

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 7 | Issue 2

2024

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A Study to Combat Human Trafficking in Perspective of Cross-Border Trafficking with special reference to Immoral Trafficking Prevention Act, 1956

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ABSTRACT

Human trafficking is a highly profitable criminal activity that generates billions of euros. However, the low number of convictions is partly due to the fact that trafficking cases are often prosecuted as other crimes instead of being prosecuted as human trafficking. Judicial proceedings rely almost exclusively on victims' statements, but effective financial research is an important tool for obtaining evidence and risk assessment. To guarantee the rights of trafficking victims, states must rely on organizations with expertise in developing legal frameworks and comprehensive policies against trafficking. There is a need to establish formal channels for the participatory role of social organizations specialized in detection procedures and offering assistance to trafficking victims.

There are no international standards regarding the nature, duration, and purpose of the recovery and reflection period for human trafficking victims. This lack of clear standards causes significant variation in national practices and confusion regarding necessary requirements for obtaining this measure. The residence permit is an important measure to guarantee victim protection and increase the likelihood of a victim cooperating with authorities for criminal prosecution. It is essential that states do not take criminal action against victims for offenses related to their trafficking situation, such as carrying false passports or working without authorization.

Identifying and sharing best practices among national authorities is an effective tool to progressively improve detection and victim assistance standards. The right to an effective remedy is a fundamental human right of all individuals, including victims of trafficking, who must be respected, protected, and satisfied by the state in accordance with international human rights standards. The United Nations Special Rapporteur on trafficking in persons emphasizes that compensation for victims is a guarantee of non-repetition, as well as their right to related matters that allow them to truly exercise their right to an effective remedy under free and secure conditions.

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Keyword: *Human trafficking, women, victim, crime, national and international organization.*

I. INTRODUCTION

Trafficking in women and children is one of the most severely abuses of human rights. But it is difficult to measure the scale of the phenomenon as trafficking is closely related to child labour, bonded labour, child marriage, kidnapping and abduction and prostitution even though these phenomena can exist also independent of trafficking. This study has attempted to analyse the nature, causes, modes, and volume of human trafficking. India has failed to comply with certain international standards to combat the crime. This paper highlights the need to develop a multidimensional approach and focuses attention on structural factors of trafficking for recommending countering the social evil.

The problem of human trafficking in women and children has emerged as an important social issue in recent times in many parts of the world. Trafficking is largely a borderless organized crime. The several national and international initiatives have been taken to impel governments into action.

II. HUMAN TRAFFICKING IS ONE OF THE WORST FORMS OF EXPLOITATION ON THE GLOBE

Men, women and children are bought, sold and forced to cross international borders. Today, human trafficking is one of the grave problems faced by many societies especially in the developing countries where there is wide scope of population who are poor and are vulnerable to commercial exploitation, hence are vulnerable to the horrors of human trafficking. The economic crisis has made Asian women and children vulnerable to organized transnational traffickers as more and more children and women are to look for work to support themselves or their families. They are being exploited on and off. They are being taken away from their home or shelter by way of fraud, abduction, auction, fake marriages, coercion, deception, abuse of power etc. Cross-border human trafficking for commercial sexual exploitation has emerged as one of the most formidable challenges of the new millennium. It has threatened the basic dignity of women besides exploiting them in the most despicable manner, destroying them physically, psychologically, socio-economically and in many other respects. Cross-border trafficking both inter country, inter-state and inter-district is increasing alarmingly State like West Bengal. A large number of women and children are being migrated or trafficked from neighbouring countries like Bangladesh and Nepal to West Bengal and many of them are absorbed in the flesh

market in West Bengal and through West Bengal to other states and to Pakistan and Middle East. West Bengal being the main transit point in India, Nepal and Bangladesh need greater interventions and initiatives at all levels including Police, BSF, Customs, Government Departments dealing with these issues, Media, Judiciary, NGOs.²

The International Labour Organisation estimates that there are 40.3 million victims of human trafficking globally in 2019³. According to NCRB, data, there were 38,503 victims of human trafficking between 2011 and 2019. But to several RTI queries filed with government agencies have revealed that less than 100 have got compensation in these eight years. According to National Crime Records Bureau (NCRB) data, in the year 2016, there were 4,911 (54%) girls and 4,123 (46%) were boys. West Bengal reported the most children trafficked, followed by Rajasthan (2,519), Uttar Pradesh (822) and Gujarat (485). West Bengal, Andhra Pradesh, Karnataka, Maharashtra and Odisha are common source areas for trafficking to red- light areas across India, according to the India Country Assessment Report 2013 on anti- human trafficking, brought out by the United Nations Office on Drug and Crime. According to NCRB, sexual exploitation for prostitution (22%) was the second major purpose for human trafficking in 2016 in India, after forced labour (45%). More than 23,000 victims were rescued in 2016, of which 61% or 14,183 children, 61% were boys and 39% girls.⁴ Human trafficking is the trade in humans, either for bonded labour or sexual exploitation in the forms of prostitution or sexual slavery. The countries like India, Nepal, Bangladesh and Pakistan are very well affected by the problem of trans-national as well as domestic human trafficking and this problem has been discussed at many (SAARC) Conventions held. The definition of Trafficking under this Convention is “Trafficking means the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the subjected to trafficking.”⁵

Bonded labour is also known as debt slavery or Debt Bondage, which is the situation where a person pledges their services or labour to a person to whom a debt is owed, as consideration for the debt taken from such a person. Hence, a person is bonded until his debt is repaid. This is somewhat similar to forced labour, which can be defined as “all work or service exacted from any person under the menace of penalty and for which they said person has not offered himself voluntarily.”⁶ The menace of penalty includes threats of physical violence against a worker or

² Sinha Indrani, *Trafficking- A Reality*, Jonaki, Vol. No.2-3,1997.

³ American Bar, <https://www.americanbar.org> (last visited on 11 April 2020).

⁴ India Spend, <https://www.indiaspend.com> (last visited on 11 April 2020).

⁵ Art.1(3) SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002

⁶ Art.2(1), International Labour Organisation Forced Labour Convention, 1930

relatives, physical confinement and denial of rights.⁷ The human trafficking on Indo-Nepal Border reported by National Crime Records Bureau of India,(NCRBI). According to National Crime Records of India data, 8 cases, 7 traffickers apprehended and 72 victims rescued in the year 2012, 14 cases, 19 traffickers apprehended and 108 victims rescued in the 2013, 8 cases, 8 traffickers apprehended and 33 victims rescued in the 2014, 73 cases, 102 traffickers apprehended and 336 victims rescued in the year 2015, 76 cases, 148 traffickers apprehended and 501 victims rescued, 147 cases, 154 traffickers apprehended and 607 victims rescued in the year 2017 and 28 cases, 40 traffickers apprehended and also 94 victims rescued in the year 2018.

(A) Migration and cross-border operation in trafficking

If 1993 is the year human smuggling crashed into our living rooms with the golden venture fiasco (the name of an ill-fated ship carrying undocumented Chinese from Fujian province) the year 1998 could be viewed as the year that human smuggling became an official ‘global problem’. In that year there that human smuggling rings, denunciations of undocumented migrant exploitation by national and world leaders, several international conferences and popular Hollywood movie (*Lethal Weapon 4*) depicting ‘evil snakeheads’ and their human cargo from China.⁸

(B) Movement for migration

The movement towards a destination may be either internal or external migration. In the case of movement across borders, the need for various documents, immigration and border checks influences the nature of the trafficking process. Greater resources and planning are needed for trafficking to be successful and so there is a great likelihood that organized crime networks across borders, smugglers and forgers are involved. Traffickers may use legal or illegal means of entry and exit.⁹ Legal entries and exists are made by using the normal immigration procedures like family reunification programmes or student or tourist visas. Illegal exit and illegal entry involves the use of false documents or no documents and usually includes a bribe to the border officials or guards. People can be moved using a combination of land, sea or air transport, even involving smugglers.

⁷ International Labour Organisation, a Global Alliance against Forced Labour – Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, 2005.

⁸ David Kyle and Rey Koslowski(Edi), *Global Human Smuggling*, The John Hopkins University Press, 2001, p1.

⁹ Albella, Manola, *Work, Dignity and Identity: Keys to Migrant Adjustment* (Speech at OSCE Parliamentary Assembly, Penhalongue; Portugal, 2002), p12.

(C) International trafficking in girls and women

1. Sex tourism, mail order brides, prostitution in brothels, pornography and militarized sexual service are examples on this market. Trafficking in girls and women is one form of migrant trafficking, out one that has special characteristics. Trafficking in women for purposes of sexual employment an involve situation in which the women is aware of the circumstances before she travels. However it also involve situation in which a girl or woman is kidnapped for purposes of trafficking, or sold into prostitution or forced marriage, and therefore it is not considered voluntary.¹⁰

2. The definition of trafficking and the exploitation of others is set out in Article 1&2 of the 1949 Convention for the Suppression on the Traffic in Persons and of the Exploitation of the Prostitution of Others. The Convention refers to actions as both the national and international levels. Since 1949, the concept of trafficking has been extended to include trafficking is reflected in the Beijing Declaration and platform for action, which also include forced marriages and forced labour.¹¹

3. Another compelling definition of the international traffic in women includes any situation where women and girls cannot change the immediate conditions of their existence; where regardless of how they got into those conditions; they cannot get out (without grave consequence); and where they are subject to sexual violence and exploitation.

4. The study of International political economy attempts to clarify the complexity of relations throughout the world. Industrial capitalism has emerged as the most favored economic system, though the ways in which it is manifested through political bodies, such as the nation-state, differs greatly throughout the world. The trafficking in women is a perversion of the interaction of politics and economics and it proves globalization to be a process by which humans may be commodified in the most base and demoralizing ways. It is widely agreed that the contemporary, international sex trade has its roots in the international political economy of sex.

III. HISTORY OF HUMAN TRAFFICKING IN INDIA

(A) Historical background of trafficking

In order to understand the phenomenon of ‘trafficking in persons’, it is of utmost importance to trace the historical development of the concept of ‘trafficking. The problem of trafficking can be traced back to the time of Greek City states. Its history is full of attempts on the part of the States to regulate, control and to limit certain sections of the society and certain kind of activities

¹⁰ Op cit Nair P.M. Trafficking in Women and Children in India, NHRC, 2004, p67.

¹¹ UNDP, <http://www.unifem.undp.org>. (Visited on 11 Febuary, 2020).

like prostitution. The Greek State and following it others regulated prostitution but in spite of the best efforts of the State and of other social agencies, prostitution has retained itself in large towns since the last 2,500 years proves how deep-rooted it is in human social life. Social, economic and moral changes in society, which necessarily influence different aspects of its social life, have affected this institution as well.

The Abolitionist Movement that set in at the end of the 19th Century brought with it a system of State regulation of prostitution. The earliest understanding of term “*trafficking*” comes from UN instruments. The term “*traffic*” was first used to refer to the so-called ‘white slave trade’ in women around 1900. The trafficking and voluntary migration of white women from Europe to Arab and Eastern States as concubines or prostitutes was of particular concern to European middleclass men, women and government. The result was the creation of an international agreement for suppression of the ‘white slave trade’ in 1904.

(A) Historical background of slavery in indian subcontinent

Human trafficking is one of the oldest crimes which have been perpetrated by a fellow man himself, upon his peers or members of society in the forms of slavery and prostitution. In the South-East Asian territory, the concept of slavery had not existed when there was no clear demarcation of nation-states, and there was the control of Monarchic States over these territories. In the Indian subcontinent, due to the prevalence of the caste system, there was stratification of society’s members into four castes namely, Brahmans, Kshatriyas, Vaishyas and Shudras. The accounts of Megasthenes, the Greek ambassador to King Chandragupta Maurya stated, “All Indians are free and not one of them is a slave. Indians do not even use aliens as slaves and much less a countryman of their own.”¹²

But he was certainly wrong because references to the existence of the institution of slavery occur in the Dharmashastras and other literary works. Perhaps Megasthenes was misled by Indian slavery which was milder than the form to which he had witnessed back in Europe as well as the fact that slaves were much less numerous than in the civilizations of the West. This has been attested to by Rhys Davids who remarks, “We hear nothing of such later Western developments of slavery rendered as rendered the Greek mines, the Roman *latifundia* or the plantations of Christian slave-owners, scenes of misery and oppression. For the most part the slaves (in India) were household servants, and not badly treated, and their numbers seem to have been insignificant.”¹³

¹²Basham A.L., The Wonder That Was India, 4thEdn., Rupa& Co., Delhi, 1987, p.155

¹³Rhys Davids, Buddhist India, 3rdEdn. Reprint, MunshiramManoharlal Publishers, Delhi, 1999, p.98

Slavery was a recognised institution of Indian society and dates back to the oldest Vedic times. The slave is denoted by the term *dasa*, which originally meant the people vanquished by the Aryans.¹⁴ “Its later connotation no doubt developed from the reduction to bondage of the many *dasas* captured in battle, and here we find the probable origin of Indian slavery.”¹⁵

Even the Mahabharata contained mention and acceptance of slavery when it expressed that “it is the law of war that the vanquished should be the Victor’s slave.” The captive served the master until the ransom was paid. The *Dharmashastras* speak of different classes of slaves and have laid down rules regarding their status. Manu and Narada, the ancient law-givers of Indian society, say that “slaves could be acquired by birth in the master’s house, by purchase, by gift, by inheritance, by maintenance during famine, by pledge, by release from a heavy debt, by capture in war, by gain in wager, by voluntary surrender of freedom, by apostasy from asceticism, by connection with a female slave, and by several other processes.”¹⁶ Slavery was also the judicial punishment for crimes.

Katyayana, law-giver of the Gupta Age developed certain rules regarding slavery, in coherent repetition of what was laid down by Yajnavalkya and Narada, and forbade the enslavement of slaves in an ascending order of castes. He categorically declares that a Brahman can never be a slave and the sale and purchase of a Brahman woman are annulled.”He introduced a new clause which had not existed before according to which a free woman marrying a slave herself became a slave, but a female slave bearing a child to her master was immediately released from servitude.¹⁷

Kautilya or more popularly known as Chanakya, the author of the Indian political treatise *Arthashastra*, laid down milder regulations.

In the last two decades the most important developments in the work to address trafficking have been in obtaining clarity on these issues, and evolving a definition of “*trafficking in persons*” which would be in accordance with human rights principles and be globally acceptable.

Trafficking in the dictionary is described as “*an illegal trade in a commodity*” in the case of trafficking in persons, the commodity of human beings.

The definition indicates three stages in the crime of trafficking:

1. An action consisting of recruitment, transportation, transfer, harbouring or receipt of

¹⁴Barbara A. West, Encyclopaedia of The Peoples of Asia and Oceania, 1stEdn., Facts On File Inc., New York, 2009, p.182

¹⁵Basham A.L., op cit., p.152

¹⁶Sreenivasa Murthy H.V., History of India Part – 1, 1stEdn. Reprint, Eastern Book Company, Lucknow, 2011, p.108

¹⁷Majumdar R.C., The Age of Imperial Unity Vol. II Part 1, 3rd Edn., Bhartiya Vidya Bhawan, Bombay, 1960, p.570

persons.

2. By means of threat or use of force or other forms of coercion, abduction, abuse of power, or position of vulnerability.
3. For the purpose of exploitation.

While the above three stages would be critical in case of trafficking in children. This definition, though, contains all the human rights elements, is essentially a “*crime prevention*” definition and its crime prevention focus detracts from the concern of the basic rights of the victims.

IV. NATURE AND EXTENT OF TRAFFICKING

Trafficking in persons especially women and children has become an important issue transcending borders, affecting countries all over the world. It is a growing phenomenon involving transnational organized crime syndicates. Women and children have been trafficked for prostitution, forced marriage and other forms of sexual exploitation such as sex tourism, and pornography, as domestic workers, labourers in sweat shops and on construction sites, as beggars, as order brides, as camel jockeys and for organ trade. The increasing use of new information technologies, in particular, the Internet, has altogether added a new dimension to problem faced.¹⁸

Anyone can be a victim of human trafficking. Victims may be

- Men, women and children
- Of varying ages
- Of varying levels of education
- Any race or ethnicity

Voluntary migrants escaping poverty, gender-based discrimination or political persecution, who become enslaved individuals seeking better employment and livelihood opportunities that are then tricked into slavery, persons abducted involuntarily and held against their will through force, fraud or deception.¹⁹

Anyone can be a human trafficker. So human traffickers may be:

- Transnational, national, or local criminal organizations
- Neighbors, friends, family members, village chiefs, returnees

¹⁸ Human Trafficking <https://www.human-trafficking.in> (last visited on 4th April, 2020).

¹⁹ Human Trafficking <https://www.human-trafficking.in> (last visited on 4th April, 2020).

- Agricultural operators
- Owners of small or medium-sized business
- Pimps, and brothel owners
- Independent operators
- Diplomatic families
- Police, government authorities, military
- Individual members of peacekeeping missions

Each case of human trafficking is unique. Whether the human trafficker is an individual acting alone or part of a larger organization, they reap financial gain from their victim through force, fraud, or coercion. They may frequently influence their victim with the false incentive of a job or better living conditions. Or traffickers use a variety of tactics to intimidate their victims, including:

- Physical violence, torture, and starvation
- Rape and other sexual abuse
- Psychological abuse, coercion, and blackmail
- Drug addiction
- Confiscation of passports or other important documentation

Poverty and economic deprivation the gap between the rich and the poor within countries and between different regions has especially made women more vulnerable to trafficking. Lured by hope of an improvement in economic circumstances of them and their families, they are often unwittingly duped and coerced into exploitative slave-like situations. Trafficking, therefore, is regarded as a contemporary form of slavery and a gross violation of basic human rights of trafficked persons.

Forms of human trafficking

- Children Trafficking
- Child Soldiers
- Debt Bondage
- Forced Labour
- Involuntary Domestic Servitude

- Sex Trafficking
- Forced Marriage
- Trafficking for Organ Trade

V. INTERNATIONAL LAW AND HUMAN TRAFFICKING

An overview due to technological revolution and communication development, cross border trafficking is assuming more and more concern of the world community. It has been taken to identify the International Instruments which are directly or indirectly provide the principles of international law against human trafficking and the specific international conventions, conferences, declarations, protocols etc, which is directly deal with the specific problem of human trafficking. The SAARC countries are trying to solve the problem of women and children by a regional treaty. The study has been divided into following sub-headings.

India's Conditional Obligation to Implement International Treaty and Instruments

Article 253 of the Constitution of India deals with the provision of power of parliament to make laws for giving effect to international agreement it says-

Notwithstanding anything in the foregoing provisions of this chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries any decision made in any international conference association or other body. Thus this Article empowers the Parliament to make any law for the whole or any part of the territory of India for implementing treaties and international agreements and conventions.

(A) Development of international legal instruments to combat trafficking in human being

1. International Agreement for Suppression of white slave traffic, 18th May, 1904

International agreement of 18 may 1904 for the suppression of the white slave traffic, which was signed in Paris in 1904. The main intention of this agreement was to provide protection to the adult and under-age girls who are the victims of sexual abuse. This International Agreement had, particularly women and children. The exploitation of trafficked victim in the labour market was in vogue from hundred years back. That trend of exploitation is still in practice and women and children from poor countries, particularly from Asia are still being trafficked every year.²⁰

2. International Convention for Suppression of White Slave Traffic, 1910

²⁰ Op cit J.S. Peiris.

This Convention stipulated that any person who, to gratify the passions of others, has hired abducted or enticed, even with her consent, a woman or a girl who is a minor, for immoral purposes, shall be punished. This was amended by the protocol of December 3, 1948. This Convention tried to eradicate the rampant, practice of white slave, for which trafficking was common.

3. International Convention for Suppression of the Traffic of the Women and Children, 1921

Due to the spread of venerable diseases after World War I, the League of Nations set up an Advisory Committee on the traffic in women and children, thirty three states signed for this Convention. International Convention of 30 September, 1921 for the suppression of the traffic in women and children, as amended by the protocol approved by the general assembly of the united nations on 20 October, 1947. Some of the articles dealing with the trafficking provision are as follows the high contracting parties agree to take all measures to discover and prosecute persons who are engaged in the traffic in children of both sexes.

4. Slavery Convention, 1926

This Convention prohibits the enticing or leading away of a woman or girl for immoral purposes, to be carried out in another country. From country to country as trafficking was going on in large number, this convention tried to prohibit enticing or taking away of women or girl for immoral purposes from one country to another.

5. International Labour Organization Forced Labour Convention, 1930

This Convention tries to suppress the use of forced labour within a shortest period of time. Article 1 of the Convention identifies the suppression of the use of forced or compulsory labour in all its forms. A civilized world Article 2 cannot tolerate forced. In this instrument all forms of compulsory labour were made prohibited.²¹

6. International Convention for Suppression of Traffic in Women of Full Age, 1933

This extends protection to all women even those who attain the age of majority. A subsequent draft convention to extend the scope of all previous convention was prepared by the League of Nations in 1937 just before the outbreak of World War II.

(B) International Human Rights Law Relating to Trafficking of Women and Children

1. Universal Declaration of Human Rights, 1948

²¹ Op cit J.S. Peiris.

The Universal Declaration of Human Rights constitutes a '*common standard of achievement for all peoples and all nations*'. The declaration consists of a preamble and 30 Articles incorporating civil, political economic, social and cultural rights.

2. International Covenant on Civil and Political Rights, 1966

The Universal Declaration of Human Rights of 1948, was not Intended to be legally binding. This Declaration was codified into two Conventions and was adopted in 1966 with two sets of rights outlined in the Universal Declaration. One of these Covenants is International Covenant on Civil and Political Rights.

3. International Covenant on Economic, Social and Cultural Rights, 1966

Economic, social and cultural rights are designed to ensure the protection of people as full persons, based on a perspective in which people can enjoy rights, freedom and social justice simultaneously.

(C) The World Plan Of Action For The Implementation Of The Objectives Of The International Women's Year, 1972

International Women's year was proclaimed by the General Assembly in resolution 3010 (xxvii) of December 18, 1972. The World Plan was adopted by the world Conference of the International Women's Year which was held in Mexico City in 1975. The objective of the World Plan is to ensure equality of women with men and to advance the status of women at national and international levels. The plan addresses a wide range of issues and outlines strategies for improving the treatment of women in administrative, political, legislative, employment, education and other areas. It particularly emphasizes the need to redefine sex roles within the family and aims at eliminating sexual discrimination in all its forms. It was adopted without a vote. It is not a treaty and, therefore, is not legally binding.

1. Convention of the Elimination of All Forms of Discrimination Against Women, New York, December, 1979

This convention is the most comprehensive treaty on women's rights, establishing legally binding obligations to end discrimination. It has come into force on 3rd September, 1981. The convention on the elimination of all forms of discrimination against women was adopted in 1979 by the UN General Assembly is often described as an international bill of the rights for women. The convention is the only human rights treaty which affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations. It affirms women's right to acquire, change or retain their

nationality and the nationality and the nationality of their children. States parties also agree to take appropriate measures against all forms of traffic in women and exploitation of women.

2. Convention of the Rights of the Child, 1989

The convention on the rights of the child was adopted by the general assembly consensus, on the 30th anniversary of the declaration on November 20, 1989. This is the main convention dealing with the children's rights and these rights consist of civil, political, economic, social and cultural rights. The convention provides protection of the children from discrimination, neglect and abuse. This convention works as a useful tool for civil society and individuals, working for the protection and promotion of the rights of the child. This instrument has a close similarity with the 1959 Declaration of the rights of child which has often important sections.

Article 35- States parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

3. Convention on Protection of Rights of Migrant Workers, 1990

This convention seeks to put an end to the illegal or clandestine recruitment and trafficking of migrant workers and lays down binding international standards for their treatment, welfare and human rights. This convention tried to solve the problem of workers coming from another country in search of labour and money which is a regular problem of the economically unstable countries

(D) Regional SAARC Convention On Preventing And Combat Cross- Border Trafficking

1. SAARC Convention on Preventing and Combating Trafficking in Women and Children for prostitution

The aim of this convention is to promote amongst member states to effectively deal with various aspects of prevention, interdiction and suppression of trafficking in women and children;²² reparation and rehabilitation of victims of trafficking and preventing the use of women and children in international prostitution networks, particularly where the SAARC member countries (Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka) are the countries of origin, transit and destination. The convention is legally binding on its signatory parties and is the first regional anti- trafficking treaty to emerge from the Asian continent. As of March 2004, the convention has been ratified by all member countries except Nepal and Sri

²² SAARC Eleventh Summit, meeting of the heads of the State or Government, Katthmandu, January 4-6,2002.

Lanka.²³

Trafficking of children in the SAARC countries assumed both national and transnational in dimension, generational and inter generational impact. So, international cooperation is essential to counter the rampancy of child prostitution, child pornography and trafficking of children. Trafficking of children is one of the crimes in which organized criminal groups are found to be active in India, Nepal and Bangladesh. Mostly the illiterate, poor and young girls of remote areas of Nepal and Bangladesh are lured to go to India for better jobs, good life and better opportunity. They realize eventually that they are being sold for prostitution. The problem is aggravated by our inappropriate criminal justice machinery, want of cooperation in prosecutorial matters and porous border with India has with Nepal and Bangladesh. This convention defines ‘child’, ‘prostitution’, ‘trafficking’, ‘traffickers’, ‘person subject to trafficking’

In the 9th SAARC Summit (May 1997) the member nations took initiatives to take proper administrative and legislative measures to combat problem of trafficking of children and women in the region. Ultimately in the 11th SAARC Summit at Katmandu Nepal (January 4-6, 2002) the SAARC member nations adopted a Convention on prevention and Combating Trafficking in Women and Children for Prostitution. This Convention, therefore, acknowledged the growing problem of trafficking in the region and felt the need for cooperation among member nations in matters of prevention, investigation, prosecution and judicial levels in operational matters of criminal justice. The member States of the South Asian Association for Region Cooperation (SAARC), Parties to the present Convention. Emphasizing that evil of trafficking in women and children for the purpose of prostitution is incompatible with the dignity and honor of human beings and is a violation of basic human rights.

Some of the Articles specially related to cross border trafficking may be mention below:

Article 1- Definitions for purpose of this convention:

- (1). **“Trafficking”** means the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking;
- (2). **“Traffickers”** means persons agencies or institutions engaged in any form of trafficking;
- (3). **“Persons subjected to trafficking”** means women and children victimized or forced into prostitution by the traffickers by deception, threat, coercion, kidnapping, sale, fraudulent

²³ Trafficking in women and children, A Report, NHRC-UNIFEM-ISS Project, Vol-I,2004.

marriage, child marriage, or any other unlawful means;

VI. LEGAL FRAMEWORK IN INDIA TO COMBAT HUMAN TRAFFICKING

Human trafficking is the trade of humans for the purpose of forced labor, sexual slavery, or commercial sexual exploitation for the trafficker or others. Human trafficking is a crime against the person because of the violation of the victim's rights of movement through coercion and because of their commercial exploitation. Human trafficking is the trade in people, especially women and children, and does not necessarily involve the movement of the person from one place to another.

India is a source, destination and transit country for labour and sex trafficking. In India, 90% of trafficking occurs domestically (intra-state or inter-state), and 10% occurs across national borders. The country serves as a destination for persons trafficked from neighboring countries such as Nepal and Bangladesh, and as a transit country for individuals being trafficked to the Middle East and other parts of the world. In addition, India is a source country for individuals trafficked to Europe, the Middle East and North America. The majority of trafficked persons in India, including men, women, boys and girls, are trafficked for purpose of forced labour Sex trafficking is also prevalent within India and predominantly affects women and girls. Sex trafficking is the trafficking of a person by means of fraud, coercion or duress for the purpose of exploiting him or her for involuntary commercial sex acts, prostitution of that person or other forms of sexual exploitation. The number of persons trafficked for either labour or sex is difficult to estimate, given the inherently clandestine nature of this criminal enterprise.

The human trafficking phenomenon is all-pervading and is considered as a complex problem in any society. States no matter however powerful or weak or partially address the issues by using the legal and administrative mechanism. Many social activities and NGOs along with Governmental implementation are actively participating in numerous activities especially in educating and training people at the community level and protecting the vulnerable class of the society. There needs to have an urgent and essential measure to reduce the epidemic of trafficking in India.

In this regard, the enactment of the Amendment Act signifies a vast improvement in the legal framework. However it remains to be seen whether the amended legislation will be implemented in ways that enhance the prevention and prosecution of human trafficking in India.²⁴

²⁴ Human Trafficking <https://www.humantrafficking.in> (last visited on 4 April 11, 2020).

(A) The Constitution Of India, 1949²⁵

There are three articles spread over the Constitution of India in Part- III and Part- IV which deal with Fundamental Rights and Directive Principles of State Policy (DPSP). Article 23 of the Constitution specially prohibits “*traffic in human beings and begar and other similar forms of forced labour*”. Article 24 further prohibits employment of children below 14 years of age in factories, mine or other hazardous employment. Other fundamental rights enshrined in the Constitution relevant to trafficking are Article 14 relating to equality before law, Article 15 that deals with prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, Article 21 pertaining to protection of life and personal liberty and Article 22 concerning protection from arrest and detention except under conditions.

The Directive Principles of State Policy articulated in the Constitution are also significant, particularly Article 39 which categorically states that men and women should have the right to an adequate means of livelihood and equal pay for equal work; that men, women and children should not be forced by economic necessity to enter unsuitable avocation; and that children and youth should be protected against exploitation. Further, Article 39A²⁶ directs that the legal system should ensure that opportunities for securing justice are not denied to any citizen because of economic or other disabilities.

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 Constitution of India, the fundamental law of the land, forbids trafficking in persons.

And other various acts implemented such as:

The Indian Penal Code 1860

The Immoral Traffic Prevention Act 1986

The Immoral Trafficking Prevention Act, 1956

The Bonded Labour (Abolition) Act 1976

The Child Labour (Prohibition and Regulation) Act 1986

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989.

²⁵M.P. Jain, Indian Constitutional Law ,Lexis Nexis, 8th Edition, 2018, p346

²⁶J.N.Pandey, Constitutional Law of India, Central Law Agency, Allahabad, 51st Edition, 2014,p 340.

Transplantation of Human Organs Act 1994

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

The Protection of Children from Sexual Offences Act, 2012

The Code of Criminal Procedure, 1973

The Criminal Law Amendment Act, 2013

(B) Measures undertaken by the government of India to combat trafficking

The Government of India has initiated several initiatives in collaboration with NGOs to combat trafficking and has also formed a special cell in the Ministry of Home Affairs, Government of India as the Nodal Agency for the Anti Human trafficking Units. The law enforcement agencies are also being sensitized on the issue of Trafficking and several modules for police trainings have been formulated by United Nations office on Drugs and Crimes (UNODC), Bureau of Police Research and Development (BPRD) and Ministry of Home Affairs. The Union of India in collaboration with NGOs has launched Ujjwala and Swadhar Schemes which are more focused towards trafficked children and as short stay homes. The Government of India unfortunately has till date not devised any proper scheme for rehabilitation for women in prostitution so that they can become part of the mainstream.

VII. CONCLUSION

Human trafficking is a big problem that not only affects the Americas but most countries worldwide. Many say human trafficking victims is the modern day slave trade, yet so little is done in an effort to stop this problem. 70% of human trafficking victims consist of young girls that are taken from their countries and imported to other countries where they can be sold into prostitution. We can work together to stop this. Human trafficking in accordance with advanced interpretation of the international instruments is the framework that covers all forms of so-called 'new' slavery. It includes labor exploitation and other forms of new slavery such as the organ trade, forced begging, forced crime, as well as various forms of trafficking for sexual exploitation. Human trafficking is not only a criminal activity, but also constitutes a grave violation of human rights. The only way to maintain the focus on the victims is to guarantee that actions taken to combat human trafficking are not reduced merely to a problem of migration, public order, or the fight against organized crime.

Effective action against forced labor requires authorities to go beyond the criminal or positive approach at the administrative level. This is important to guarantee financial compensation for workers under laws against forced labour and human trafficking. This is especially relevant for

exploited workers who may not be entitled to compensation under criminal law.

Therefore, we have been discussed about the human trafficking in India, its historical background, international law relating to human trafficking, legal framework to combating trafficking, and implementation of trafficking laws in perspective of human trafficking in India.

VIII. BIBLIOGRAPHY

(A) Books

- Paranjape .N.V, Criminology, Penology and victimology, Central law publication, Seventeenth Edition, 2017.
- Tripathi S.C & Vibha Arora, women & Children, Central Law Publications, Sixth Edition, 2015.
- C R Kothari & Gaurav Garg, Research Methodology, New Age International Publishers, Third Edition, 2014.
- C.N. Krishna Naik, Arjun Publishing House, 10th Edition,2018.
- Roy Rekha, Women and Child Trafficking in India, Akansha Publishing, 8th Edition, 2014.
- Mishra Veerendra, Combating Human Trafficking, SAGE Publications India Pvt Ltd,11th Edition,2015.
- Ratanlal & Dhirajlal, The Indian Penal Code, LexisNexis, 36th Edition, 2019
- MP Jain Indian Constitutional Law ,Lexis Nexis, 8th Edition, 2018
- Diwan and Diwan, Human Rights and the Law, Deep and Deep Publication House, New Delhi, 1998.
- J.N. Pandey, Constitutional Law of India, Central Law Agency, Allahabad, 51st Edition, 2014.

(B) Reports and Journals

- Castells, Manuel, Mireia Fernandez-Ardevol, Jack Linchuan Qiu, and Araba Sey. Mobile Communication and Society: A Global Perspective Cambridge: MIT Press, 2007.
- Curtis, Ric, Karen Terry, Meredith Dank, Kirk Dombrowski, and Bilal Khan. Commercial Sexual Exploitation of Children in New York City, Volume One: The CSEC Population in New York City: Size, Characteristics and Needs. Centre for Court Innovation, December 2008.
- David Kyle and Rey Koslowski(Edi), Global Human Smuggling, The John Hopkins University Press,pl,2001

- End Human Trafficking Now, Campaign of the Suzanne Mubarak Women ‘International Peace Movement .Luxor Implementation Guidelines to the Athens Ethical Principles: Comprehensive Compliance Program for Business,’ 2006.
- Finklea, Kristin M, Adrienne L. Fernandez- Alcantar, and Alison Siski. Sex Trafficking of Children in the United States: Overview and Issues for Congress Congressional Research Report, June 21, 2011.
- GLE Group. The 2012 Games and Human Trafficking, London Councils, January 2011
- Gozdzia, Elzbieta M. Bump, Data and Research on Human Trafficking: Bibliography of Research- Based Literature, Georgetown University Institute for the Study of International Migration, October 2008.
- Hampton, Keith N., Lauren Sessions Goulet, Lee Rainie, and Kristen Purcell. Social networking sites and our lives. Pew Research Center’s Internet & American Life Project, June 16, 2011.
- Hughes, Donna M. The Demand for Victims of Sex trafficking. University of Rhode Island, June 2005.
- Hughes, Donna M. “Prostitution Online” Journal of Trauma Practice 2, No.3/4 (2003).

(C) Legal Sources

- Complaint for Damages. M.A. v. Village Voice Media Holdings, LLC. Case 4: 10-CV-01740(E. Dist. Mo. Sept.16, 2010).
- Stratton Oakmont, Inc. v. Prodigy Services Co. 1995 WL 323710(N.Y. Sup.Ct.1995).
- United States v. Murrell. 368 F.3d, 1283(11th Cir.2004).
- United States v. Myers.2011 WL 2391306 (11th Cir. June 15, 2011).
