

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 2

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Examining the Challenges and Concerns of Human Trafficking in India

TANMAY TATHAGAT¹ AND ALWIN AKASH²

ABSTRACT

This research paper deals with the issue of Human Trafficking which has been a prime concern in the 21st century. Trafficking involves the involuntary mobility of people from a known place to an unknown place. Trafficking of women and children has become part of transnational organized crime and can be referred to as the dark side of globalization. Estimates indicate that more than 2 million women of India, Nepal, and Bangladesh origin are forced into the commercial sex trade, and of these, at least 50,000 are below the age of 18 years. India has failed to deal with the problems of human trafficking as a result for the past 5 consecutive years India is being placed on the tire-2 watch list of the United Nations. Poverty, ethnic conflicts, child marriage, unemployment, the lure of a job in the big cities, lack of educational facilities, and migration of laborers are some major reasons behind human trafficking. This research paper tries to analyze the setback that law and amendments have faced regarding the prevention of immoral and inhumane trafficking in India and also discusses issues related to why trafficking happens, find the reasons behind it, and also finds desirable solutions to the problems of human trafficking

Keywords: *Trafficking, Unemployment, India, Poverty, Globalization.*

I. INTRODUCTION

The word Trafficking has many different origins like Traffique in French, Traifo in Spanish, and Traffico in Italian. It is observed that human trafficking is related to the involuntary and forceful trading of humans predominantly for the purpose of forced labor, sexual slavery, organ smuggling, or other inhumane purposes. Human trafficking is considered to be the world's third-largest criminal activity after drug dealing and arms dealing and also the fastest-growing criminal activity. Though the inhumane practice of Human Trafficking is still prevalent throughout the world it is a serious issue in India. Human trafficking is not only a heinous crime but also a severe violation of human rights because the victim's free will and right of movement are being restricted furthermore women and children are the primary targets of human trafficking. Women are usually forced into sexual slavery or commercial sexual exploitation

¹ Author is a student at Christ University, India.

² Author is a student at Christ University, India

while children are forced into begging and other criminal activities, though males are not the prime target of human trafficking however they are traded for forced laboring in hazardous sectors.

According to the International labor organization(ILO), considering the data of the forced labor sector alone generate an estimated revenue of \$150 billion as of the year 2014 furthermore another report by ILO of the year 2012 revealed a shocking fact that around 21 million people in were victims of modern-day slavery out of which 14.2 million of these were forced in laboring, 4.2 million were exploited for sexual slavery and remaining 2.2 million people were forced in state-imposed forced laboring sectors. The ILO has concluded that the people belonging to the community of irregular migrants, minorities, and children are the most vulnerable target of human trafficking. People of Ethnic minorities and highly marginalized groups are deemed to work in some of the most hazardous sectors such as leather tanning, mining, and stone quarry work.

Human trafficking does not only hamper The socioeconomic development of a country But also threatens the security of international, national, and regional Security as well as the Security of an individual. The people who are the target of human trafficking are usually the people that face the problems of inequality, poverty, illiteracy, and lack of livelihood opportunities.

(A) Objective Of Research Paper

The objective of this research paper are-

1. The research tries to find reasons that are responsible for the flourishing of Human Trafficking.
2. The research tries to find the present scenario of Human Trafficking Within India.
3. The research paper tries to discover the steps taken by the Government of India and whether they are sufficient enough.
4. The research paper further tries to find what can be a possible solution to the problem of Human Trafficking

(B) Hypothesis Of The Research Paper-

1. Mostly women and children are victims of Human trafficking
2. Lack of awareness, Poverty, Illiteracy, Economical disparities, and inequality plays a major in nurturing Human Trafficking

(C) Review Of India

In the report on trafficking in person 2020, it was found that the government of India fails to meet the minimum standards for the elimination of trafficking but is making substantial efforts to do so. India was placed again in Tire 2 but an increase in the effort to curb the practice of Human trafficking was observed as reports were compared with that of the previous year.

These efforts compromised convicting traffickers and also completing a high-profile investigation into a case that bewildered the presence of officials complicit in trafficking situated at a government-funded shelter home in Bihar, where 19 individuals were convicted as well as three state officials and an influential former legislator was among the 12 that received life sentences furthermore the government also filed “First Information Reports” (FIRs) against another government-funded shelter homes in Bihar that reportedly abused the residents also including trafficking victims.

The government significantly worked on its draft anti-trafficking bill and committed to further increase in funding to expand its police anti-human trafficking units (AHTUs) within 732 districts. Still, the government failed to meet the minimum standards in several key areas furthermore the government did not make serious or bolster efforts to address its consistently large trafficking problem. Overall anti-trafficking efforts, specifically against bonded labor, remained insufficient. The government also decreased the investigations and prosecutions, and case convictions of traffickers, which ultimately led to the increase in the acquittal rate of traffickers to 83 percent also the Law enforcement decreased victim identification efforts

Furthermore, the NGOs estimated police did not file FIRs in at least half of reported bonded labor cases, and inconsistent with NGO reports, 17 of 36 states and territories did not identify any bonded labor victims in 2017 or 2018.

II. DEFINITION OF HUMAN TRAFFICKING

Though Human trafficking can take place at the domestic, national, or international level, and thus to recognize and take action against human trafficking United Nations recognized human trafficking under Palermo protocol³ in the year 2000.

Definition 1-As per Palermo Protocol which is signed by 173 countries defines Human trafficking under article 3 as “Trafficking in persons” shall mean the recruitment, transportation, transfer, harboring, or receipt of persons, by means of the threat or use of force or other forms

³ article 3 of United Nation Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children,

of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, or the removal of organs.

Definition 2-The Oxford Dictionary⁴ describes trafficking as a trade specifically which is illegal and further elucidates it as the crime of transporting or controlling people and forcing them to work in the sex trade or other forms of forced labor.

Definition 3-Trafficking of people is defined as the recruitment, transportation, transfer, and harboring of human beings by the means of threat, force, or other forms such as coercion, abduction, fraud, deception, abuse of power or position, or giving by hoax promising the victims to provide monetary benefits for the purpose of exploitation.

(A) Root Causes

The root causes of human trafficking differ from one nation to another. Trafficking is a compound or complex phenomenon which is usually influenced or driven by various economic, social, or cultural factors. The global omnipresence of human trafficking can be explained by extreme poverty, political instability, and war can be the common causes of human trafficking. Some of the common causes of human trafficking are:

LACK OF EDUCATION: lack of education leads to decreased opportunities for work at a living wage and it can also lead to diminished knowledge of rights. It leads to pronounced vulnerability for human trafficking. So, in order to prevent such things, education can empower children to make changes in society and as they grow older it will prevent situations and vulnerabilities of which traffickers take advantage of.

POVERTY: Poverty is one of the largest contributors to human trafficking. It can also influence people to become traffickers, or parents to sell their children or other family members into enslavement.

DEMAND FOR CHEAP LABOUR: demand for cheap labor and commercialized sex gives opportunities for the traffickers to exploit people by them making large profits through cheap and free labor.

LACK OF ECONOMIC OPPORTUNITIES: lack of economic opportunities or incentives

⁴ Oxford online learner dictionary

may also lead to increased vulnerability to human trafficking. People in this group are the migrants without any job, those who lack education, illiterate people, and people living in rural areas. Traffickers lure them to do forced labor, bonded labor, sex trafficking, etc.

CULTURAL AND SOCIAL FACTORS: Bonded labor is seen as an admissible way to pay off debt. Some countries like Mauritania still practice outmoded slavery, where families are held for generations by slave masters. In Uzbekistan, forced labor is institutionalized. Social and cultural factors can also lead victims not to speak about being trafficked.

(B) Purpose Of Human Trafficking

Human trafficking is not limited to only sex trade but also for the purposes like commercial gay and lesbian relationships, forced labor, domestic slavery, hiring wombs, organ transplantation, and begging. Historically speaking, the term ‘trafficking’ was used for the purpose of acts that are immoral and hidden from society for example prostitution. But, over the years, the scope and purposes of human trafficking have been enlarged from that of prostitution. Nevertheless, sex trafficking still constitutes or holds major forms where children and women are being forced and exploited for the purpose of prostitution. But, several other motives, intentions, and purposes have been included in this sight of human trafficking. Its ambit ranges from commercial sexual exploitation to the extent of enslavement. The numerous purposes of human trafficking include trafficking in human beings for sexual exploitation, services, forced labor, enslavement, illegal activities, entertainment, drug trafficking, removal of organs, etc. In India, as far as commercial sexual exploitation is concerned, it includes forced prostitution, social and religious forms of prostitution, sex tourism, bartending, etc. For the purpose of commercial human trafficking, children may also be trafficked for the purpose of forced labor, sexual exploitation, drug trade, adoption, child begging, etc. Another purpose of human trafficking is termed domestic servitude which is a form of forced labor and is defined as slavery and bondage.

III. PRESENT SCENARIO OF TRAFFICKING IN INDIA AND ITS STATES

Some NGOs and reports have concluded that India is a major source of transit and destination for men, women, and children who are subjected to forced labor and sex trafficking moreover another shocking fact that came to light was that girls are forced to conceive and deliver babies for the purpose of sale. Children as young as six years old were forcibly removed from their families and forced by separatist groups such as the Maoists in the state of Bihar, Chhattisgarh, Jharkhand, Maharashtra, West Bengal, and Odisha to perform the tasks of spies, couriers, plant improvised explosive devices and fight against the government. Experts estimate that 80% of

human trafficking is done for the purpose of sexual exploitation and the rest for bounded laboring and millions of women and children are victims of sex trafficking in India.

As per the Walk Free Foundation Global Survey Index, 2014, India is home to an estimated 14 million victims of human trafficking, together with victims of sex trafficking, bonded labor, child labor, domestic servitude, and forced marriage. Paramount provenance and destinations for internal trafficking victims include Kolkata, Mumbai, Delhi, Gujrat, and Hyderabad.

With the most cases reported from the state of West Bengal, the state is now being considered as the center of human trafficking for domestic slavery in India today, and the colossal reason for such an increase in cases of human trafficking in West Bengal areas there are no placement agencies in West Bengal pertaining to Human trafficking, children and women continue to fall victim to illegal recruitment organizations that allure them with the false job offer and then trap them into domestic slavery. Major provenience from which human trafficking victims are transmitted encompasses the States of Maharashtra, Uttar Pradesh, Bihar, Assam, and Meghalaya and prime destinations where human trafficking victims are transported include Maharashtra, Chhattisgarh, Bihar, Delhi, Tamilnadu, etc. As of human trafficking in West Bengal out of total of 8,132 cases of human trafficking reported in 2016 in India. West Bengal is ranked first in the list in the state. In West Bengal, 3,576 cases were registered in recent times. As stated by the NCRB, Assam and West Bengal account for 40% of all criminal activities related to Human Trafficking. The United Nations Office of Drug and Crime stated that out of over 19,000 children and women who went missing from West Bengal in 2011, only 6,000 have been relocated. The presence of conditions such as poverty, domestic violence, abuse, and the absence of opportunity and freedom, act in favor of the growth of such rackets.

IV. MEASURES

Project on strengthening law enforcement in India against human trafficking. The government of India is also taking various steps to combat the spread of human trafficking the Ministry of Home Affairs in association with the United Nations Office on Crime and Drugs has initiated a two-year project for training law enforcement officers on human trafficking in four states which are- Maharashtra, West Bengal, Goa, and Andhra Pradesh. The project is expected to raise awareness at different levels of Law Enforcement Officers on the issue of human trafficking and further build up their extent to better investigate the misdeed or crime and prosecute the offenders carrying out such crimes. The Ministry of Home Affairs has set up a Nodal Cell for dealing with matters related to the trafficking of human beings. Some general preventive measures are

BORDER MEASURES: Strict enforcement in cross-border trafficking, secure surveillance in trafficking routes, and proper social accountability are required.

SOCIAL AND ECONOMIC POLICIES: Measures are taken to increase the levels of social protection and to create employment opportunities and appropriate measures are taken to eliminate discrimination against women in the field of employment in order to ensure, on the basis of gender equality, the right to equality in employment opportunities and the right to equal pay for equal work. Developing programs offering livelihood options that include basic education literacy reduces barriers to entrepreneurship and the development of communication skills. Encouraging gender sensitization and educating on equal and respectful relationships between the sexes, will eventually lead to the prevention of violence against women. Ensuring that the policies are in place that allow women equal access to and control over financial and economic resources.

MEASURES TO RAISE AWARENESS: With the help of police officials and NGOs there can be different types of advertisements through popular media in particular locations and by conducting awareness programs in local schools, villages, among kids of the poor society and general public to be alert of being victimized.

LEGISLATIVE MEASURES: Adopting and strengthening poor law enforcement, uncorrupt officials, social, educational, cultural, or other measures. Penal legislation including bilateral and multilateral co-operations to discourage their demand fostering all forms of exploitation of humans especially women and children which leads to trafficking.

V. LEGAL FRAMEWORKS

Though there is much international law for curbing human trafficking to curb it at national, and regional levels laws within a country play a major role. However, it does not mean that international law does play a significant role but the Domestic law of a country is more effective in dealing with Human Traffickers through the criminal law within a country. The constitution of India prohibits Human trafficking. The Fundamental rights which are provided by the Constitution and are further considered as the heart and soul of the constitution forbid Human Trafficking but even so, India is a transit hub where daily men, women, and children are exploited within the nation or trafficked to other nations. The mechanism of this trafficker is fairly easy as India shares pour border with Nepal and Bangladesh, the dire situation can be understood only by the fact that India shares 4,156 Km of the border with Bangladesh and there are only 20 check posts to keep vigilance.

The constitution of India as well as other regulations of law such as IPC and acts passed by

legislation try to curb the heinous practice of human trafficking. The Part III Fundamental Rights and Part IV Directive Principle Of State Policy provide rights to citizens to protect them directly or indirectly from trafficking, the mentions of the following articles are given below-

Article 21- Right to life and personal liberty.

Article 23- Right against exploitation, trafficking, and forced labor.

Article 24- prohibits the employment of children below the age of 14 years in hazardous sectors.

Article 39(e)- Mentions that men and women, and children are not abused and that citizens are not forced by economic necessity

Section in Indian Penal Code(IPC)-

Section 366A- Covers the aspect of procurement of minor girls(below 18 years) regarding it as punishable offense

Section 366B- Covers the crime of importation of girls below 21 years

Section 370- Covers the crime of Import, Export, Removes, Sells or Buys any person as a slave shall be punished with imprisonment for a term that may be extended to 7 years.

Section 372- Covers the crime of selling girls for the purpose of prostitution.

Section 373- Covers the crime of buying girls for the purpose of prostitution.

Section 374- Covers the aspect of punishment for forcing any person to labor against the will of that person.

(A) Case Laws Related To Human Trafficking-

1. State of Uttarakhand vs Sartaj Khan

In the following case State of Uttarakhand vs Sartaj Khan, the respondent was held guilty under Section 366B, 370 of IPC and was awarded 10 years imprisonment. The Culprit was trying to traffic a 15-year-old Nepalese girl by making a fake promise of taking her to meet her uncle who lives in India.

2. Vishal Jeet vs Union Of India

Vishal Jeet vs Union of India is considered a landmark case where the Supreme Court gave direction for the protection and rehabilitation of people who had been devadasis by a person's family or community. This could also be applied to the Nepali who are dedicated, albeit in Nepal but are trafficked in brothels in India.

(B) Anti- Trafficking Bill 2018

The Bill provides the investigation of trafficking cases, rescue, and re-establishment of trafficked victims. It includes trafficking for the purpose of sexual exploitation, enslavement, or forced removal of organs. The bill also considers trafficking for certain purposes, such as begging or for inducing early sexual maturity to be an exasperate form of trafficking, and these forms of trafficking attract higher punishment. The bill provides the setting up of investigation and rehabilitation authorities at the district, state, and national levels. The bill also provides for the setting up of Protection Homes and Rehabilitation Homes to provide care to the victims, it supplements through rehabilitation funds. Special Courts will be designated in every district to complete the trial of trafficking cases in a year. The Bill also specifies penalties for various offenses including for the promotion of trafficking. All the offenses are cognizable and non-bailable. If a person is found guilty under the bill, the punishment that is higher will apply to the offender.

VI. HOW DOES THE BILL COMPARE WITH EXISTING TRAFFICKING LAWS?

The current bill does not replace but it adds to the existing legal framework. For instance, The Immoral Traffic (Prevention) Act, of 1956 covers trafficking for commercial sexual exploitation while the Bonded Labour System Act, of 1976 deals with the punishments for employment of bonded labor. These laws will continue to be in force after the bill, as these laws have different procedures and it is unclear which procedure will apply in certain cases of trafficking.

VII. SUGGESTION FOR THE SOLUTION OF HUMAN TRAFFICKING

To curb the problem of Human trafficking we should start working on the very basic ground level thought the Government has provided many Fundamental Rights and Bills but if people are not aware of it the whole purpose of such laws will be useless thus we should give priority to increasing the awareness within the people and children. Furthermore, there should be strong coordination within the government agencies and also between the law-enforcing organizations and NGOs. The Government should focus on eliminating the factors such as Inequality, Poverty, Illiteracy, Ethical Conflicts, etc. The Ministry of Women and Child Development and the Ministry of Labour and Employment should kick off programs for victims identification and rehabilitation throughout the nation. One of the major reasons for Human Trafficking is that people are given the bait of economic benefits but are later exploited therefore the government should increase employment opportunities among the people who are considered vulnerable to Human Trafficking. Human trafficking in India is considered easy because the checking at the border between Nepal and Bangladesh is not up to the mark therefore there should be an increase

in the check post throughout the borders as this will not only help in eliminating Human Trafficking but also strengthen the security of our Nation.

VIII. CONCLUSION

Through the research paper, we came to know that though our world is developing rapidly by the means of globalization there still exist various issues such as Human Trafficking which are being neglected or not being given attention with respect to the threat it possesses. Human Trafficking is like a pest that is though not visible on the surface it is weakening our country behind the scene. Though the Government of India has launched various laws and bills such as Anti Trafficking Bill,2018 and fundamental rights with India still being in tire -2 in United Nations Trafficking in-person Report, 2020 it clearly manifests that the steps taken by the Government are not enough to curb the heinous practice of Human Trafficking. Human trafficking is nurtured by the factors such as economic disparity, poverty, illiteracy, ethical conflicts, and lack of awareness furthermore women and children are the most vulnerable target of Human Trafficking thus we should work on these weaknesses. The Government should strengthen the coordination between the executive bodies and the law-enforcing bodies furthermore law enforcing bodies can also help by providing free legal aid help to the victims of Human Trafficking. The loopholes that are present in our system and laws that help the traffickers to escape from the clutches of law should be spotted and corrected. Moreover, the role of NGOs cannot be neglected and strong coordination between Government organizations and NGOs can bring a drastic change to the current situation of Human trafficking. NGOs can play a massive role in promoting awareness among the masses, rehabilitation of victims, helping the victims to get legal remedies, helping in women empowerment, healthcare, economic opportunities, etc. Hence a proper balance and strong coordination between Central Government, State Government, Executive bodies(Police), Law enforcement bodies, and NGOs can not only help in curbing the crime of Human Trafficking rather the total elimination of it is also possible.

IX. REFERENCES

- <https://www.state.gov/reports/2020-trafficking-in-persons-report/india/>
- <https://www.kirkleessafeguardingchildren.co.uk/wp-content/uploads/2019/04/2016-01-27-The-Palermo-Protocol-Definition-of-Trafficking.pdf>
- https://www.researchgate.net/publication/319998554_Human_Trafficking_an_Overview_With_Special_Emphasis_on_India_and_West_Bengal_Himika_Deb1_and_DrTanmay_Sanyal_Corresponding_Author_iosr_jhss_vol22_issue_9_version_5
- https://www.academia.edu/15207772/Challenges_and_Concerns_of_Human_Trafficking_In_India
- https://www.academia.edu/33204447/A_Comparative_Analysis_of_Various_Factors_Influencing_Human_Trafficking_in_India
- https://www.academia.edu/36534888/Human_Trafficking_in_India
- https://www.academia.edu/42109104/A_STUDY_OF_HUMAN_TRAFFICKING_IN_INDIA_AN_OVERVIEW
- http://ijrar.com/upload_issue/ijrar_issue_20543854.pdf
