

Access to Justice for Victims of Trafficking and Prostitution: A compilation of laws in India

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Abstract

Trafficking in people is a worldwide phenomenon, which has picked up momentum in the recent times. Trafficking is equivalent to slavery in the modern day. The clarifications behind the increment of this phenomenon are many and they are very complex.

Human trafficking is the unlawful trade of individuals across nations by means of threat or use of force. It is done for several purposes of which, human trafficking for sexual reasons, referred to as sex trafficking, is the most common and the largest subset. This global phenomenon of trafficking in individuals thrives on the shortcomings and the helplessness of individuals.

Known to be one of the largest democracies in the world, India, has constitutionally banned the phenomenon of slavery and trafficking in human beings and has incorporated and enshrined it as a fundamental right of every person to be free from exploitation. Secondly, the Indian Penal Code, 1860 also contains several sections under which the offence of trafficking is punishable under law. Other than this, various acts have been passed for the same which will be described in the paper.

This paper seeks to compile all laws in India provided to the victims of human trafficking and prostitution for obtaining justice. The paper in the first place, investigates the causes of human trafficking and prostitution and continuous growth as a global phenomenon. The second section of the paper, which is the major section, examines the existing laws in India for the victims to seek justice. In the final section, the paper tends to provide some suggestions to further effectively reduce human trafficking. This paper is a piece of complete theoretical work and simple research.

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Introduction

“The unlawful and stealthy movement of people crosswise over the national borders, to a great extent from the developing nations and some nations with economies experiencing a significant move, with the true goal of compelling women and girl youngsters into sexually or financially oppressive and exploitative circumstances for the benefit of enrolment representatives, traffickers and wrongdoing syndicates, along with other illicit activities in relation to trafficking, like forced household work, forced relational associations, secretive employment and false appropriation.” – As per the United Nations General Assembly, 1994.

Trafficking in people is a worldwide phenomenon, which has picked up momentum in the recent times. Trafficking is equivalent to slavery in the modern day. The clarifications behind the increment of this phenomenon are many and they are very complex. Trafficking in a generalised form appears to have taken for granted of the globalisation of the world economy that has incited extended advancement of persons, money, merchandise and services to widen its self-globalised reach. It remains alive on poorness, despair, war, emergencies, negligence and the unequal status given to women in maximum societies.

Trafficking in individuals is one of the most noticeably worst forms of wrongdoing in present day civilisation. Across the globe, over 20.9 million people are its casualties, most of who are young women who are defenceless to sexual abuse. The secretive nature of human trafficking makes it onerous to accomplish perfect estimation of human trafficking.

The evaluation of this figure is after excluding the trafficking done for the purposes of taking away of organs or compelled marriage or assumption until and unless such practices result into a condition of compelled labour or services which means that the total figures of traffic in persons taking in account all perspectives might be considerably greater than the present estimation of the International Labor Organisation.

Human trafficking is done for several purposes such as for prostitution, for working in entertainment outlets, sweatshops, unlawful adoption of youngsters, transplantation of organs, compelled marriages, household work, constrained labour, for example, trafficking of drugs, construction, begging and all other exploitative types and forms of work. Of all the types, human trafficking for sexual reasons, referred to as sex trafficking, is the most common and the largest subset. The cruel purchasing and offering of females of all ages into the work of prostitution, their total subordination by the offenders, and the succeeding physical and mental viciousness to which they are subjected, all of this together constitutes slavery and if not so, at least slavery-like practices. Slavery happens when an individual

viably “owns” the other, so that the former individual can abuse the latter with complete immunity. In the similar vein, bondage, a wider and broader term as compared to slavery, is defined as the other types of outstandingly bad and shocking financial abuse or domination honed by an individual over the other or subjugation-like practices.

Known to be one of the largest democracies in the world, India, has constitutionally banned the phenomenon of slavery and trafficking in human beings and has incorporated and enshrined it as a fundamental right of every person to be free from exploitation. Secondly, the Indian Penal Code, 1860 also contains several sections under which the offence of trafficking is punishable under law. Other than this, various acts have been passed for the same which will be described in the paper.

Largely from developing nations, a huge number of females, are deceived, sold, pressured or otherwise put into the circumstances where they are left with nothing but prostitution from where they cannot escape and therefore lead to become casualties of contemporary types of slavery.

This paper seeks to compile all laws in India provided to the victims of human trafficking and prostitution for obtaining justice. The paper in the first place, investigates the causes of human trafficking and prostitution and continuous growth as a global phenomenon. The second section of the paper, which is the major section, examines the existing laws in India for the victims to seek justice. In the final section, the paper tends to provide some suggestions to further effectively reduce human trafficking. This paper is a piece of complete theoretical work and simple research.

Research Methodology

Approach to research

In this paper doctrinal research is involved. Doctrinal Research is a type of research in which secondary sources are used and materials are collected from libraries, archives, etc. Books, journals, articles were used while writing this paper.

Type of research

Explanatory type of research was used in this paper because the topic of the paper was not relatively new and unheard of and also because various concepts were needed to be explained.

Sources of data collection

Secondary source of data collection was used which involves collection of data from books, articles, websites, etc. No surveys or case studies were conducted.

Objectives of the paper

1. To compile all laws in India provided to the victims of human trafficking and prostitution for obtaining justice.
2. To investigate the causes of human trafficking and prostitution and continuous growth as a global phenomenon.
3. To examine the existing laws in India for the victims to seek justice.
4. To provide some suggestions to further effectively reduce human trafficking.

Human Trafficking: Causes and Growth

The global phenomenon of trafficking in individuals thrives on the shortcomings and the helplessness of individuals. The reasons for the emergence of such shortcomings and vulnerability is due to poor financial conditions, presence of violence based on gender and political flimsiness which includes war, internal disturbances, etc. The term “Abuse of a position of vulnerability” (APOV) is a significant reason of the phenomenon of human trafficking. It is known to be as one supplementary way by which a casualty can be recruited, transported, transferred or received for the cause of ill treatment or exploitation.

Areas in which there a lot of conflicts and have genuine war or have the mere existence of military bases create demand, and such areas are characterised by the existence of sex works and young soldiers. The control of the government in such territories is constrained. One of the major problems is poverty which is caused by economic and social conditions and it causes social and cultural exclusion. As a result, jobless youngsters and school dropouts result into weakness and helplessness and thus end up becoming simple targets of human traffickers. The ones who move out from rural places, where the opportunities are lesser and rarer, in the search and looking for work, employment and other opportunities.

Also, a cause of human trafficking is the evacuation of human organs or the need of cheap labour in agricultural work. Absence or the lack of literacy and awareness makes it impossible for the casualties to sensibly evaluate what they are agreeing to. It has been seen that females from poor financial and economic backgrounds are brought to Mumbai to be constrained into sex work in a number of reports. Coming next to Assam, it has been demonstrated in recent reports that the traffickers are targeting the tea plantation workers who live on pitiful 12 paise per day. Here, females are sold for as low as Rs. 1000. Next on the list we have Goa, a surge in the instances of trafficking, where females from countries like

Bangladesh, Nepal, etc. and several parts of India are put into sex trade forcefully to serve the tourists.

In India, the bringing in and vending of females into the brothels, and their compelled detainment under barbaric working conditions, depicted by non-selective sexual abuse by the proprietors of the brothel, traffickers, police and, pimps has been accounted for. However, contemporary kinds of female slavery don't prevail inside a flawless worldwide legal framework, so accordingly it is possible that these conditions could fulfill the globally agreed-upon meaning of bondage or slavery-like exercises.

Free labour is captured by a tricky strategy known as bonded labour. The poor individuals are taken under control and command by keeping them in debt or a bond by which they are kept in service. The service begins in order to repay the debt or the bond and therefore, the worker is not given any kind of payment or remuneration for the work done by him for a broad stretch of time. After this, we have the notion of debt inheritance that come into role which basically means that if in any case, the worker is not able to repay his debts his children are constrained into working for the creditor to repay the parents' remaining debt.

Therefore, such children are born into debt and are brought up only to repay such pending debts due to which they are never able to live their life comfortably. Also, they are not able to escape all this because they are not educated and aware of the rights they possess and the rescue agencies which are being run for people like them. They believe that it is their customary duty to serve those people and therefore such enslavement or bondage goes on and on for generations. Even if they try to escape, they are threatened by physical or sexual abuses and are forced to work and continue. It is the youngsters who are most receptive to bonded labour as they don't have any means of escape from it. The most disturbing and worrying fact that comes up is that some parents intentionally and deliberately sell their children due to poverty and hunger. All of this at the end leads to vulnerability, the people who due to age, sex, physical or mental state, or due to social, economic, ethnic or cultural situations, find it hard to practice the rights given to them by legislations. Women are exploited more than men generally due to the concept of men being superior to women and also due to preferences of the society.

The lack of adequate laws, appropriately working administrative system and a powerful judiciary are the most evident reasons for human trafficking. A number of nations are deficient of pertinent laws and precise strategies to combat human trafficking. However, in a few nations in which human trafficking or similar exercises are criminal offences, conviction

as a penalty may be relatively tolerable. The above-mentioned causes and reasons are the major barriers for the combatting of human trafficking.

Human Trafficking: Related Indian Laws

The Constitution of India

The Indian Constitution prohibits trafficking in humans, Article 23(1) of the document guarantees the fundamental right known as the right against exploitation which states that “Traffic in human beings and other comparable forms of forced work (begar) are prohibited or banned and any contravention of this provision shall be an offence punishable in accordance with and as per the law”.

The Indian Penal Code

IPC under Section 366B prohibits trafficking of females, both women and girls, into coercive prostitution in India and has prescribed harsh punishment for the offenders. It has been stated in the IPC that anyone who brings or sells or acquires possession of anyone who is a minor, i.e., below the age of 18 years for “the purpose of prostitution or illicit intercourse...” or for an “unlawful or immoral purpose...” is subject to conviction of imprisonment for up to 10 years.

The IPC also takes into account cross-border trafficking into prostitution and states that *Whoever imports into India from any country outside India and girl under the age of twenty-one years with the intent that she may be, or knowing it to be likely that she will be forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.*

The Section 293, 294, 317, 339, 340, 341, 342, 354, 359, 361, 362, 363, 365, 366, 370, 371, 373, 373, 375, 376, 496, 498, 506, 509, 511 are the significant provisions provided in the IPC which in some or the other way combat human trafficking. The proprietors of the brothels, it's staff, and the customers are liable under these laws whenever they get involved or engaged in sexual intercourse with youngsters or adolescents, with or without their agreement, or with those who are kept in the brothels forcefully or by threat.

Domestic legislation subsequent to trafficking convention

The Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA) later amended and renamed as The Immoral Traffic (Prevention) Act, 1956 (ITPA). It's major and the only purpose is to provide effect to the Trafficking Convention of the UN which was signed by India on May 9, 1950 at New York. According to the Trafficking Convention, the casualties

of prostitution cannot be convicted under any kind of situation. The goal of the act was to safeguard the exploited women and girls, to stop the degradation of public ethics and to stamp out the abhorrence of prostitution that was uncontrolled in several areas of the nation. The Act mentions some offences which are given as follows:

1. Having or owning a brothel or permitting a premises to be utilized as a brothel (S.3)
2. Living on the money earned by the means of prostitution (S.4)
3. Obtaining, acquiring, prompting or taking people for the selling of prostitution (S.5)
4. Confinement of an individual in a premises where the work of prostitution is done (S.6)
5. Carrying out of prostitution in and around the region of public spaces (S.7)
6. Instigating or seducing or tempting or requesting with the end goal of prostitution. (S.8)
7. Tempting or seducing of an individual who has been kept in custody (S.9).

Several initiatives like the set-up of Protective Homes to give security and services to casualties and instructive and professional training to at risk-groups have also been instituted under this Act. It additionally provides for arrangement of special Police Officers who are assisted by lady police to investigate the offences in trafficking, and for setting up of Special Courts.

Miscellaneous Acts and Statutes

There are also more legislations in India to combat human trafficking, mentioned as follows:

- (i) The Probation of Offenders Act, 1958
- (ii) The Indecent Representation of Women (Prohibition) Act, 1986
- (iii) The Child Marriage Restraint Act, 1929
- (iv) The Bonded Labour System (Abolition) Act, 1976
- (v) The Child Labour (Prohibition and Regulation) Act, 1976
- (vi) The Transplantation of Human Organ Act, 1994
- (vii) The Information Technology Act, 2000
- (viii) The Juvenile Justice Act (Care and Protection of Children) Act, 2000
- (ix) Goa Children's Act, 2003

Human Trafficking: Landmark Judgements & Possible Recommendations

1. *Sushila v. State of Tamil Nadu*³

It was held by the High Court of Madras that, “a solitary instance of prostitution in a place does not make a place a ‘brothel’”.

2. *Gaurav Jain v. Union of India*⁴

The Supreme Court by this case laid down an inclusive scheme to liberate and rehabilitate the casualties of sexual exploitation.

3. *Prerna v. State of Maharashtra*⁵

It was held by the Bombay High Court that all cases that are connected to sexual exploitation shall be disposed off quickly and swiftly.

4. *Kaushaliya v. State*⁶

Section 20 of SITA was struck down by the High Court on the basis that it contravened with the fundamental rights insured by the constitution. It was declared in the judgement that “it is open to the state to impose a total ban; and no one can claim any fundamental right to carry on such an activity” if a profession or trade is an “inherently immoral activity like prostitution”.

5. *State of Uttar Pradesh v. Kaushaila*⁷

This case was also based on the infringement of fundamental rights guaranteed by the Indian Constitution from Section 20 of SITA. By this case, the decision of the Supreme Court differentiated against the casualties of prostitution on basis of prejudice.

6. *Begum v. State*⁸

The gist of the judgement is that rather than being insensitive towards the casualties of prostitution, the State shall be searching for other choices to provide them some other alternative.

7. *UpendraBaxi and LotikaSarkar v. State of Uttar Pradesh: The Agra Home Case*⁹

This was a Public Interest Litigation concerning the disgraceful state of the Protective Home which were introduced and instituted under SITA in Agra, U. P., India.

Not only the cases mentioned above, many more cases were fought on the issue of human trafficking as well as prostitution. There are several NGOs which work for the casualties of such offences and also fight for their justice. NGOs carrying out work in backward areas might carry out workshops to assure that people are aware of secure movement exercises and

³CriLJ 1982 Mad 702.

⁴AIR 1997 SC 3021.

⁵(2003) 2 BOMLR 562.

⁶A.I.R. 1963 ALL. 71.

⁷(1964) 4 S.C.R. 1002.

⁸A.I.R. 1963 Bom. 17.

⁹(1983) 2 S.C.C. 308.

report migration offers that are not consistent. Training programs and exercises emphasizing the significance of gender equity to encourage gender sensitization.

Prevention of trafficking takes into account involvement at several levels to contend with the initiation of trafficking. Prevention has to be an amalgamated attempt of governmental as well as non-governmental organisations. It has to be a scheme by which the public can be made aware of human trafficking as a way of slavery in the contemporary times and to sensitize them about the same. The government should make sure that the most suspected people should be provided with good quality education, opportunities of employment and income generation programs. Regular and timely programs should be conducted to make aware and sensitize parents, educators, and society workers on trafficking.

Awareness at the local level, in the society via workshops, songs, plays, assemblies, pamphlets, brochures and posters chiefly in the rural areas is essential. The casualties of trafficking who might be missing should be reported and vigilance must be kept.

The use of media must not be ignored on any condition as it is an excellent way of sensitizing the people. The use of media helps gather the attentiveness of numerous number of viewers because of which media can be used for the communication of suitable message to casualties that legal and social help is there for them to get out of the exploitation suffered by them. Media have proven to be a powerful tool to bring in attentiveness of the government as well as the people to particular issues of the past.

More strict and rigid legislations and their better application is needed to combat human trafficking and prostitution. Severe convictions should act as a discouragement for other traffickers. There is a requirement of framing policies towards the creation of rehabilitation facilities for the casualties who have survived such practice. Awareness of happening of such offences, efficacious criminal justice machinery and alert citizens is what can help check and combat human trafficking and prostitution.

Also, the other possible solutions in brief are given as follows:

1. Efficacious execution of the strategies.
2. Sensitisation and information programs for legislation implementing agencies.
3. Constant raids for tracing trafficked people.
4. Vigilant Border Security Forces (BSF) to put a stop to trafficking out of the nation.
5. Public consciousness programs to make people alert and to help them recognise any type of such exercise around them.
6. Rehabilitation programs after saving the lives of casualties to assure that they are not forced to sex abuse because of the lack of other rational option.

7. Training programs to make financially self-governing the casualties saved.
8. Provision of Protective Homes for homeless people and orphaned youngsters as they are the ones who are most poverty ridden.
9. Setting up of different institutions for different type of casualties, i.e., for women, for minors and people exceeding the age of 18 years.
10. Combined attempt must be made by the police and the NGOs to look for the addresses of the casualties to help them return back to their country.
11. Family members of the person who survives shall be counselled for sensitisation, to make the acceptance easier of the repatriated survivors.
12. The judicial procedure must be understandable and accessible to assure to bring out repatriation of survivors.

Conclusion

The phenomenon of human trafficking is practiced widely across the nation. It is a socio-economic offence which largely affects the social life of the people, both the victims as well the people who are not victims of such offences. It makes people doubt their security and the effectiveness of the judicial mechanism. It is the collective responsibility of the state and the society to fight against trafficking and take care of the vulnerable people. There are various reasons of human trafficking and prostitution and several causes for the same. People consent themselves into this practice due to numerous reasons of which, vulnerability is the major.

In India, a number of laws and acts have been passed by the government to combat human trafficking and prostitution and also to provide justice to the sufferers of this unlawful practice. But what is lacking is the awareness, which is the key to the prevention of this exercise. Poverty and vulnerability ridden people are not aware of their rights that are guaranteed to them by the state due to illiteracy. Other than this, several cases have been fought and several judgements have been given by the courts.

But still, further improvements can be done to make the conditions better of the situation presently prevailing in the society. Many people don't have means of approach and are not aware of the exercise. These people are also not aware of the rights and the numerous legislations made to safeguard them.