

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 5

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.

Human Trafficking: A Modern Time Slavery

GHALIB NASHTER¹ AND SOFIYA NAAZ²

ABSTRACT

When we talk about human being living within a territory of a country one of the first thing which comes in our mind is the rights and protection which has been assured to them, especially in a country of democratic nature. In India's context we can see that how our lawmakers were concerned about our rights and protection of the same. Articles are enshrined therein Constitution to protect an individual from any abuse or violations. When these rights are violated and that person is made deprived of it is not only the issue of that particular individual but of the state as a whole. One of the most heinous crime by which a person is deprived of those fundamental right vested is in the form of 'Flesh Trade' Or 'Trafficking of a person'. It is a form of epidemic witnessed by developing as well-developed state. In all these mishaps and increasing cases the judiciary system of India is trying to protect those victims and to ensure that the legislative measures taken to curb this down is adhered to. A very impact full role is also played by the NGO's in rescuing those victims from those unfavorable and deteriorating conditions.

his abstract also delves into the complex web of factors that contribute to the persistence of human trafficking, including poverty, lack of education, gender inequality, armed conflicts, and weak legal systems. Additionally, it explores how globalization and digital technologies have both exacerbated and facilitated this modern form of slavery, enabling traffickers to exploit vulnerable populations more efficiently.

Keywords: Human trafficking, judicial system, role of NGO's.

I. INTRODUCTION

The word 'Human Trafficking' or 'Trafficking of a person' is itself an indication that how dehumanizing and cruel it is. Human trafficking refers to the illegal and exploitative trade of human beings, typically for the purposes of forced labor, sexual exploitation, or involuntary servitude. It is a grave violation of human rights and a serious crime under international law and the laws of most countries. Human trafficking can take various forms and involve both adults and children.

It is an exploitation of a human being by a human being through coercion, fraud, force, threat.

¹ Author is an Assistant Professor at Department of Law, Aligarh Muslim University, Centre Malappuram, Kerala, India.

² Author is a student at Department of Law, Aligarh Muslim University, Centre Malappuram, Kerala, India.

Of which a person become deprived of his personal liberty, his right to live freely without any fear of compulsion. An issue which is not circumscribed to any particular country or a region rather it is global of which no country is exempted. There is no as such exact meaning given to this term but this should not be confused with 'human smuggling' as this type of offence have the consent of the person being smuggled however subsequently it can lead to human trafficking.

Approx 6622 trafficked victim and 2505 potential trafficking victim were identified and have been reported in the year 2022³.

(A) Meaning of Human Trafficking

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, commonly known as the Palermo Protocol, provides a comprehensive definition of human trafficking. It was adopted in 2000 as a supplement to the United Nations Convention against Transnational Organized Crime (also known as the UNTOC or the Palermo Convention). The Protocol defines human trafficking in Article 3 as follows:

- (a) "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 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.

(B) Human trafficking modern time slavery

One cannot disagree with what we have read in our history about slavery prevailing at that time and how people were bounded and suppressed by fear, threat of the powerful ones; they were exploited and maltreated in many awful ways. In India's context we can see that the slavery of that time was however circumscribed towards a particular caste or class of people and they were exploited by the higher-class ones.

However, when we are talking about Human Trafficking or trafficking of a person in contemporary, we will see that there is no longer targeting of any particular class, caste, sex or

³ "Human Trafficking too high in India, says US" *The New India Express*, March 01, 2023 available at: <https://www.newindianexpress.com/nation/2023/mar/01/human-trafficking-too-high-in-india-says-us> (last visited on June 10, 2023)

religion. The traffickers target the one who are in great need, or in poor condition by luring them therefore it can be- a Hindu, a Muslim, female, children's, old-aged people anyone⁴.

The irony which one can discern is that how a human being is intentionally exploiting another human being just for the fulfillment of his greed and for some monetary gain.

(C) Why there is human trafficking?

The main targets of the traffickers are the one who are in need and are not aware about the reality they lure them by fake job opportunities and other factors and making them seek the service of smugglers or kidnapping and abducting them. Some people get easily trapped because of the condition they live in, poverty and unemployment which they face, and also because of the political condition, religious persecution, lack of resources, wars. Once trapped they get exposed to forced labor and are subjected to sexual and physical abuse and sex trade and some of them become the victim of organ trafficking. The malefactor of trafficking use these people in worst way possible as these victims because of their unfavorable condition are not able to get proper document and other necessities, the traffickers first provide them with that and then exploit them under the veil of migratory debts.

II. FORMS OF HUMAN TRAFFICKING

The exploitation of a human being can be done in many ways some of the forms in which trafficked persons are exploited are following⁵-

- **Sex Trafficking**

When a person becomes victim of sexual activity by coercion fraud threat exploited in there is called as sex trafficking. The common victim to this are children and women's this can occur in places like brothels, bars, strip clubs, even in private a women or a children can be domestically trafficked. As per 'International Labor Organization' about 6.3 million individuals are subjected to sex trafficking and exploitation. With women and children the LGBT community is also subjected to the sex exploitation.

Victim subjected to this are mentally traumatized of the dreadful events, they suffer from physical issues as well and can get exposed to HIV, AIDS, HPV which are sexually-transmitted infection disease.

- **Child Sex Trafficking**

⁴ Ellie Collier 'Method of Human Trafficking and Recruitment' *High Speed Training* (2023).

⁵ 'Types of Trafficking' *Human Trafficking Search* available at: <https://humantraffickingsearch.org/types-of-trafficking/>

Like women and LGBT community children are also being exploited via sex trafficking. Children who are the victim of forced labor are mostly subjected to commercial sexual exploitation.

The consequences of this on the victim is long lasting as they are subjected to high mental physical and sexual abuse, unplanned pregnancies, tortures, mental disorders, suicide attempts, depression, anxieties disorder even after being rescued.

- **Forced Labour**

When a person is made to work or do something to which he has not given consent, but has left with no option because of threat and fear. The service which is extracted from them can be in any form- in factories for production and manufacturing of goods, sex workers. The impact of this is not only on them but on their families as well as they are also subjected to exorbitant working condition. In India more than half of the forced victims are in bonded labor tricked by promising job and large advancement.

Victims to this not only suffer physical or mental trauma but also experience isolation and distance from their families and communities to which they belong, they get circumscribed to an area and are restricted from any other movement and opportunities.

- **Debt Bondage**

This is also a kind of forced labor where the victim is manipulated and compelled to do the work against his will in order to pay off the debt. Debt bondage is a practice which is somewhere similar to slavery. As per International Labor Organization about 1/5th of forced labor are subjected to debt bondage. In India after COVID-19 the issue of bonded labor has increased, the unfavorable condition prevailing in country at that time has given a quite good opportunity to those traffickers to easily lure the unemployed with cash advances with the motive to trap them in the cycle of debt bondage.

Victim to this are paid little or no wages in name of getting the debt pay off, they forcefully made them do these works of which value is more than that debt. They are put in those work for a long time, long hours and are tortured.

- **Domestic Servitude**

When domestic servitude is obtained by means of threat, manipulation, and force and against the consent it is an exploitation of human being from where that person is not able to escape. There are compelled either by destroying the document or threatening. Most of the children's are subjected to this and it occurs mainly in private household where there are paid negligible

amounts or no amount.

- **Child Labor**

Children of young age are often exploited for large period of time. They are made to work in factories and manufacturing companies which are threat to their lives, young childrens are often subjected to commercial sex trade, force marriage or they are made to beg on street, pick-pocketing, drug trades. They are paid little or no wages and are subjected to abuse- mental, physical, sexual and emotional.

- **Organ Trafficking**

Another form of bestializing human trafficking is the involuntary removal o organs from the body of an individual for transplant which includes lungs, hearts, livers but the most illicit organ trafficked is kidney; about 10000 kidneys are trafficked annually. This is one of the most horrifying thing done to a human by the so called influential persons such as doctors, nurses, politicians and even police are involved in this, making it difficult to trace this crime. India is one of the largest exporters of human organs as per the report of WHO. The monetary amount which is generated by this heinous crime is between \$840 million to \$1.7 billion as per the global financial integrity. Dr. Amit Kumar who was arrested in Nepal is said to have performed about five hundred illegal transplants⁶.

III. HUMAN TRAFFICKING IN INDIA

India has witnessed trafficking of person on high rates. As it being one of the top country in illicit organ transportation, and also in India many women are trapped in sex trade, prostitution by those traffickers making fake promises of love apart from it there is a tradition in which girls are sacrificed in name of washing out the sins of the family⁷.

- **Constitution of India**

Article 21- “Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law”.

After the judgment of the landmark case ‘Maneka Gandhi vs. Union of India’ the ambit of personal liberty was expanded.

Article 23(1) - “Traffic in human being and begars and other similar forms of forced labour are

⁶ “Kidney kingpin Dr Amit lands in Delhi” *The Indian Express* Feb 09, 2008 available at: <http://archive.indianexpress.com/news/kidney-kingpin-dr-amit-lands-in-delhi/271090> last visited (June 12th, 2023)

⁷ Alese C. Wooditch and Leonard A. Steverson ‘Human Trafficking’ available at: <https://www.britannica.com/topic/human-trafficking> (last visited June 12, 2023).

prohibited and any contravention of this provision shall be an offence punishable in accordance of law.

Article 24- “No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous industry or factories or mines without exception”

Being one of the biggest democratic countries these Articles of Indian Constitution protects major as well as minor from exploitation.

- Immoral Traffic (Prevention) Act, 1956 (ITPA)
- Criminal Law (Amendment) Act, 2013
- Juvenile Justice (Care and Protection of Children) Act, 2015
- Bonded Labour System (Abolition) Act, 1976
- Protection of Children from Sexual Offences (POCSO) Act, 2012
- Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
- National Policy for Domestic Workers, 2020

IV. JUDICIARY IN MATTER OF HUMAN TRAFFICKING

The judicial system in India is not just there to pass judgment rather from the very beginning of its establishment it has been the custodian as well as guardian of the constitution of India. It protects and ensures that the right granted therein is not altered or violated. The rule of law is the core of the Indian polity which states that no one is above the law and that everyone is subject to the jurisdiction of the regular courts of law no matter what position they belong to or what status they hold, in front of law everyone is equal and subjected thereto.

James Medison who is one of the founding father of American Constitution states that “judiciary in India is truly the only defensive armor of the country and its constitution and laws”. In word of Justice Y. K Sabharwal “Liberty and equality has well survived and thrived in India due to the pro-active role played by the judiciary. The rule of law, one of the most significant characteristics of good governance prevails because India has independent judiciary that has been sustained, amongst others, because of support and assistance from an independent bar which has been fearless in advocating the cause of the underprivileged, the cause of deprived, the cause of such section of society as are ignorant and unable to secure their right owing to various handicaps, an enlightened public opinion and vibrant media that keeps all the agencies

of the state on their respective toes”⁸

There are numerous cases on Human trafficking and exploitation which has been addressed some of them are-

- **Gaurav Jain vs. Union of India (July 9, 1997)-**

On July 11, 1998 in ‘India Today’ an article was published under the heading of “A Red Light Trap: society given no chance to prostitutes offspring” on reading this the petitioner filed a Public Interest Litigation in Supreme Court. In that PIL it was prayed to issue an appropriate writ directing the setting up of distinct educational institutions for the children of prostitutes up to 16 years of age in order to protect them from this unfavorable and unethical situation.

In this the opinion formed by both the judges was not in majority and therefore it was referred to chief justice as Article 145 (5) of Indian constitution states that “no judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of the majority of the judges present in hearing of the cases”. The justice of the Supreme Court singly passed an order where majority vote was required before passing any judgment. In the order it was stated that the prostitutes through self employment schemes will be rehabilitated and that the children of the prostitute should be provided adequate safety protection in juvenile homes under qualified social workers and also the NGOs with aid and financial assistance by the government and the state”.

Justice Wadhwa dissented and stated that the prayer of the PIL is not about eradicating of prostitution and rehabilitation and that this matter involves union and state government. On one hand he dissented from being the part of this order and on the other hand he concurred with Justice Ramaswamy on the issue of children of prostitute and the need of their rescue and rehabilitation, establishment of juvenile homes as according to him the prayer of PIL was in concern of this only.

Justice Ramaswamy observed that “the fundamental and human right remains pious platitudes to which miserable souls crushed in the cruel flesh trade with grinding poverty in the evening of their lives”. He gave a twenty eight page deliberation in which he addressed most of the socio-economic reasons, political factors as well as the police complicity in trafficking of the persons.

The plea demanded separate educational institutes for the prostitute’s children but the court did

⁸ ‘Role and Function of Judiciary’ available at: [file:///C:/Users/user/Downloads/Unit-11%20\(3\).pdf](file:///C:/Users/user/Downloads/Unit-11%20(3).pdf) (last visited June 12, 2023).

not agree on this point as agreeing on that would have been against the society as well as being of those children, providing these things separately will make them feel isolated and they will not be able to make compatibility with the rest. However, the court stated that in order to help them sufficient availability of accommodation- homes and hostel and reformative measures are needed. A committee of four advocates and three social workers were set up in order to look into this matter and to take appropriate measures and actions.

As because of the dissenting opinion of the judges a review petition was filed in which the guidelines formulated for the prostitutes children rescue and reestablishment hereinabove was upheld. The criticism to this case is that the justice addressed those women as “fallen women” is quite derogatory towards those women and mothers who are trapped in there because of unfavorable circumstances, religious propagandas; the word was used in such a way that they are not compatible to be a respectful citizen of the society.

- **PUDR vs. Union of India (AIR 1982 SC 1473)**

At the time of ASIAD-82 project many child labours and other labours were exploited by giving minimum wages and were forced to work extra hours despite of the hours fixed by the government. This exploiting condition was brought into light by ‘People’s Union for Democratic Right (PUDR)’. The labours involved in this were recruited by the agents through jamadras from backward villages of Bihar, Orissa, West Bengal, Rajasthan, Madhya Pradesh and Andhra Pradesh. The wages were given to the jamadras and not directly to labours and therefore the jamadras used to give them little wages which were not worth to the service provided them and was not enough to lead a sustainable leaving because of this they were subjected to malnutrition, starvation. The children were often subjected to accidents because of the risk involved in that, they themselves meet with many accident and health problem as they were forced to work extra hours and to complete the project by 19th of November.

The petition in form of PIL was filed by the PUDR on behalf of both the children who were forced into laboring and the labours that were given wages lower than prescribed by the government and were exploited in such a inhumane manner. It was filed before the Supreme Court on November 16, 1981 the PIL prayed for the observance of various labor laws in relation to the workers employed in the construction of the ASIAD project also there was complaint of violation of Article 24 which states- “No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous industry or factories or mines without exception” on behalf of those child labors involved in the project. The petition which was filed was admitted by the Supreme Court on May 1982. Justice who addressed this

case were- Justice P.N Bhagwati and Justice Baharul Islam they directed the body concerned with the project (Union government, Delhi Development Authority and Delhi Administration) to ensure-

- a) Minimum wages and other form of facilities were paid to the workers involved theirn in the project.
- b) Women exploitation should not be there by not providing them equal pay for equal work.
- c) The court extended the ambit of Article 21 by stating‘forced labour’ and ‘bondage labour’ to be in contradiction to ‘right to live life with dignity’.
- d) The court constituted responsibilities of the government to ensure that the agencies as well as private and non-governmental bodies to ensure proper regulation of Acts are there.
- e) The court also widened the ambit of Article 23 and asserted that it is not limited to begars, and is applicable to any kind of forced labours.
- f) As per the judgment in question of forced labour and bonded labour the Burden of Proof is not on the victim rather on the State and the Government.
- g) The court also recognized the right of the individual to file a petition under Article 32.

- **Vishal Jeet vs. Union of India (AIR 1990 SC 1412)**

Another case which highlights the issue of ‘flesh trade’ and dehumanizing activity of Human Trafficking is this. In form of writ a PIL was filed under Article 32 of the constitution by an advocate. The petition prayed for the annihilation of child trafficking and to provide shelter and rehabilitation for the children of the prostitutes. The petitioner in his petition was seeking direction to Central Bureau of investigation in order to investigate in the matter and to remove the veil of those officials- police, primps who were involved in this henonius crime under whose authority the Red light areas were. the contention which was raised by the petitioner was that how this ‘flesh trade’ system which is increasing is in violation of the fundamental right which is enshrined in our constitution for our protection. And how for some monetary gains the young girls are forced in thses activities and tortured brutally and inhumanly.

The court directed the State government and Central government to take steps and ensure the proper implementation of the laws concerned with the prevention of these inhuman crimes, to maintain rehabilitative homes in order to provide shelter to the children of prostitutes under well trained and experienced social workers. Committee was formed in order to give suggestion to curb down the crime of flesh trade and sexual exploitation, and to setup machinery in order to

implement the suggestion given by the committee.

V. ROLES NGO'S⁹

NGO's plays a huge role in prevention of child trafficking as they not only help to rescue them but also provide with rehabilitation centers, and help them to tackle with post-trafficking trauma by providing medical care, supportive environment and other necessities.

Many NGO's are providing medical aid especially of HIV and AIDS which are sexually transmitted disease and of which the forced sex labors are victim. The volunteers involved in this are well trained and equipped with the necessary tools and information of HIV and AIDS.

There are NGO's which protect the immigrant children who are illicitly transported here in veil of fake promises or by kidnapping/abduction. Although they are illegally transmitted and not recognized by the government the NGO's plays it part in order to protect those innocent kids from being exploited. They not only protect the immigrants but also the street kids who are forced in begging, pick pocketing and other form of crime which is immoral towards them as well as the society.

Some of the NGO's are-

- **PRERNA-** one of the NGO of Mumbai established in the year 1986 working in frontline to protect the vulnerable children from commercial sex exploitation, child laboring. It works mainly in red-light areas of Mumbai. It safeguards the children by providing rehabilitation home and shelters to those children as well as the girls who are forced to do sex works¹⁰.
- **PRAJWAL-** an NGO in South India established in the year 1996 is an anti-trafficking organization formed on the five pillars of- Prevention, Protection, Rescue, Rehabilitation and Reintegration¹¹.
- **SHAKTI VAHINI-** this one is in Delhi one of the recognized organizations which ensures that proper investigation is done in the cases of exploitation. It has rescued around 1300 victims of flesh trade and has participated actively in many courts

⁹ Apeksha Kumari 'Role of Government Organization in Confronting Trafficking in India' *American International Journal of Research in Humanities, Arts and Social Science* pp 198-199 2014 available at: [file:///C:/Users/user/Downloads/AIJRHASS14-185%20\(3\).pdf](file:///C:/Users/user/Downloads/AIJRHASS14-185%20(3).pdf) (last visited June 13,, 2023)

¹⁰ 'The Frontline Fighters Against Child Trafficking' available at: <https://railwaychildren.org.in/blog/worlddayagainstchildtrafficking-the-frontline-fighters-against-child-trafficking> (last visited June 13, 2023)

¹¹ *ibid*

proceeding related to this¹².

- **APNE AAP-** This was established in the year 2002 and since then it has been working to end the flesh trade and criminalizing this offence. It basically aims at ending women and child trafficking and exploitation in India and to empower them to be independent and not fall prey for these kind of activities¹³.

VI. CONCLUSION

In conclusion it can be said that what type of crime this flesh trade is, and how harmful it is towards the society as well as the individuals. The type of role played by the judiciary in this matter is an evidence that how the judicial system of our country is thriving to eradicate this dehumanizing activity. Side by side with the constitution enforcing the rights, legislative making provisions and judiciary taking measures the NGO's are also working for the welfare of the individuals. Human trafficking is a deeply troubling and persistent issue that demands a coordinated, multi-pronged approach from governments, civil society, and international organizations. Combating it requires addressing root causes, protecting victims, and prosecuting traffickers to the fullest extent of the law. Only through sustained efforts and global cooperation can society hope to eradicate this heinous crime and protect the rights and dignity of all individuals.

¹² Supra note 10

¹³ *ibid*

VII. REFERENCES

1. Bales, K. (2004). *Disposable People: New Slavery in the Global Economy*. University of California Press.
2. Musto, J. (2009). *Human Trafficking: A Global Perspective*. Lexington Books.
3. Cabezas, A. L. (2004). Between Love and Money: Sex, Tourism, and Citizenship in Cuba and the Dominican Republic. *Signs: Journal of Women in Culture and Society*, 29(4), 987-1015.
4. Andrees, B. (2007). Trafficking in Persons and Development: Towards Greater Policy Coherence. *International Migration*, 45(3), 67-91.
5. Laczko, F., & Gramegna, M. A. (2003). Developing Better Indicators of Human Trafficking. *Brown Journal of World Affairs*, 10(1), 179-194.
6. Goździak, E. M., & Bump, M. N. (2008). *Data and Research on Human Trafficking: Bibliography of Research-Based Literature*. Georgetown University Institute for the Study of International Migration.
7. Huda, S. (2006). "Trafficking in Human Beings in South Asia: A Regional Perspective." *International Migration*, 44(4), 45-75.
8. Musto, J. (2018). "Human Trafficking in India: The Difficult Road to Prosecution." *Journal of Human Trafficking*, 4(3), 246-263.
9. Parimi, P., & Lakshmi, V. (2019). "Economic empowerment and health of trafficked women: A review of the literature." *Trauma, Violence, & Abuse*, 20(2), 214-226.
10. National Human Rights Commission of India (NHRC): <https://nhrc.nic.in/>
11. United Nations Office on Drugs and Crime (UNODC) - Human Trafficking: <https://www.unodc.org/unodc/en/human-trafficking/index.html>
12. Stop the Traffik: <https://www.stophetraffik.org/>
13. Polaris Project: <https://polarisproject.org/>
14. Human Trafficking Search: <https://humantraffickingsearch.org/>
