

## Human Trafficking: Laws and Flaws

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### Abstract

*This study provides a brief overview of the issues related to human trafficking and its prevention with special reference to India. It details the causes that have turned human trafficking into a most flourishing industry. Cheap labour and sexual exploitation is mainly trafficked in poverty-stricken regions and among the most vulnerable populations. In total violation of their human rights, tribal and scheduled caste people, women and children have been pressed into such activities in complete violation of their human rights. The victims face several societal, economic and health issues at the time of confinement and also adapting to their earlier life if and when rescued from the clutches of their exploiters. The paper also aims to create awareness about the existing international and national anti-trafficking laws and their effectiveness in this regard. NGOs working in this field suggest a huge gap in the estimates of the crime in Government of India reports and their own findings. This can be very harmful in the long-run as they disguise the actual cases of human trafficking and related crimes. Although the Government has taken initiatives especially through Anti Trafficking Units in the districts, it is yet to address strictly the involvement of officials, police officers and politicians in this racket. There is also evidence of the dilution of the legal prospects which is very harmful in rendering timely justice and adequate compensation. The sources used for this study are primarily secondary sources and the methodology used is qualitative research. In conclusion this study suggests certain combat strategies that can prevent this great denigration of humanity by humans.*

**Keywords:** awareness, human trafficking, laws, racket, strategies.

### Introduction

Human smuggling and trafficking have become a global industry, involving millions of people each year, and generating billions of dollars in revenue (Besler, 2005). In a survey by Thomson Reuters Foundation, 548 global experts on women's issues were asked, which 5 among 193 United Nation members did they consider most dangerous for women. According to the report submitted, India was named the most dangerous country for women in terms of human trafficking including sex slavery and domestic servitude. It was reported that the human traffickers of India, Libya and Myanmar exploited women in a global crime worth approximately 150 billion dollars a year. (Goldsmith, 26 June 2018). One of the greatest problems in India is trafficking in women for sexual exploitation. Young women are vulnerable to this crime in particular. Trafficking for bonded labour is more common in impoverished areas and among the vulnerable population like the tribals and the schedule castes. The National Crime Records Bureau of 2018 reported a total of 5264 cases of human trafficking of which 64 per cent were women and 48 per cent were below 18 years old. States with the highest cases were Bihar, Maharashtra, Telengana, Jharkhand, Rajasthan, Andhra Pradesh, Assam, Orissa and West Bengal. (Sharma, July 30, 2020). According to NGO reports the figures are much higher. Data suggests that the government machinery is somewhat inadequate in dealing with the challenges posed by human traffickers in the context of the existing corrupt political environment and socio-economic backwardness in some areas.

### Methodology

This study on human trafficking in India is based on data from relevant secondary sources. This data has been systematically collated and analysed. Both qualitative and quantitative method has been used for research analysis.

### **International Human Rights against Trafficking**

Human Rights as the term suggests is an essential component of human life that is naturally inherent to every born human. It refers to the right of life, liberty and equality; freedom from exploitation, discrimination, humiliation ensuring the dignity of life and expression. The concept of Human Rights can be traced back to civilised human existence and the acknowledgement by the ruling authority of the natural rights of its subjects which are inalienable. The famous French philosopher, Rousseau is credited with a very thought-provoking observation in the eighteenth century, 'Man is born free and everywhere he is in chains'. What we term as Human Rights today is a codified version of mankind's natural rights formulated by the United Nations after the Second World War that involved serious violations of human rights.

It is but natural that the significance of assuring rights to all mankind was not lost on an esteemed international body like the United Nations which defined a broad range of political, civil, economic, social and cultural rights. The Charter of the United Nations in 1945 and the Universal Declaration of Human Rights in 1948 has laid the highest standards for the protection of these principles. In course of time these rights have been extended to the marginalised sections and vulnerable groups women, children, minorities, people with other disabilities. The preamble of the Universal Declaration of Human Rights States, "It is essential if man is not to be compelled to have recourse, as a last resort to rebellion against tyranny and oppression, that Human Rights should be protected by the rule of law." (United for Human Rights. What are Human Rights, p. 2)

It goes without saying that Human Rights are more essential for the vulnerable groups and in this regard one of the most cruel form of denial of Human Rights is Human Trafficking. Human Trafficking means trade of human for exploitative purposes including bonded and forced labour, commercial sexual exploitation and illegal organ-trade. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, also known as UN TIP Protocol, provides the first common international definition of 'trafficking in persons'. This Protocol (15 November, 2000) also discusses other problems that can arise from trafficking that leads to total degeneration of human life. The Protocol is expected to standardize the laws of its member countries to ensure protection and punishment to the offenders. Article 3, paragraph (a) of the Protocol (15 November, 2000) defines 'Trafficking in Persons' as "the recruitment, transportation, transfer, harbouring 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". Broadly speaking Human Trafficking means trade of humans for exploitative purposes including bonded and forced labour, commercial sexual exploitation and illegal adhere to these principles. In course of time these rights have been extended to the marginalised sections and vulnerable groups women, children, minorities, people with other disabilities (United Nations Office on Drugs and Crime, 2008).

### **National Laws and Legislations against Trafficking**

The great nationalists, who framed the Constitution of India were inspired by the concept of Human Rights and in framing the Fundamental Rights they ensured that 'We the People of India' were not denied our basic rights. The visionary constitution-framers considered servitude, slavery, forced labour, the age-old Devdasi system to be a curse for India which had just emerged from the clutches of colonialism. Naturally, Human Trafficking was an anathema to a free democratic socialist India. Thus they provided the Right against Exploitation (Article 23) of our Constitution, prohibiting traffic in human beings and forced labour. According to the Article, (1) Traffic in human beings and *begar* and other similar forms of force labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. (2) 'Nothing in this article shall prevent the state from imposing compulsory service for public purpose. And in imposing such service the state shall not make any discrimination on grounds only of religion, race, caste or class or any of them'. Article 23(1) proscribes three exploitative practices, viz., (a) *Begar* (b) Traffic in human beings; and (c) Forced labour.

A significant feature of Article 23 is that it protects the individual not only against the State but also against private citizens. (a) *Begar* means 'labour or service exacted by Government or a person in power without giving remuneration for it.' The practice was widely prevalent in the erstwhile princely States and this evil was abolished. (b) Traffic in humans is an expression implies slavery, the buying and selling of human beings as if they are chattels. Traffic in women for immoral purposes is also covered by this expression (3) Forced Labour of the kind of contemplated by the Article is in the nature of human trafficking or *begar*.

Special protection from trafficking and other forms of exploitation has been provided to the children of our country. Article 24 of our Constitution provides: 'No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment'. This provision read with the Directive Principles of State Policy contained in Articles 39(e) and 39(f), provides for the protection of the health and strength of children below the age of fourteen years. Government of India has also enacted many laws to prevent violation of the rights of innocent children who cannot speak for themselves when violated physically or mentally. The Child Labour (Prohibition and Regulation) Act of 1986 prohibits the employment of children under the age of fourteen years in hazardous occupations listed by the law. In 2006, and again in 2008 the list was expanded. The Juvenile Justice (Care and Protection) of Children Act of 2000 made it a criminal offence, with imprisonment for anyone to purchase or employ a child in any hazardous employment or in bondage. The Immoral Traffic in Persons (ITPA) Act 1956 also prohibits the procuring, inducing or taking of a person for the purpose of prostitution. The Protection of Children from Sexual Offences (POCSO) Act 2012 prohibits a range of sexual offences against children under the age of eighteen. Human trafficking (sections 370 and 370A IPC), follows the passage of the Criminal Law (Amendment) Act 2013. Under the new section 370 of the Indian Penal Code, trafficking of persons for 'physical exploitation or any form of sexual exploitation, slavery or practises similar to slavery, servitude and the forced removal of organs' is prohibited. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and the Bonded Labour System (Abolition) Act (BLSA) specifically criminalised bonded labour.

### **Are the Legal Measures Effective?**

There is no doubt that due to such strong legislations many rescue operations have taken place. The Anti-Human Trafficking Units of the Government spread over all districts in India, and many non-Government humanitarian groups are involved in this process and especially in rescuing young and underage girls from the prostitution racket. Out of 15379 victims, 58% of them were below eighteen years of age according to National Crimes Record Bureau statistic crime report in 2016. A total of 23117 of victims of Human Trafficking were rescued in 2016. In the year 2016, more than 8000 cases of Human Trafficking had been lodged, out of which 182 foreigners were rescued during the year as per NCRB (Bureau, 2016).

However, in spite of legislations and rescue operations in 2016, about 23000 of human trafficking case were reported in India and the number is increasing passing year. Around 40% of trafficking is from West Bengal followed by Assam, Rajasthan, and Gujarat (Barua, 2018). The administrative capacity to combat human trafficking is woefully inadequate. One of the main reasons for the high traffic percentages in these states are the porous borders with few official check posts. Trafficking is then not limited within the country but also acquires international dimensions.

It has been claimed that in some cases the punishment for the traffickers is not stringent enough. For instance, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and the Bonded Labour System (Abolition) Act (BLSA), prescribe penalties of only up to five years and three years imprisonment, respectively. This punishment is not commensurate with the crimes committed. The punishment fixed under BLSA hardly serves as a future deterrent for bonded cheap labour in factories and construction sites. There are also instances of recruitment of children younger than age eighteen, forcefully incorporated in insurgent armed and terrorist groups like the Naxalites in Chattisgarh or the Terrorist camps in Kashmir. However, protection to these children is not provided by the law.

Furthermore, a new methodology adopted by the National Crimes Research Bureau is rather suspect as its mechanism hides crimes. If we analyse the crime rate in India, as provided by NCRB, it was over 540 in 2013, increased to 581 in 2014 and was almost 582 in 2015. The crime rate then dropped abruptly by about 35 per cent to 379.3 in 2016, increasing to 388.6 in 2017 and dropping again in

383.5 in 2018. How did this happen? The answer lies in the Principal Offence Rule (POR), a new methodology for calculating crime data which registers a case on the basis of its highest punishment. For instance a case will be counted as a murder only though it might involve a series of offences like kidnapping, forceful confinement, rape, human trafficking and murder (Dutta, January 10, 2020). Anti-trafficking charities fear the number is much higher with many cases going unreported as survivors fear stigma and retribution from traffickers if they file complaints.

Government data shows that 93% of human trafficking cases sent to courts in 2016 were pending trial and the conviction rate in cases where trials had taken place was 54%. Taftesh researchers analysed police diaries, cases filed in court, and complaints registered with police by survivors in West Bengal and Andhra Pradesh after they had been rescued and returned home. According to Snigdha Sen of Taftesh, the study showed that 31 of the 429 people charged with slavery offences had previous trafficking and were accused convictions for trafficking and were convicted of being involved in more than one slavery case involving children and adolescents, Snigdha Sen of Taftesh said. The researchers pointed out that 64 people accused of slavery offences were granted bail and returned to neighbourhoods where trafficking victims lived and worked. Ram Mohan, secretary of Andhra Pradesh-based anti-trafficking charity HELP lamented that the investigations by the police was not as thorough as it should be in case of such organised crimes. He further pointed out that that this often resulted in criminals going scott free when in reality the need of the hour is “good investigation and strong testimonies from survivors after they are counselled” (Nagaraj, September 3, 2019).

The media, NGOs, and authorities continued to document a persistent lack of accountability and negligence in government-run, government-funded, and privately run shelters which sometimes resulted in abuse and trafficking of residents as in the Muzaffarpur shelter rape case in Bihar first exposed in 2018 by the ‘Koshish’ Project of Tata Institute of Social Sciences (Sharma A. , July 31, 2018). A controversial draft anti-trafficking bill was passed in the lower house of Parliament in 2018 and it is under ministerial review at present. Its inadequate provisions relating to immunity of trafficked victims and presuming guilt of owner of premises without the safeguards which exist in other criminal legislations are debateable. Moreover, the draft legislation has been criticised for its vague language allowing scope for misuse of power by officials (Sharma A. a., 2019).

### **How to Strike at the Root of the Problem: Suggestions**

It is thus obvious that the root of the problem lies very deep and cannot be uprooted by mere laws. To understand the gravity of human trafficking we need to study its causes and realize how human trafficking can lead to the complete degeneration of a human being, denying a human being her/his inalienable natural rights:

*Poverty:* The victims are by majority from the lowest economic rung of the society. In the search for a better living ,they are usually trapped by the traffickers into prostitution, or lured into forced labour and or selling their internal organs like kidney, eyes etc. Once in the clutches of these traffickers it is difficult for the victims to resist or protest. They are abducted and locked up like cattle to be abused at will, at the mercy of their masters to whom they are literally enslaved. As the traffickers ensure their victims are transported far away from their villages, the poor men, women and children find themselves without any financial or moral support in a new place and have to depend on their exploiters for their meal, lodging, rather their very existence.

*Low wages:* In the rural areas successive Governments have tried to deal with the economic disparity in the wages of landless labourers, farm labourers etc. but the economic exploitation prevails and they are forced to subsist on very low wages not at all commensurate with the amount of labour put in by them. Most of the unskilled labourers are forced to give their labour on the farmlands of village headmen and other powerful men. In the urban areas also taking advantage of the unorganised labour force, men, women and children are compelled to work in construction industry for long hours without adequate wages.

*Lack of Education and Awareness:* Most of the victims of Human Trafficking are not educated enough to know about the legislations and judgments that can save them from the traffickers. It could be that they are vaguely aware of their rights but even then have no recourse to the courts of law. Many are not even in a position to lodge a complaint with the police.

*Corruption:* There have been claims that political leaders, officials and law enforcement in our country have been complicit with traffickers by accepting bribes from them and turning a deaf ear to the suffering voices instead of protecting them as their duty demands. Thus if laws are not implemented by the officers they lose their meaning and are reduced to mere scraps of papers.

*Societal Exclusion:* The poorest of the village folks generally belong to the lowest caste in societal hierarchy. We have not advanced to the point where we can view all humans as equal even in the twenty first century. The age-old caste divisions persist in India, especially in the rural areas where certain sections of the society are considered as outcastes and untouchables. Such unfortunate folks who are humiliated as low born find themselves alienated from their villages and look for a better life in another part of the country. These vulnerable people become easy prey in the hands of the traffickers.

*Gender Discrimination:* In our patriarchal society women have never been treated on par with men. The birth of a male child is preferred to that of a female child and she is considered a burden to the parents who have to collect a dowry to pay off to her groom and in-laws. In this situation traffickers in the guise of grooms refusing dowries have won over the poor parents, marrying their unsuspecting daughters, only to push them into prostitution. Some of them are so socio-economically weak that they are willing to sell off their daughters to these racketeers. It is also easy to lure these girls who are illiterate and immature. Many of these females are under-age and the way they are forced into sex trade is the worst experience a human can ever have; an absolute and violation of her human rights. Smuggled away from the comfort of their homes they are locked up and beaten and raped time and again by different men till at some point of time they have a total breakdown. If some of them are rescued from brothels they are not welcomed back in their home and neighbourhood. The social stigma attached to them scars many such women for life.

*Urbanisation and Globalization:* The increase in IT and BPO workers is a result of migration to urban areas and there is a growing demand for casual and professional sex in the cities. The communication revolution has also brought along with it sex tourism and the scope of the entertainment industry has greatly widened making sex trade very lucrative.. An increasingly international world has seen the rapid transfer of goods, services and social aspirations across borders and regional imbalance between developed and developing worlds has resulted in illegal migration and corresponding rise in opportunities for human trafficking (Danailova-Trainor and Laczko 2010). Increasing economic disparities between the developed and developing world, along with the feminisation of poverty and marginalisation of many rural communities, have produced conditions making people vulnerable to trafficking.

*Flourishing Organ Trade:* One of the main causes of human trafficking is the flourishing trade in human organs. The traffickers lure the victim with promises of huge monetary benefit but in reality the life of the victim is at risk as operations are carried out in illegal clinics in unhygienic conditions with no medical care at all. According to NCRB (2015), 15 cases were registered in India under the Transplantation of Human Organ Act, 1994.

*Manipulation of Children:* Children are innocent to the evil designs of traffickers and thus easy to manipulate. They can be forced to work under duress for long hours. Although employing under-age children is punishable by law there is a great demand for children in manufacturing tobacco, spinning, weaving, dying, tanning, carpets, rugs, hotels industry and as domestic servants. Children, both boys and girls, are also major victims of sex trade and the trauma they suffer nips their natural growth in the bud.

*Preference for Foreigners:* People who migrate from neighboring countries in search of better living conditions are often trapped by the traffickers, especially the women. A section of the clientele in the sex racket prefer foreign females like those from Nepal etc. Rich sheikhs come to India with specific demands for marrying and or enslaving young girls. Most of the women from Bangladesh are found working as cheap domestic helps in North India.

*Low investment:* Human trafficking ensures huge profits with very low investment and low maintenance. No wonder the criminal graph of human trafficking is sky high.

## Conclusion

To alleviate the evil of human trafficking and ensure men, women and children the basic right to live a free life with dignity, it is imperative to strike at the root of the problem. It is difficult to accurately measure the impact of trafficking because of its clandestine nature and hidden economies in which trafficked people work. According to Aronowitz (2009), "Lack of legislation and inadequate national definitions; lack of political will; inexperience in dealing with the issue; corruption; victims' inability or unwillingness to cooperate all make it difficult to determine the scale and impact." It is obvious that just a declaration of human rights or fundamental rights will not cleanse the system. The message has to percolate to the most vulnerable section of the society for whom these protocols have been made. They need to be educated about their rights against the State or any individual. The right law and order atmosphere has to be created so that the victim can report such violation instantaneously without fear of being persecuted by the protector, namely the police. Rescue operations also need to be launched with great alacrity and proper training. Anti-human trafficking units (AHTUs) of the Government and human rights groups can work together in this field.

Although most of the anti-trafficking laws give judges the authority to provide trafficking victims with compensation, the latter do not receive the same. Even in cases brought into media glare like the Muzaffarpur case where the female inmates, mostly children were raped, activists reported authorities did not investigate all high-level officials who may have been involved in the case. Government should encourage state and territory compliance with the Supreme Court's recommendation to audit all government-run and -funded shelter homes. The draft anti-trafficking bill of the Lok Sabha should also be duly revised and placed in the Rajya Sabha soon since the pandemic situation and the resultant socio-economic suffering has made more people susceptible to the designs of human traffickers. It is of utmost significance to rehabilitate the victims of human trafficking and welcome them back into the societal hold instead of stigmatizing them. Various studies have shown that the loss of basic self-respect and self-esteem is most detrimental psychologically at a personal level and it is equally demotivating for the society at large (Hossain, 2010). At the economic level it is indicative of an unproductive economy and politically it mocks the seat of democracy and the lofty political ideals of liberty, equality and fraternity. Above all Human Trafficking is a crime against humanity like no other. It leaves us with the question of our claim to civilization and progress.

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