

The Scenario of Human Trafficking in Relation to Increasing Rates of Sexual Slavery

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Introduction

Nothing propels the agony of the ultramodern world of men slavery. It may be sexual, domestic or labour human trafficking that defies the horror into the scope of human sensitivity. That is the main reason that only the fewer are cited and even lesser is addressed. The purpose of this research is to address the gaps and actions that are serving the purpose of the perpetrators of human slavery. Human smuggling is a well known business transaction which occurs on the arrival its leads to the violation of the essential human rights of an individual. Trafficking in humans is one the most transitional and deplorable crimes. The immoral traffic (Prevention) act, 1986 provides for the legislative draft of the rules which the sex slavery and prostitution in India through the human trafficking. With the rise in trafficking at the global level the share of India has also increased and factually it is becoming the major transit source for trafficked children. One of the major difficulty levels lies in the fact that the laws fall under the different departmental state and the central governmental control. However, the problems increase as there is a lack in consensus on definition and clarity on the rights of the victims also the frail punitive measures against perpetrators and the fragile enforcement mechanisms impeding the justifiability of the low conviction rates. For the purpose of providing broader legal framework it is beneficial to touch upon the international covenants India is signatory to. Perhaps the most glaring the fact in the law is related to the rehabilitation and compensation to the victims in absence of a specified set of rights of victims. The growing and evolving nature of the laws calls for the single and effective law that can be taken into account with the particularities of the Indian context. In addition to the addition to lack of coordination and convergence between departments and agencies, the severe capacity constraints needs to be urgently reported as they are potentially capable of unravelling the best drafted legislations.

Research Methodology

The type of research that will be used in this study is qualitative research and quantitative research. Qualitative researchers aim to gather an in-depth understanding of the meaning and concept human trafficking and the causes for getting of its victims into the prostitution. The

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study investigates the “why” and “how” of this specific type of crime. Besides this, the researcher has tried examine the phenomenon through observations in numerical representations and through statistical analysis.

The Reported Scenario

More than 8,000 cases of human trafficking were reported during the year 2016, while 23,000 victims and 182 foreigners were rescued according to the national crime record bureau data. The noticeable ratio between the victims and the cases is clearly presenting the difference between the cases which are actually reported and come to the data and the untold cases where the victims suffers because they are aware of their rights.

The Legislative Scenario

Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons 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.

The above definition gives the three elements to the crime of human trafficking i.e:

1. The Act: includes the recruitment, transportation and transfer, also the harbouring receipt of the humans.
2. The Means: it includes the methodology used by the perpetrators of the crime to control the transactions of human transfer through force, coercion, abduction, abuse of power or vulnerability.
3. The Purpose: it includes the intention of the perpetrator i.e. sexual exploitation, slavery or similar practices and the removal of organs.

As noted above human trafficking leads to the violation of the essential human rights, to provide it a legislative strength many international treaties and organisations have taken several measures. The UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949) requires States to punish any person who exploits the prostitution of another. The Slavery Convention (1926) defines slavery, and its Supplementary Convention describes “practices similar to slavery,” including debt bondage, and institutions and practices that discriminate against women in the context of marriage. The International Covenant on Civil and Political Rights (ICCPR) prohibits a number of practices directly related to trafficking, including slavery, the slave trade, servitude and forced labour.

In the Indian laws, the most relevant role is played by Immoral Trafficking Prevention Act (ITPA) 1956, where the Indian Government penalizes trafficking for commercial sexual exploitation, with prescribed penalty of 7 years to life imprisonment under Section 5(d). Bonded labour is prohibited by the bonded labours act,1976, Child labour act, 2016, Juvenile Justice Act,2000. Sections 366(A) and 372 of the Indian Penal Code, prohibits kidnapping and selling minors into prostitution respectively. Penalties under these provisions are a maximum of 10 years' imprisonment and a fine. The most effective step taken by India by is creating the specialised Anti Trafficking Cell (ATC): It was set up in the Ministry of Home Affairs (MHA) in 2006 to act as a focal point for communicating various decisions and follow up on action taken by the State Governments to combat the crime of Human Trafficking.

Trafficking into Prostitution: A Immediate Form of Slavery

The inhumane buying and selling of women and girls into prostitution, their complete subordination by the perpetrators, and the successive physical and mental violence to which they are subjected constitute slavery or, at the very least, slavery-like practices. The lives of these trafficked victims are completely dominated by the brothel owners that they cannot refuse to have sexual intercourse with anyone, even if they know that the customer before them is chronically ill with an infectious disease. Many Nepali girls who have returned from brothels in India have revealed that they were given only a single meal from the brothel owners and were forced to rely on tips from customers as their only means of obtaining a second meal. These Nepali women and girls were required to satisfy 20-25 customers a day. It was also reported that in some brothels the work day would start at 8 a.m. and continue up to 2 a.m. the following day, with a victim's schedule varying according to customer demand. These conditions are characteristic of an egregious form of slavery, in which the owner controls the life and fate of the enslaved woman. These reports demonstrate the various forms of exploitation directly violating the victim's right to be free of slavery and servitude, a core human rights norm cherished by the world today.

Child and Trafficking

Child victims of trafficking are recruited, transported, transferred, harboured or received for the purpose of exploitation. They may be forced to work in sweatshops, on construction sites or in houses as domestic servants; on the streets as child beggars, in wars as child soldiers, on farms, in travelling sales crews or in restaurants and hotels. Some are forced to work in brothels and strip clubs or for escort and massage services.

In India there are many reasons for the trafficking in children, families do possess many children as according to their financial viability and that is compounded by the low income and the weak family planning. This gives them the idea of selling their daughters for sexual slavery. The biggest problem lies in the fact that children are not themselves aware of their rights and the perpetrators do take an advantage for the same and practice such crimes in the remote areas.

In the *Bachpan Bachao case*² it was held that Articles 23, 39, 14 and 21 of the Constitution of India guarantee every child to be free from exploitation of any form. There was violation of various laws concerning Child Labour and their abuse and traffic. Concerns of child and the paradigm of child rights had been addressed suitably in various international conventions and standards on child protection including the UN Convention on the Rights of the Child (UNCRC), 1989. India has ratified the UN Convention on the Rights of the Child in 1992. Convention prescribes standards to be adhered by all state parties in securing the best interest of the child. Integrated Child Protection Scheme seeks to create database and knowledge base for child protection services it needs to strengthen child protection at family and community level. Government of India was fully aware about problems of children working in various places particularly in circuses. Right of children to free and compulsory education had been made fundamental right under Article 21A of the Constitution.³

Hence, every child of the age of 6 to 14 years has right to have free education in neighbourhood school till elementary education. Therefore, Court in order to implement fundamental right of children under Article 21A directed that Central Government must issue suitable notifications prohibiting the employment of children in circuses and also directed Respondents to conduct simultaneous raids in all circuses to liberate the children and check the violation of fundamental rights of children. They were also directed to frame proper scheme of rehabilitation of rescued children from. Petition was directed to be listed for further directions.⁴

Rehabilitation, Compensation and Protection

Perhaps the most glaring anomaly in the law related to rehabilitation and compensation is the absence of a specified set of right for the victims. This includes their detention in protective or corrective homes without their consent as mentioned above, but extends to the entire gamut of rehabilitation, including relief and compensation. Instead of specifying rights the

²*Bachpan Bachao Andolan v. Union of India (UOI) and Ors.*, MANU/SC/0431/2011.

³*Ibid.*

⁴*Ibid.*

ITPA gives state governments the option of making provisions for corrective and protective institutions. The thing these implies is that state governments comply with these provisions only to the extent that their budgets or capacities allow. Invariably budgets for such matters tend to be deficient. As a result, these areas have been grossly underserved, with state governments taking arbitrary and cursory measures to bring relief to the victims. This is evidenced from the fact that protective and corrective homes are poorly equipped. Counselling, including legal counselling is completely absent as are provisions for health and education. Providing livelihood opportunities, that would go a long way in sustaining rehabilitation are also absent. It is no surprise then that after a period of what has aptly been described as 'detention' victims are released, and more often than not fall back into their older lives. Similarly, the lack of a coherent policy to guide finalization of the minimum and maximum amount of compensation or the procedures to be followed means that victims have to wait long periods before they receive anything, if at all.

In the case of *St. Theresa's Tender Loving Care Home & Ors. v. State of Andhra Pradesh*,⁵ the Court observed that "It should be ensured that behind the mask of social service or upliftment and evil design of child trafficking is not lurking. It is the duty of the State to ensure a safe roof over an abandoned child." Further, "Now, obviously children need special protection because of their tender age and physique, mental immaturity and incapacity to look after themselves." It stressed that keeping in view the welfare of the child all possible efforts should be made by the State Governments to explore a possibility of adoption under the supervision of the designated agency. It also referred to guidelines for adoption as provided in *Lakshmi Kant Pandey v. Union of India*.⁶ The accused appellant was prosecuted in this case and some of its employees had been convicted as well by the lower court, which was affirmed by the Supreme Court.

Conclusion and Suggestions

The researcher conducted the local survey of around 50 educated people through the Google forms and observed that people who are graduated and working in good institutions even they don't even know the meaning of the HUMAN TRAFFICKING around 11 people suggested that immoral traffic prevention act, 1956 is the legislation regarding the traffic rules and only around 17 people said it is the legislation for prostitution and 16 said rightly that it relates to human trafficking. Out these 50 people around 40 are not aware about the legal status of

⁵Appeal (Civil) 6492 of 2005.

⁶1984 (2) SCC 244.

prostitution in India; also many of them stated that the main cause for human trafficking is the social injustice which is true also, the basic idea behind conducting this very small survey was to bring to the notice that social awareness about this crime is very insufficient and that is becoming the root cause for increasing number of such cases in India.

In addition to this, the lack of coordination and convergence between the departments and agencies involved impedes further the efficacy of the law. Severe capacity constraints in the law and policy apparatus, reflected particularly in shortages of trained and dedicated staff for prevention, protection and rehabilitation purposes, need to be urgently, as they have the potential to unravel the best-intentioned and drafted legislation.

Establishment the ITPA should be substituted with a comprehensive Bill covering all aspects of trafficking. of a National Anti-Trafficking Bureau to coordinate and monitor all aspects of trafficking. A National unit would also be able to tackle the issue from the perspective of organized crime with international ramifications with provisions for hiding the identity of victims and Witness Protection Programme. The scheme of victim's repatriations and rehabilitation should be enhanced. In inclusion to this we should encourage our local schools to partner with students and include modern slavery in their curriculum. As a parent, educator, or school administrator, they should be aware of how trafficker's school aged children specifically with all of this media plays an enormous role in shaping perceptions and guiding the public conversation about human trafficking at large. So while concluding it would be very right to mention that the hesitation to employ available laws to prevent massive exploitation through prostitution is both morally wrong and legally untenable.