

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 8 | Issue 2

2025

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Legal Dimensions and Challenges in Human Trafficking in India

PAYAL PANDEY¹

ABSTRACT

Human trafficking is a crime, a direct violation of human rights and a pervasive global problem. With a view of protecting, rehabilitating and preventing human trafficking different legislations and policies have been made. It is contradictory that despite of having laws on anti-trafficking, it is gradually increasing and is world third most organised criminal activity. The actual scenario prevailing in the society to curb the problem is ascertained. The study also emphasis on various aspects and the gravity of the crime. The trade of human trafficking is a huge threat to human's right, dignity and towards their liberty. It is a huge problem that extend across borders of the countries. The study presents the characteristics and contrast in legal system, since human trafficking is a diverse crime, its legal framework needs to be properly addressed for protection of the victims, abolishment of the crime and the punishment to the criminals.

Keywords: *human trafficking, human rights, rehabilitation, globalisation, transnational, harbouring.*

I. INTRODUCTION

Human Trafficking as an organised crime is a matter of global concern. It is an extreme form of human rights violation as it denies the fundamental rights of mobility, freedom and dignity of the victims. It is a trading of human misery and depression. Trafficking in its broader sense not just only Includes exploitation of others or forms of sexual exploitation but also includes forced labour or services, slavery or trade in human being for removal of organs. It is an egregious human right violation that occurs throughout the world. Trafficking in human being is one of the fastest growing criminal activities after drugs and weapon trade.

Human trafficking also known as trafficking in persons or modern-day slavery, is a crime that involves illegal transport of individuals by force or deception for the purpose of labour, sexual exploitation or activities in which others benefit financially.² Victims of trafficking can be anyone regardless of race, age, gender, sexual-orientation, socio-economic status, education

¹ Author is a Teaching Assistant at The Maharaja Sayajirao University of Baroda, India.

² Alese C. Wooditch, Leonard A. Steverson *Human Trafficking Crime* <https://www.britannica.com/topic/child-abuse/dangers-f-overreaction>

level or citizenship status.³ Every year thousands of men, women and children fall into the hands of traffickers in their own countries and abroad from which they cannot escape. Almost every country is affected by trafficking whether it is of origin, transit or destination for victims.⁴ The definition given by (Article 3) United Nation Protocol to Prevent, Suppress and Punish Trafficking in Persons is widely accepted internationally and has been recognized globally. It states that:

“The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other form 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”.

This definition indicates three stages in the crime of trafficking:

1. An action which consists recruitment, transportation, transfer, harbouring or receipt of persons.
2. By means of threat or use of force or other form coercion, abduction, abuse of power or position.
3. For the purpose of exploitation.

In 2006, the United Nations Office on Drugs and Crime provided its first Trafficking in Person Global Report detailing trends of human trafficking in 127 countries of origin to 137 countries of destination. The report outlined three basic distinctions among countries that are not exclusives (i) *countries of origin (from where the victims or survivors come)*, (ii) *transit countries (countries through which transportation is common)*, and (iii) *destination countries*.

The South Asian Association for Regional Corporation (SAARC) has also framed the definition of trafficking in the *SAARC Convention on Preventing and Combatting Trafficking in Women and Children for Prostitution (2002)* as *moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without consent of the person subjected to trafficking*.

(A) Research Methodology

In accordance to the research method adopted, apart from the material from decided cases,

³ Biswajeet Ghosh Trafficking in Woman and Children In India; Nature, Dimension And Strategies For Prevention. The International Journal of Human Right (2009)

⁴ Shankar Sen P.M Nair A Report on Trafficking in Women and Children in India NHRC (2002-2003), National Human Rights Commission, Government of India

attempts have been made to use facts and information already available and analyse them to make a critical evaluation of the problem. Primary Sources used were the international treaties such as the SAARC and other law, treaties relating to human rights trafficking and its components help to undertake the research study. whereas Secondary Sources of materials used as example were committee reports and study survey reports prepared by the statutory and non-statutory bodies in India, etc. The research papers of jurists, academicians and researchers published in various international and national journals and websites are also helpful to understand the doctrine of fair use and fair dealing.

II. IMPACT OF HUMAN TRAFFICKING ON VICTIM

The victim faces physical abuse such as beating, forceful exploitation, torture, psychological abuse following the emotional stress and mental trauma these physical consequences are dreadful and such communicable disease are threat to human health. In addition, victims may be exposed to health risks, such as HIV/AIDS, infections and substance abuse. The health conditions of women and children who are trafficked for the purpose of sexual exploitation are far more serious. They suffer grave amount of exploitation and lack of knowledge and necessary information leads them towards aggravated spread of communicable diseases. The political consequences of human trafficking are diverse. It undermines democracy and its principles which are rule of law and accountability is on the government. Where corruption facilitates trafficking undermines the system of governance. It also influences the domestic and foreign policies of many countries apart from having individuals only. This hideous crime its nature and extent have caused harm to the lives of innocent people.⁵

Historically, trafficking was associated with slavery and bonded or forced labour. As the time passes by it became synonymous with commercial sexual exploitation or prostitution. It has a history with antiquated time and has existed in different structures in all civic establishments and societies. The International Labor Organization (ILO) claims there are at least 12.3 million people in forced labour, debt bondage and slavery including people who have been trafficked into these conditions.⁶ It is a global phenomenon. Human trafficking mostly of women and children in India is a matter of concern. In the last few decades, it has become a worrying phenomenon. India is considered as source, destination as well as transit country for this crime. It is a grave violation of their fundamental and human rights. Human trafficking can be said as basket of crimes. In this basket one can dug out the elements of abduction, kidnapping, illegal

⁵ Alexis A. Aronowitz *Human Trafficking Human Misery: The Global Trade in Human Beings*, Green Wood Publishing Group, America (2009)

⁶ ILO 2005,10

detainment, illegal confinement, criminal intimidation, hurt, grievous hurt, sexual assault, outraging modesty, rape, unnatural offences, selling buying of human being, servitude, criminal conspiracy etc. therefore, multiple abuse and abusers located at different points of time and place together constitute the organized crime of trafficking. Internal forced labour groups constitute India's largest trafficking issue. Almost 90% of human trafficking is internal and mostly the victims belong to the marginalised sections of the society, including lower castes and tribal people. Not only women and children but also men are subject to human trafficking in India. There is very little awareness of this crime among masses. It is also because of its highly secret and clandestine nature.⁷

According to data from the United Nations, two-thirds of the trafficking detected globally are women. Sexual exploitation is noted as by far the most commonly identified form of human trafficking followed by forced labour. The lack of data regarding the true extend of human trafficking compromises the capacity of potential measures to combat this crime. It is a complex and multidimensional problem that had spread worldwide. The traffickers take advantage of an individual's vulnerability to recruit or abduct them.

(A) Reason for the growth of Human Trafficking

Some of the factors such as poverty, illiteracy, unemployment, migration, lack of legal status, broken families, lack of education, natural disasters, social and cultural factors etc. At any stage, the traffickers can be involved in various functions as for example recruiters, transporters or exploiters. It is not an individual work but involves a group for doing all the entire process.⁸ The customary practice of dedicating the slaves has been mentioned. British Government has enacted various legislations to check trafficking of women and rescue of minor girls. It was taken into consideration and also the importance of providing shelter homes. Although they themselves use to exploit the women in the form of prostitution.

(B) Legal Framework on Human Trafficking

In the last few decades significant development has been taken into consideration for combating trafficking in human being at the National and International levels. The Constitution of India guaranteed number of rights and privileges to the people including equality before the law.⁹ Right to life and personal liberty is the fundamental right of every citizen.¹⁰ Trafficking in

⁷ J His Arch & Anthropol Sci Volume 1 Issue 5 Human Rights and trafficking in women and children in India <https://www.medcraveonline.com/JHAAS/human-rights-and-trafficking-in-women-and-children-in-india.html>

⁸ Human Trafficking and Migrant Smuggling <https://www.unodc.org/unodc/human-trafficking/>

⁹ INDIAN CONST. art 14.

¹⁰ INDIAN CONST. art 21.

human beings, beggar and other similar forms of forced labour is prohibited.¹¹ Prohibition of employment of children below the age of 14 years in factories, mines or other hazardous employment.¹² The provisions of directive in Article 39 (e) and (f), in the view of socio-economic realities are also given. Apart from the provisions of the Constitution, there is a wide framework of laws enacted by the Parliament as well as the State legislatures in relation with trafficking. There are 25 provisions in Indian Penal Code 1860 relevant to trafficking. The Indian legislature has passed the Immoral Traffic (Prevention) Act, 1956¹³ to implement the provisions of Article 23 of the Constitution of India, which exclusively deals with trafficking in human beings. Moreover, there are various other legislations like Juvenile Justice (Care and Protection of Children) Act 2000, Child Labour (Prohibition and Regulation) Act 1986, Child Marriage Restraint Act 1929, Bonded Labour System (Abolition) Act 1976 also make attempts at addressing the issue indirectly. The States have also taken measures to combat trafficking like Karnataka Devadasi (Prohibition of Dedication) Act, 1982 and Andhra Pradesh Devadasi (Prohibition Dedication) Act, 1989. However, critical and concrete levels have been lacking to curb this menace.

III. IMPACT OF JUDICIARY WHILE DELIVERY JUSTICE

The Supreme Courts and High Courts in India has taken various decisions to show its concern over the crime of trafficking and has given various directions and guidelines. The number of non-governmental organisations working in the field has increased enormously. The transnational nature of this crime requires an integrated global action and involvement of all the stakeholders.

(A) Challenges in Legal Framework of India

There are many laws that mentions provisions regarding trafficking in persons. First and foremost, the Constitution of India which expressly prohibits trafficking in human beings. But it lacks clarity of concepts as there is no rules regarding forceful prostitution, a large number of women are often compelled to sell their body for money without their consent. It fails to provide their means of subsistence. The Immoral Traffic (Prevention) Act, 1956 is a Central legislation specially dedicated to tackle the problem of immoral trafficking of human beings. However, the legislation only focuses on trafficking for commercial sexual exploitation. There is no mention of other forms of human trafficking such as forced labour, bonded labour, organ trade, begging etc. The Act has amended twice in 1978 and 1986, still there is no visible reduction in

¹¹ INDIAN CONST. art 23.

¹² INDIAN CONST. art 24.

¹³ Renamed by Amendments to the Suppression of Immoral Traffic in Women and Girls, 1956 (SITA)

trafficking. This is largely due to the reason that the efforts have not been consistent with other forms of trafficking in human beings and the lack of effective implementation. A proper and contemporary definition of human trafficking is required in India, although there is a law¹⁴ but it does not define it. The State legislation of Goa Children's Act, 2003 has defined a limited definition of Human Trafficking.¹⁵

Apart from it, Indian Penal Code is there which in one way or another helps in prevention of crime like trafficking. Other relevant legislations which address the issue of human trafficking indirectly in India are Juvenile Justice (Care and Protection of Children) Act 2000, Goa's Children's Act 2003, Child Labour (Prohibition and Regulation) Act 1986, Child Marriage Restraint Act 1929, Bonded Labour System (Abolition) Act 1976 Karnataka Devadasi (Prohibition of Dedication) Act, 1982 and Andhra Pradesh Devadasi (Prohibition Dedication) Act, 1989. Beside this, there are other collateral laws also which are relevant in different perspective of trafficking. Currently, India uses different laws to deal with human trafficking cases depending on the facts of the case.¹⁶ But neither of them are comprehensive and complete in order to deal with human trafficking. There are only limited number of provisions mentioned in different legislations which indirectly comments upon trafficking. The extant of laws do not provide sufficient safety mechanism to prevent the crime. The legislation specifically made still remained unchanged and has no reference to the amendments in the Indian Penal Code. Resultantly, there is a dissonance between two prominent legislations. The Immoral Traffic Prevention Act lacks definition of trafficking, commercial sexual exploitation. There is an ambiguity regarding what constitutes the actual offence. The law does not clearly define rights of the victims. Moreover, due to lack of witness protection program or the option of in-camera proceedings, victims refrain from testifying especially in case of child victims. In spite of this, other legislations are referred indirectly only. If the case of trafficking gets little twisted and takes a path breaking step, then there are also chances these provisions provide no benefit to the situation. As it is a dynamic crime, the form of crime often changes, all these laws are incomplete. Some lacks rescue and rehabilitation of victim, some becomes deficient in providing justice, some are insufficient in carrying all forms of trafficking.

Due to poor condition of rehabilitation homes and lack of medical and psychological support the situation of traumatised victims doesn't change, they become a source for re-trafficking. Also, with the low-level of poverty and high-level of corruption they become sufferers.

¹⁴ Immoral Traffic (Prevention) Act, 1956 Act no. 104 of 1956 (India)

¹⁵ Goa Children Act, 2003, Goa Act no. 18 of 2003 (India)

¹⁶ SS Rana & Co India: Statutory Law passed prohibiting all forms of human trafficking 2018 <https://www.lexlogy.com/library/detail.aspx?g=c4e4533b-19ca-4d50-b4eb-5b03bb2bb121>

Trafficking in humans is a serious crime affront to their dignity and human rights. It is a gross violation of victims' right particularly all the basic fundamental rights like freedom and liberty, free speech and expression, education, right to life with dignity. It becomes a sordid tale of modern-day slavery. A core component of a human rights approach is ensuring equal protections to all the victims. The impact of trafficking extends not only to the helpless victims but to the society as a whole. The barbaric sale and purchase of human beings for immoral purposes is a direct insult to the human civilization and morality. The redressal of victim grievances requires effective and strong implementation of the law. The survivors are the largely helpless souls of grim tale of trade. Victims often get arrested as accused, prosecuted and even convicted the meaning of their rights become absurd. What was meant to redress their grievances becomes tool of continuous victimization. It touches the core of beliefs about morality and justice. Human rights are the lifeline of any democratic society.¹⁷ Human rights abuse are not just morally wrong but they are short-sighted. The right to live with freedom and dignity, right to equality before law, adequate healthcare and housing are not lofty and impractical ideas, they build a resilient and prosperous community and strong institution based on the rule of law.¹⁸

Trafficking includes illegal transportation, harbouring of person by means of threat, coercion, abduction or fraud for exploitation. Exploited people are only considered as materialistic thing just for the sake of earning money. They are not even considered as human. They are inhumanely treated and if they try to come outside of it, they are threatened to be killed. Current State-policies do not typically approach trafficking as a human rights issue but as an issue of prostitution which detrimentally impacts the rights of trafficked persons. We have already plethora of laws enacted by the legislature that prove to be dead letter laws for want of proper implementation. Immoral Traffic (Prevention) Act, 1956 is the legislation specially made to deal with sexual exploitation and abuse of women and children and provides punishment for keeping, managing or assisting in management of brothel. Human trafficking includes forced labour, bonded labour, domestic servitude, organ transplant, forced marriage which has not been included in the definition of trafficking in ITP Act. The Court has to interpret the provision of separate legislation into the offence. For instance, offence of bonded labour comes under Bonded Labour System (Abolition) Act 1976, offences relating to illegal organ trading will come under The Transplantation of Human Organ Act 1994. The problem of trafficking is

¹⁷ Sujata M. Contemporary Women's issues, Marginalized Women and Human Rights Journal of the Human Rights Commission of India. 2013

¹⁸ United Nations Human Rights Office of the High Commissioner Human Rights and Human Trafficking <https://www.ohchr.org/Documents/Publications/FS36-en.pdf>

growing at an alarming rate. The Immoral Traffic (Prevention) Act, 1956 which was later amended in 1986 has not taken human rights of victims in its ambit. It is not a self-sufficient piece of legislation. It heavily depends upon the Indian Penal Code to address some of the most crucial and serious crime that constitute trafficking. The amended ITP Act 1986 emphasis on brothel, sexual exploitation that takes place on private premises is largely uncovered by legislation. Also treating the victims as the offenders implies contradiction, the victim cannot simultaneously be an offender too. The detention of victim in 'corrective homes' establishes contradiction. There is no existing law that deals with trafficking for labour purposes and thus the issue has been addressed under the preview of The Child Labour (Prohibition and Regulation) Act, 1986 or under Bonded Labour System (Abolition) Act 1976. There are no other law deals with different forms of trafficking.

It also fell short on deterrent punishment leaving alone the sensitive handling of rescue and rehabilitation of victims. There is a large gap in the existing laws and the laws being implemented. The traffickers are not convicted to the actual number of people being trafficked, due to the dearth of resources for the law enforcement officers this gap exists. The available provisions are not enough to curb trafficking. The laws are cumbersome to enforce, because the victims of trafficking are hesitant to identify the traffickers for fear of consequences. Anti-trafficking laws lacks training of the local officers. There is no proper infrastructure in the shelter homes. The coordination among the law enforcement authorities for rescue and rehabilitation is lacking. There is deficiency in the shelter homes for rehabilitated victims and it also lacks adequate vocational training among the staff members. In spite of having many laws it hasn't been uprooted fully due to lack of motivation, financial aid, latest technology and training of officials. The legal framework is insufficient in terms of providing an effective system for the safety, recovery and compensation to the victims of trafficking.

Trafficking has become a lucrative business and the risk of being prosecuted is very low. Traffickers used to work in groups and victims being trafficked often change hands to ensure that both of them don't get caught in transit. It includes a big nexus; they are well organized and have linkage both within the country as well as outside the country. It is undoubtedly a criminal justice issue; However, it affects the territorial integrity of the nation as well. In many cases trafficking involves facilitations of illegal crossing of borders which is a clear violation of national immigration laws and policies. It is also threatening the other nation's rule of the law as they involve violence, corruption and complicity to advance their plans. The laws related to trafficking are cumbersome to enforce, because the victims are hesitant to identify the traffickers for fear of consequences. So, this crime goes beyond borders and jurisdictions. In

countries with fewer resources law enforcement is hindered. Sometimes, there is language barrier between enforcement officers and the victims. It makes gathering of information problematic. The jurisdiction limitations hinder the law enforcement and other concerned agencies from taking effective measures to curb this crime. Globalization has been accompanied by rapid technological advancements which improves communication across borders and has made the crime easier to organize. The technologies wielded by traffickers are enabling them to transport more victims across the borders without being detected.¹⁹ Countries are unable to prosecute on alone arrest of such crime syndicate members due to lack in laws, judicial experience, enforcement authorities' capabilities and corruption in government. Trafficking transcends borders as well as jurisdiction, applying international law to a person residing in a different country is costly and complex too. As several laws are violated at once, so it takes a lot of time building a case against the traffickers. In countries where resources are limited, such complexities can hinder the enforcement of anti-trafficking laws.

Judiciary is the independent organ of the country. Though, the Indian Judiciary has played an active role in giving decisions and providing guidelines to the parties concerned. But it lacks the arena of human rights jurisprudence. The cases of immoral trafficking rarely come before the courts because of the under reporting of such cases, due to fear of repercussion, stigmatization, lack of money, unable to understand their rights etc. Sometimes the officials are found corrupt and the victims find difficult to trust anyone. Judiciary takes lengthy or prolonged legal process in order to deal with the cases. Since, several laws are broken together and it's not a one-time event but a process, building a case against the traffickers consumes resources, time and energy to a great extent. The fast-track courts that were set up after the December 2012 gang rape (Nirbhaya gang rape case) has not been operated as effectively as needed. The Courts are already burdened with cases which sometimes result in victim turning hostile in prosecution of traffickers due to long process and delays in proceedings.

IV. CONCLUSION

Trafficking has increased dramatically with Globalization; it is also characterized by greater mobility of goods and people and with more rapid communication. It is built on widespread individual suffering, yet it is hard to combat because it has financial advantages for many legal businesses. Although the consequences are undeniable and destructive on the victims as well as the society. Large number of people have fallen under this prey designed by traffickers and have been exploited. The current legislations and conventions do exist in prohibiting the practice but

¹⁹ Lee, M. *Trafficking and global Crime Control* Thousand Oaks: Sage Publications Inc 2011, pg.76

still flaws and deficiencies in the existing laws are clearly visible. The actual scenario prevailing in the society to curb the problem is ascertained. There has been an emphasis on various aspects and the gravity of the crime.

(A) Recommendation

1. There is a need to amend the Immoral Traffic (Prevention) Act again or replace it with a new Comprehensive Anti-trafficking legislation. The legislation should provide all forms of trafficking. As the existing law contain only commercial sexual exploitation.
2. The existing law should be revied to ensure the victim's safety and rehabilitation. As the existing law often ends with the victim getting re-victimized and they should be liable for rigorous punishment. The law also does not clearly define the rights of the victims. Provisions for right should be mention with more stringent punishment imposed.
3. Trafficking is not only a national issue but it transcends across the borders. The cross-border dimension is also neglected in the existing law. therefore, the law needs to have extra-territorial jurisdiction. This would ensure that exploiters do not escape the punishment merely because of lack of jurisdiction.²⁰
4. There should be proper vigilance over the staff of protective homes so that they don't end up being exploited again.
5. The Central and State government with the assistance of NGO's needs to launch more social empowerment schemes so that the people living on those vulnerable areas get sensitized about the scheme.²¹
6. There is a need for development of a global coordination in developing and developed countries to rescue the trafficked victim and develop strategy to protect them from the network of traffickers.²²
7. Medica treatment, proper guidance and counselling by the professional experts should be made in order to connect them with the normal life.
8. Develop educational materials and compliance assistance tools for the community awareness regarding immoral practices.

²⁰ M. Rita Rozaro, *TRAFFICKING OF WOMEN AND CHILD IN INDIA* UPPAL PUBLISHING HOUSE NEW DELHI (1988)

²¹ Gunjan Kinnu, *FROM BONDAGE TO FREEDOM: AN ANALYSIS OF INTERNATIONAL LEGAL REGIME ON HUMAN TRAFFICKING* NATIONAL HUMAN RIGHTS COMMISSION PUBLICATION First Ed. (2006)

²² *Human Trafficking Across Borders and the Need for a Global Response* (2014) CUNY Academic Works

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