



LEGAL REGIME AND TRAFFICKING – NEW PERSPECTIVES

ABSTRACT

Dr.Narayan Charan Patnaik
Principal, Lingaraj Law College
(Constituent College of Berhampur University) Berhampur, Odisha

The problem of human trafficking particularly trafficking in children and women has emerged as an important social issue in recent times in many part of the world. It is widely recognized that many countries in Asia serve as place of origin, transit and destination of human trafficking and that these has been a steady rise in the last two decades, following increased transborder mobility of people in contrast to this popular perception, data provided by the National Crime Record Bureau (NCRB) show a steady decline in the number of cases under the Immoral Traffic (Prevention) Act in the last few years. The same agency, however notes a steady rise in number of cases under Section 366A (Procuration of Miner Girl) and 372 (Selling of Girl for Prostitution) of the Indian penal Code.¹

The issue of human trafficking is the premier human rights issue of our time. But it is not just about enforcing human rights, it is about strengthening and using criminal justice systems to prosecute traffickers and rehabilitate survivors.

Our modern legal systems are much more sophisticated and nuanced, but the principles remains the same. Human trafficking is a crime. It is monstrous crime. Not only do we need policy that helps us pursue traffickers but we need prosecutors who are trained, judges who are sensitive to survivors, and police officers who can collect the proper evidence.

Human trafficking is a heinous crime. If we are to effectively address the injustice of slavery in our lifetime, we must make sure that criminal justice professionals are adequately trained.

The authors compare the different responses to human trafficking in the present global scenario how to raise awareness about human trafficking and combat the social evil and improve the response of law enforcement agencies to the problem.

Key Words: (1)Trafficking (2)Heinous(3)Prostitution(4)Slavery (5)Organized crime.

¹. The Total number of ITPA cases went down from 2659 in 2008 to 2563 in 2012 compared to this cases under Section 366A of the IPC increased from 224 to 809 and those under Section 372-IPC increased from 49 to 108 during this period.



Introduction

Trafficking is a generic term involving a process of movement. It is a planned and unplanned economic activity, which involves displacement and movement of persons resulting in their exploitation. Trafficking of women and children is one of the most heinous crimes perpetuated against humanity. India is a source, destination, and transit country for men, women and children trafficked for the purposes of forced labour and commercial sexual exploitation. Trafficking of women and children for the flesh trade has emerged as one of the most profitable trades in the world today. Child trafficking is one of the worst forms of human rights violations. It affects million of children worldwide. United Nations estimated suggest that globally tracking in women and children is an operation worth \$10 billion annually.

According to a report of the National Commission for Women(NCW) at least half of the 612 district in the country are affected by trafficking of women and children for commercial sexual exploitation. The New Report says that in 378 district, there are 1794 identified places of origin from where females are trafficked and 1016 areas where commercial sexual activities take place.

Child Trafficking and Sexual exploitation of children is increasing day by day all over the Asian Region like the rest of the world. In the Indian sub-continent especially India, Bangladesh, Pakistan and Nepal trafficking at women and children has increased enormously. It is said that nearly 400-15000 girls and women are trafficked every year from Bangladesh to West Bengal and then to other parts of India and also middle East via Pakistan. Trafficking is also the illicit and clandestine movement of persons national border largely from development countries with the end goal of forcing women and girl children into sexually or economically oppressive and exploitive salutations for profit of recruiters, traffickers and crime syndicates as well as other illegal activities related to trafficking such as forced domestic labour, false marriages, clandestine employment and false adoption.



Objective of the study

- To understand and reasons and purposes which contribute to the trafficking.
- To analyze the magnitude of the problem and to study the adequacy of law relating to child and women trafficking and human rights.
- The role of judiciary and government action.
- To suggest a strategy combating human trafficking in India.

Hypothesis

1. Human trafficking in India has become a serious and growing issue.
2. To study the adequacy of law relating to human trafficking and human rights.
3. To examine various problems and lose laws to combat trafficking in India.
4. To strengthening the national laws and policies.

Methodology

In the context of present paper, doctrinal research methodology is utilized. It also describes the secondary data collection for the literature review.

Main Reasons which contribute to the Trafficking

There are a number of factors that tend to increase vulnerability to or are among the causes of trafficking. A Study on Trafficking in Women and Children in India², on an extensive literature survey found that while there is broad agreement on the factors that may lead to trafficking, there is some uncertainty about their precise roles³. Among the major vulnerability factors identified by various studies in India are poverty, illiteracy and the consequent lack of awareness; unemployment, lack of means of livelihood and landlessness; status of women and girls in society; migration; globalization, industrialization and consumer culture.

² . "A Report on Trafficking in Women and Children in India: A Study by National Human Rights Commission, Institute of Social Sciences, UNIFEM and USAID, 8 (Orient Longman: New Delhi, 2002-03)

³ . Article 3 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.



Before we develop a strategy for prevention we should know the main reasons which contribute to the trafficking. Both supply and demand factors drive the growing trafficking industry.

On the supply side:

1. Economic imaginations leading to breakdown of traditional livelihood options.
2. Low status of women and girls in society.
3. Inadequate educational and employment opportunities due to gender disparities.
4. Lucrative business with low investments but high monetary returns attracting crime syndicates.
5. Economic disparities with the country and between countries and regions creating demand for trafficking from low income to high income areas.
6. Internal and Inter International Migrations of women into labour market giving rise to channels of trafficking.
7. Social conventions such as child marriage, polygamy, dowry and social stigma against single.
8. Lack of strong political will and weak Law enforcement mechanisms.

On demand side

1. Patterns of developments like Industrialisation, rural to urban migration of particularly males generated demand for commercial sex.
2. Expanding commercial sex industry in the Asian region employing a large number of minors increasing the demand for services of sex workers.
3. Preference for younger women and virgin girls because of fear of HIV infection.
4. Demand by employer for cheap labour of children and women.
5. Male dominated value systems in society.

Magnitude of the problem

The global magnitude of victimization of young women i.e. every minute of every day, the most vulnerable women and children in the World are raped for profit with impunity, yet efforts to combat sex trafficking remain woefully inadequate and misdirected. There has been a substantial



increase in the trafficking of children/ women within the across South Asian Countries. The globally accepted definition for trafficking is the moving buying or selling of women and children. Within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking. Historically, South Asia has had a traditional of migration due to poverty and traditional mores, but this has increased in the last decades due to factors such as increasing demand family disintegration, political disruptions, consumerism, improved infrastructure and communication, tourism and globalization. UNICEF estimates that there are at least a million child prostitutes in Asia alone with the highest number of trafficked children/ woman in from Nepal and Bangladesh in the India and from India to Pakistan and then or into the gulf Counties. In Srilanka, trafficking occurs mostly along the borders.

This paper will focus on India. India has one of the highest rate of Sexual Exploitation of children, mostly through prostitution.

Sex trafficking is one of the ugliest contemporary actualization of global capitalism because it was directly produced by the harmful inequalities spread by the process of economic globalization; deepening of rural poverty, increased economic disenfranchisement of the poor, the net extraction of wealth and resources from poor economics into richer ones, and the broad-based erosion of real human freedoms across the developing world. Ending sex trafficking requires an attack on the industry's immense profitability and a radical shift in the conduct of economic globalization.

As per data from National Crime Record Bureau (NCRB) the number of registered human trafficking cases has increased 38.3% over five years from 2848 in 2009 to 3940 in 2013.

The conviction rate for such cases has declined 45% from 1279 in 2009 to 702 in 2013.



West Bengal is the hub of human trafficking in India. It had the maximum human trafficking cases 669 among all states in India 2013 followed by Tamil Nady, Andhra Pradesh, Karnataka and Maharashtra.

- Approximately 75-80% of human trafficking is for sex. There are more human slaves in the world today than ever before in history.
- There are an estimated 27 million adults and 13 million children around the world who are victims of human trafficking.
- Human trafficking not only involves sex and labour, but people are also trafficked for organ harvesting.
- Although human trafficking is often a hidden crime and accurate statistics are difficult to obtain, researchers estimate that more than 80% of trafficking victims are female. Over 50% of human trafficking victims are children.
- Human trafficking is the only area of transnational crime in which women are significantly represented- as victims, as perpetrators, and as activists fighting this crime.
- Human trafficking is one of the fastest growing criminal enterprises because it holds relatively low risk with high profit potential. Criminal organizations are increasingly attracted to human trafficking because, unlike drugs, humans can be sold repeatedly.

The first ever World Congress against commercial. Exploitation and trafficking of children in Stockholm in 1996 concluded that most of these abuses are committed on the girl child. India has a total of 3,00,000 child prostitutes below 18 years of age in Mumbai, Kolkota, Delhi, Chennai, Bangalore etc. In addition the National Crime Records Bureau reports that case of sexual acts against children below 10 years have increased more than 178% in 1991 with 1099 cases reported in the year as compared to 394 in 1990. In the recent years, the average age of the trafficked or abducted girls has dropped from 14 to 13 years despite the amended prevention at Immoral Trafficking Act, 1986. A large percentage of these girls are afflicted by AIDS and other Sexually Transmitted Diseases (STDS). The Devadasi System, the Basavi system, the Join system, Prostitution among the tribals are found in the form of child prostitution. For instances in



the Southern Indian states of Karnataka a unique ritual by the name of Devadasi system or pratha though the Karnataka Government banned the Devadasi system long ago and the Devadasi Prohibition Act, 1982 is in force and the practice still continues on the different part of North Karnataka.

In the last half century is that more women are migrating than ever before. They now account for half the International Migrant Population and in some countries as much as 70% to 80%. As women migrants frequently end up in law status, low wage production and service jobs and often work in gender-segregated and unregulated sectors of the economy such as domestic work, they are exposed to a much higher risk of exploitation, violence and abuse.⁴

According to an International Labour Organisation (ILO) study of Four South East Asian Countries (Indonesia, Malasia, Thailand and the Phillipines) between 0.25% and 1.5% of the total female population were sex workers. This sector was said to account for 2% to 15% of gross domestic product in each country.⁵

The International Labour Organisation (ILO) estimates that of the victims of forced labour trapped in jobs through coercion or deception the Asia. Pacific region accounts for nearly 56% of the victims about 22% are victims of forced sexual exploitation in areas such as agriculture, construction and domestic work⁶. If further rates that 26% of such victims are below 18 years of age and 55% of victims are female⁷.

Story of Indian Laws

Some of the leading laws in India to curb trafficking include Immoral Trafficking (Prevention) Act, 1956⁸, the Govt of India has enacted the Suppression of Immoral Traffic Act in women and Girls Act, 1956. The Act was amended in 1986 and renamed as Immoral Traffic (Prevention)

⁴ . UNFPA, Linking Population , Poverty and development, <http://www.unfpa.org/pds/migration.htm>s.

⁵ . Discrimination the sex sector “commentary, Himal, Kathmandu, Augua 2010.

⁶ . See ILO, “global Estimate of Forced Labour: Results and methodology (ILO) 2012 estimate about 21 million people world wide to be victims at forced labour.

⁷ . ILO, “21 million people are now victims of forced Labour (Press Release, 1st June 2012)

⁸ . Section 3, Section 4, Section 5, Section 6 and Section 8.



Act, 1956. In addition to this the Indian Penal Code, 1860 which makes Immoral Trafficking⁹ an offence the Juvenile Justice (Care and Protection) Act, 2000, Indian Constitution mainly under Article 23 and 23(a), Article 39(e)(f) etc. Despite Constitutional guarantee and ratification of International Conventions the Child Labour (Prohibition and Regulation) Act, 1986 bans employment of children less than 18 years in certain fields such as transport, railway, crackers and fireworks etc. besides this legislation like Factories Act 1948, Mines Act, 1983 etc are also regulated relating to Child trafficking in India. Similarly, The Child Marriage Act, 2006 which repealed the earlier, the Child Marriage Restraint Act, 1929 stipulated the minimum age of 21 years for boys and 18 years for girls. The Probation of Offender's Act 1958 was extended to the fallen Women and girls and penalties for offences under SITA were enhanced and more stringent. The Bonded Labour System (Abolition) Act, 1976, the recent legislation, the Protection of children from Sexual Harassment Act, 2012.

However in practice these above laws have remained a dead letter often followed in their breach then in their observance. The Trafficking mafia is an extremely powerful. Conglomerate with wrong links with the powerful, namely police and other state officials, business and political leaders.

Hence Criminal Procedure under the needs to be streamlined. Speedy trial are a most a total revamping of the country's rescue rehabilitation centres in essential before any large scale rescue attempt are made.

A Survey of these laws would reveal that Indian laws have not adopted holistic approach but attempted cover one or the other aspect of trafficking in women and children which can be termed not only of a curative nature but also covering the preventive perspective of the subject matter¹⁰. Present day laws are sufficient to deal with problems as it has been identified as an

⁹ . See Sections 336-B, 372 and 373 of Indian Penal Code, 1860

¹⁰ . Dr.B.R.Sharma and Harish Verma, Trafficking of Women and Children in India: a study of Judicial response vol.X Part-II, MDU Law Journal p.75 (2005).



“Organised Crime”.¹¹ Judiciary has also made significant pronouncements in this regard like Vishal Jeet v Union of India¹², Gourav Jain v Union of India¹³, Sannania Suba Rao v State of Andhra Pradesh¹⁴, Vishram N. Rajpasa v State¹⁵, Bandhu Mukti Morcha v Union of India¹⁶, Sankshi v Union of India¹⁷, Prenana v State of Maharashtra¹⁸, Prajwala v Union of India¹⁹, Mahammad Sajid Hussain v State of Maharashtra²⁰ and Majappa v State of Karnataka²¹ etc. All these cases have declared trafficking as worst type of offences affecting and violating human dignity. In this context Prof. Rickard banks pointed out that the relation between a cause of problem and its remedy is not a logical consistency. The effort to solve a problem should not fixate on any single understanding of its cause of remedy.²²

Regional and Sub-Regional Arrangements relevant for India

- International programmes for the Elimination of child Labour (IPEC) 1992
- 1997 ESCAP Resolution 53/4 on Elimination of Sexual Abuse and Exploitation of children and youth in Asia and Pacific.
- EAARC, Rawalpindi, Resolution of 1996.
- SAARC Summit in Male, 1997.
- ASEAN Declaration 1999.
- SAARC Convention on Prevention and Combating Trafficking in Women and Children, 2002.

¹¹ . Kasnaljeet Singh v State, 2008 INDLAW DIL 328.

¹² . (1990) 2 SCC 318

¹³ . (1997) 8 SCC 114

¹⁴ . 2008(17) SCC 225

¹⁵ . A.I.R. 2002 INDLAW Mum 610.

¹⁶ . 1983 INDLAW 192

¹⁷ . A.I.R. 2004 SC 3566

¹⁸ . (2003) 2 MHLJ 105.

¹⁹ . (2005) 4 SCALE 517(2)

²⁰ . (2008) 1 SCC 213.

²¹ . (2011) 9 SCC 334.

²² . R.Richard beyond profiling Race Policing and drug war, Vol.56, Stanford Law Review, pp.571(2003)



International Mechanisms

1. International Agreement for the Suppression of White Slave Traffic, 1904 and 2010 which sought to protect from trafficking underage girls and women and criminalized procurement, enticement etc of women under the age of 21, even with their consent for immoral purposes.
2. The International Convention for the Suppression of Traffic in Women and Children, 1921.
3. The International Convention on the Suppression of Traffic in Women, 1933 which focus on Forced Labour and Trafficking in women respectively.
4. Trafficking has been defined in the UN Protocol to Benent, Suppress and punish trafficking in Persons specially women and children supplementing the CN Convention Against Transnational Organizations of Crime, 2000 to which India is signatory.
5. UN Protocol to prevent, suppress and punish trafficking in persons especially women and children provides for preventive measures.²³
6. The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, child Prostitution and Child Pornography, 2012.
7. International Covenant on Economic social and Cultural rights, 1966.
8. Convention for the Suppression of the Traffic in persons and of the exploitation of the prostitution of Others, 1949.
9. Declaration of the Rights of the Child, 1959.
10. Convention on the Elimination of All Forms of Discriminations Against Women (CEDAW), 1979.
11. ILO Forced Labour Conventions, 1930
12. Conventions relating to Trafficking among Migrants.
13. Statute of the International Criminal Court.

²³ . See Article 6,8,11 and 12 (Regarding victim Compensation and Privacy Protection, repatriation and strengthened border control measure.



Strategies for preventions

Since this issue is complex and State gives response are necessarily many faceted. More than are strategy may be appropriate and one particular approach may not bring necessary result.

1. Trafficking as a problem of (Organised crime)
2. Trafficking as a Migration problem.
3. Trafficking as a Labour problem.
4. Trafficking as a Human rights problem.

Implementation

Standard Minimum Rules (SMR) for the treatment of Trafficked persons should be adhered to and as such judiciary, police, juvenile board members, NGOs be sensitized on these issues. A set of standard and minimum rules has been drafted concerning the treatment of trafficked victims.

The Rule are as follows

1. Right to freedom from prosecutions or harassment.
2. Access to competent translators during legal proceedings.
3. Access to force legal assistance and legal representation during criminal or other proceedings.
4. Access to legal possibilities of compensation and redress.

Specific Strategy

The difficult most things are to re-integrate the sexually abused children or trafficking children into their our family. Such families are reluctant to accept the victimized girl. Hence (1) Regular visit by social worker and trained counselor will be required for mainly counseling (2) lower level judicial and Juvenile Board Members need to sensitized on the issue of trafficking of children/women. (3) Police, BSF, NGO need to be oriented in Juvenile Justice Right of the child and on how to handle a child victim. (4) A plan of Government Action has been drawn up by the Department of Women and Child Development that addresses several areas of the problem namely (i) Bevention (ii) Rescue (iii) Law Enforcement (iv) Rehabilitation (v) Community participation for Reintegration. (5) National Commission of Women and State Commission have also responded to the need to immediately attended to the problem of trafficking.



As a whole anti-trafficking intervention must address Prevention, Protection and assistance, including return and resettlement.

Conclusion

Trafficking in human beings, particularly women and children is a serious issue in most reveals that the line between “missing and Trafficking children is very thin. It appears that child trafficking and other types of crimes against children are not merely sociological issues in the context of the deepening crisis in the difficult aspect of this problem. Steps have been taken by the Government as well as other organization such as UN to create awareness. Judiciary has also been playing an important role in this issue. Efforts are also being made by a number of NGOs working in this area in various parts of the country. However, much task still needs to be done in order to tackle this worldwide problem in an effective manner. Keeping in view the gravity of the social issue, transboundary character and social strategies to combat and deal with this social evil a strong holistic approach is needed. This paper suggests:

- i. Changes in the nature of human trafficking in India, probably because labour trafficking is easier than sex trafficking.
- ii. We need to be more attentive about explaining human trafficking and finding solutions to it in the age of globalization.
- iii. As the issues involved are multi dimensional, their solutions are also lie in following as multidimensional approach.
- iv. The role of different International and External Stakeholders and agencies in minimizing the vulnerabilities of children and women become pertinent in this context.
- v. Special task/ police force must be created for this purpose.
- vi. Laws dealing with trafficking must be stringent and strict punishment must be awarded to the offenders of trafficking including the publication of names of the offenders, punishment must be deterrent one.



DECLARATION

I, herewith declare that the paper is original and has not been submitted for publication elsewhere or presented in any Conference or Seminars.

Dr. Narayan Charan Patnaik