons are abused and exploited in certain conditions which may result in short term and long term minor and severe psychological and physical attacks, diseases especially sexually transmitted diseases or HIV viruses. This condition can even lead to the permanent disability and death. The direct consequences of human trafficking are aggression, depression, disorientation, alienation and difficulties in concentration. Many studies have shown that injuries and traumas acquired during the process of trafficking can last for a long period even after the person has become free from exploitation and this mainly occurs when the victim is not given with proper care and counsel. Even the rehabilitation process for the victims cannot be guaranteed for a certain result. Although the victims are brought out from the physical problems, the trauma and the psychological problems does not allow the victim to totally recover from the consequences. Some of the victims find it difficult to adapt to the normal lives that they previously carried out. The sad part about the victims of human trafficking is that the rights of the victims are violated even after they come out from the status of exploitation

## CONCLUSION

Human trafficking jeopardizes the dignity and security of trafficked individuals, and severely violates their human rights. Constitutions of India guarantee the equal rights of men and women, but they are often merely rhetoric when it comes to the question of practical implementation. In order to combat trafficking and thus to protect the human rights of the vulnerable people, strong political will of the government is vital in implementing their anti-trafficking mandates. Thus we can say any crime which can be used as business one day becomes a big social evil as in the case of human trafficking. The problem is still in our hands to be solved if the strong steps are taken deliberately and policies are made and implemented strictly. If timely steps are not taken then in very short time it will remain late but too late

Human rights embodied in the Indian Constitution are justifiable. All these rights now have the support of a large number of international conventions and human rights covenants dealing with human rights. Even the courts have used these international covenants to widen the scope of the human rights in the constitution of India. As a result, it is possible to judicially enforce a large number of human rights violations embodied in international covenants also. But the constitutional-cum- international mandate needs to be accompanied by correct social perceptions, support services and a basic change in family and societal values. A proper enforcement of these rights thus requires, educating people in these human rights so that these rights are respected and observed in practice.

## SUGGESTIONS

- The domestic legislation for combating human trafficking in India must be strengthened that it must combat all forms of human trafficking.
- The National Human Rights Commission must conduct extensive research throughout the country and should contribute towards the implementation of an effective law for human trafficking. The rights of women and children guaranteed by the constitution must be ensured to women.
- The migration aspects from one country to another must be strengthened in order to prevent transnational organized crime of human trafficking
- Many more rehabilitation centres must be established for the welfare of the victims.

- Not alone women and children also men must be given with adequate means of education and employment which would greatly contribute for preventing human trafficking.

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