

THE TRAFFICKING OF WOMEN FOR SEXUAL EXPLOITATION IN INDIA

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ABSTRACT

“The battle for freedom and justice is never hopeless, but it is never finally won. Every morning, we must wake up ready to fight it again.”

-Mr. Kofi Annan

Trafficking in women is one of the worst abuses of human rights specially trafficking of women for sexual exploitation. Every year thousands of women fall into the hand of traffickers. Today almost every Indian state is affected with this social and criminal nuisance. The constitution of India in itself provides numbers of right in form of fundamental rights which protect women from trafficking specially article 23 of the same. This article deals with the rights of women who trafficked for sexual exploitation and legal protection available to them under international laws and as well as under the Indian national laws. This article also deals with the various landmark judgment and order passed by Supreme Court of India.

Keyword- Trafficking, Human Rights, Women’s Rights, Sexual Exploitation, Anti-Trafficking Laws

Introduction

Trafficking in persons is a serious crime and a grave violation of human rights. Every year, thousands of men, women and children fall into the hands of traffickers, in their own countries

and abroad. Almost every country in the world is affected by trafficking, whether as a country of origin, transit or destination for victims. Human trafficking is the third most money-spinning activity of organized crime groups worldwide, following the trafficking of arms and drugs (according to UNICEF report, 2002).

Trafficking for the purposes of sexual exploitation is also the least punished among above mentioned forms of trafficking. Although human trafficking has been the focus of world attention since the first international counter-trafficking treaty was signed in 1904, attention in the international arena has increased dramatically in 1990s (John Morrison and Beth Crosland, 2001).

Despite the extensive literature on the topic, there is still no absolute clear definition of trafficking and appropriate measures to combat it. The first international agreement on the definition of trafficking is found in under article 3(a) of the 2000 UN Convention Against Transnational Organized Crime as trafficking in persons' shall mean "the recruitment, transportation, 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". This definition was adopted by Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, to which India is signatory. This definition is also adopted by Indian parliament under section 370 of Indian Penal Code by means of amendment in 2013. In these definitions the term *exploitation* includes sexual exploitation, forced labour, slavery, servitude and removal of organs. However, this paper focuses on only the trafficking of women.

Conceptual Frame Work

Sex trafficking is just not a crime, it is more than that, it is an issue of violation of basic human rights, gender inequality and the symbol of subordinate status of women globally. If we look around the world most trafficking people are women, who belong to low socio-economic status. The 'demand' aspect of sex trafficking remains the least visible. When demand is not analysed, or is mentioned rarely, it becomes easy to forget that people are trafficked into the sex industry to satisfy not the demand of the traffickers, but that of the purchasers, who are mostly men. (Alison Phinney, 2019).

The insatiable demand for women and children in massage parlours, strip shows, escort services, brothels, pornography and street prostitution are what makes the trafficking trade so lucrative.

The 'supply' aspect of trafficking is perhaps the most transparent. Where there is poverty, discrimination against women in education, employment and wages, can leave them with very limited options for supporting them self and their family. It is very hard to women to migrate from one place to another by formal channel. In the hope of better life in same city, or at another place they become vulnerable to traffickers' false promises of high-paying jobs.

Even though women might feel uneasy about the travel circumstances, despair over their current prospects and hope for a new life can easily outweigh any sense of danger. In this way poverty and gender inequality create a large pool of potential and seemingly willing recruits (Alison Phinney, 2019).

With their entrepreneurial skills traffickers manage sex industry with this of demand and supply relation. Insufficient or inadequate laws, poor law enforcement, ineffective penalties, Corruption etc are helping them to increase the vicinity of sex industry.

There are approximately 800,000 people trafficked across international borders annually and, of these, 80% are women or girls and 50% are minors. (NA Deshpande and NM Nour, 2013). The purpose of this trafficking is mainly for sexual exploitation. International Labour Organization (ILO) found that, of the estimated 9.5 million victims of forced labour in Asia, less than 10 percent are trafficked for commercial sexual exploitation. Worldwide, less than half of all trafficking victims are part of the sex trade, according to the same report.

Position in India

The scale and extent of trafficking in people remain little explored in the Indian context. Trafficking in human beings, especially in women, has become a matter of serious concern in India (Siddhartha Sarkar, 2014). Trafficking is an organised crime that thrives on human dejection. Despite strong steps taken by the government of India, the trafficking rackets and gangs have become more organised and expanded into newer forms of trafficking. The crime has proliferated in such a way that today almost every Indian state is affected with this social and criminal nuisance. (report of United Nations office on drugs and crime, 2013).

Trafficking for commercial sexual exploitation is on the increase. West Bengal, Andhra Pradesh, Karnataka, Maharashtra and Odisha continue to be the high source areas in India for the purpose of trafficking to the red-light areas across India (report of United Nations office on drugs and crime, 2013). The red right areas have continued to be prostitution dens but the business has

expanded out of the red light areas and has become much more organised by providing services on demand. The operators of the sex trade have expanded their business and have started operating from residential colonies, market places, malls etc., in the garb of friendship clubs, escort services, massage parlours, spa, dance bars, beer bars etc. This has helped the traffickers to earn maximum money and also get access to high paying customers. They have even started advertising their services in the newspapers and internet. Deals are fixed on the phone itself and transactions happen through the internet. The India Today, a leading news magazine while documenting this growth in prostitution rackets reported how women and girls are being brought from Ukraine, Georgia, Kazakhstan, Uzbekistan, Azerbaijan, Chechnya and Kyrgyzstan, all of which are part of the Commonwealth of Independent States. The rackets are also procuring victims from Nepal, Thailand, Malaysia etc. In 2012, the police have busted sex rackets being run from Pune and Goa supplying women and girls from Thailand (The Times of India, 2012). Most of the business is transacted via the internet and has become a money-spinning business.

Trafficking and Human Rights

Every human being is born free and they have some basic human rights which are necessary for their existence. The women who are trafficked for sexual exploitation, they are also human being and they have also these human rights. Regardless of how they are recruited and transported, most women trafficked for sexual exploitation are denied at some point the Right to Life, Liberty and Security guaranteed to all persons including the victims of women trafficking for sexual exploitation under various international instruments. Article 3 of the Universal Declaration of Human Rights (UDHR) expressly provides that everyone has the right to life, liberty and security. Again, Article 6 of the International Covenant on Civil and Political Rights (ICCPR) provides that every human being has the inherent right to life and this right shall be protected by law and cannot be arbitrarily deprived of. Article 9 of the same convention also provides that everyone has the right to liberty and security of person.

Article 1 of the UDHR provides that all human beings are born free and equal in dignity and rights. This puts women trafficked for sexual exploitation at par with other human beings with respect to having a dignified life.

Discriminatory rights can be effectively used to protect the rights and interests of the women trafficked for sexual exploitation. The UN Charter seeks to achieve international assistance in solving international problems and promoting human rights and fundamental freedom for all without any distinction as to sex, race, language or religion as among one of the purposes of UN

under article 1 paragraph 3 of the UN Charter. This was also further upheld under article 2 of UDHR. It is also recognized under article 2, paragraph 1 of the ICCPR. Besides, right against discrimination forms the fundamental code in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) where Article 1 intricately defines discrimination against women and article 2 imposes obligation upon the state parties to condemn discrimination against women in all its forms.

International Law and Trafficking

The 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others criminalizes sex trafficking and acts associated with prostitution, but with weak enforcement mechanisms and adoption by only 69 countries, it has not been effective (Navindra E Persaud et.al., 2000). The convention also fails to address forms of exploitation that were not widespread in 1949, including mail-order bride industries, sex tourism and trafficking of organs (report of Economic and Social Council, 2000). The CEDAW requires States Parties to take action to suppress “all forms of traffic in women and exploitation of prostitution of women” and CEDAW’s General Recommendation No. 19 specifically mentions newer forms of exploitation neglected in the 1949 convention. The 2000 UN Convention against Transnational Organized Crime provides a tool for international cooperation against trafficking in its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. The protocol specifies criminalization, stronger border controls, and increased security and control of documents as preventive mechanisms. It focuses on international cooperation to combat trafficking and details aspects of assistance and protection for victims. In May 2001 the protocol had been signed by 85 countries; thirty-five additional signatures are needed for the protocol to become an instrument of international law.

Anti-trafficking law in India

The Indian Constitution prohibits trafficking in persons and guarantees many of the internationally recognized human rights norms (article 23), among them: the right to life and personal liberty (article 21), the right to equality (article 14,15), the right to freedom (article 23), and the right to constitutional remedies (article 23). These rights figure prominently in judicial decisions and academic discourse on the Indian Constitution (Vijayashri Sripathi, 1997).

The Suppression of Immoral Traffic Act 1956 (SITA), amended as the Immoral Traffic (Prevention) Act (ITPA) in 1978 and later in 1986, was in response to the ratification of the

International Convention on Suppression of Immoral Traffic and Exploitation of Prostitution of Others in 1950. The amended law stressing prevention rather than suppression of human trafficking took into consideration the international conventions and protocols and provided severe penalties for different types of exploitative conditions. The ITPA toughened penalties for trafficking in children, particularly by focusing on traffickers, pimps, landlords, and brothel operators, while protecting underage girls as victims. The ITPA also provides protection and rehabilitation for the rescued girls. Keeping a brothel or allowing premises to be used as a brothel is a crime under the same act and also provides punishment to (a) adults living on the earnings of prostitutes, (b) procuring a person for the sake of prostitution, and (c) detaining a person in premises where prostitution is carried on. But prostitution is not an offence under the ITPA. It however criminalises solicitation or engaging in sex work in or near a public place. Often this provision of the act is used by the police to harass and punish the sex workers who themselves are the victims of trafficking (Biswajit Ghosh, 2009).

Apart from the ITPA, trafficking of women and children for sexual exploitation is covered under several other sections of the Indian Penal Code, namely, 366A, 366B, 367, 372, 373. There are some other offences under IPC that have direct bearing on the problem of trafficking. Thus, for instance, trafficked women/girls very often are raped before being sold to the brothel. Also, sexual intercourse with a girl child under 18 years of age, even with her consent, constitutes the offence of a rape under section 376 IPC. Similarly, special legislations like The Child Marriage Restraint Act 1929, Bonded Labour Abolition Act 1976, Child Labour Act 1986, Juvenile Justice Act 2000, Offences against Children Act 2005 and local legislations like Goa Children's Act 2003 also attempt to prevent human trafficking which in itself includes trafficking for sexual exploitation.

Approach of Indian Judiciary towards the Trafficking of Women for Sexual Exploitation

In the absence of any law on trafficking on women for sexual exploitation, it was expected that the judiciary will take a dynamic stance while interpreting Article 21 of the Constitution, and grant relief to the victim. In any case, the judiciary has recognized that Article 21 incorporates certain unenumerated rights in the enumerated Right to Life, and has given it a broad interpretation to include right to life with dignity (Francis Coralie v. Delhi, AIR 1981 SC 746), and to mean more than mere survival and mere animal existence (Olga Tellis v. Bombay Municipal Corporation, AIR 1986 SC 180). However, it is a sad but real fact that the extensive

legal provisions against trafficking related to sexual exploitation have rarely been implemented in India, and as a result there are very few judicial decisions available on this issue. Some of the available decisions are provoked and initiated by public-spirited persons, who have found trafficking of women for any purpose to be unacceptable are following:

In *Kaushailiya Vs. State* (A.I.R. 1963 ALL.71), the High Court had struck down Section 20 of SITA on the grounds that it infringed fundamental rights guaranteed by the Constitution. Although the High Court did not look into the fundamental issues of prostitution or the various interests involved in it, Justice W. Broome declared that if a profession or trade that is an "inherently immoral activity like prostitution, then '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' (Kaushailiya v. State A.I.R. 1963 ALL.71). Furthermore, Justice Broome suggested that Section 20 is not aimed directly at the business of prostitution, but instead seeks to control the movements and residence of prostitutes, and he added that: "*Woman proceeded against under this section is not given the option of ceasing to carry on prostitution if she wishes to be allowed to reside within the magistrate's jurisdiction. If the magistrate finds that she has worked as a prostitute in the past, he can expel her from the area controlled by him without further ado. Moreover, she may not only be removed from one town to another, but may be expelled from the whole district*" (Kaushailiya v. State A.I.R. 1963 ALL.71).

In *Prajwala Vs. Union of India* (2005(12) SCC 135), Prajwala, an anti-trafficking organization, files a PIL in the Supreme Court petitioning the Government to create a 'victim protection protocol' so as to protect the rights of victims of trafficking. Existing laws do not protect the welfare of women and children who have been rescued from trafficking and sexual exploitation. Thus, Prajwala invoked Article 32 of the Constitution to file a Public Interest Litigation to force the Government to create a protocol for the rehabilitation of women and children who have been the victims of trafficking. The court has held that *there should be complete protection provided to the victim, her family and witnesses in accordance with the Law Commission's Recommendations with respect to victim, witness protection protocol.*

In *Vishal Jeet Vs. Union of India* ((1990) 3 SCC 318) Supreme Court has given order for formation of Advisory Committee ordered for all States and Union Government to combat trafficking and the Advisory Committee to make suggestions for the measures to be taken in eradicating child prostitution, and the social welfare programmes to be implemented for the care, protection, treatment, development and rehabilitation of trafficked victims of commercial sexual

exploitation. And in *Madhu Kishwar Vs. State of Bihar* ((1996) 5 SCC 125) In this case, the Supreme Court considered *the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women, 1979* and held the same to be an integral scheme of the *Fundamental Rights and the Directive Principles*.

In *Gaurav Jain Vs. Union of India* ((1997) 8 SCC) While clearly stating the violation of Right to Life of trafficked victims the Supreme Court ordered the Union Government to form a Committee to frame the National Plan of Action and to conduct an in-depth study into these problems and evolve such suitable schemes for rehabilitation of trafficked women and children.

In *Upendra Baxi & Lotika Sarkar Vs. State of Uttar Pradesh* (1998 (8) SCC 622), concerned the deplorable conditions found in a Protective Home established and working under Sections 17, 19 and 21 of SITA in Agra, India. The case, which spanned a period of 16 years, beginning under SITA and continuing until 1997, eleven years after the implementation of ITPA, began after a letter was written by Upendra Baxi and Lotika Sarkar, both at the time professors at Delhi University, to a justice of the Supreme Court of India, Justice P.N. Bhagwati. The letter was a Letter to the Editor, published in a daily newspaper called the Indian Express and that revealed a shocking picture of the Agra Protective Home. The Supreme Court converted the letter into a writ petition and ordered the superintendent of the Home to furnish explanations regarding the allegations presented in the writ petition (1998 (8) SCC 622). From 1981 to 1997, the Supreme Court monitored this case and found serious abuses and omissions in the functioning of the protective home, but never implemented a concrete decision to punish the responsible persons (Upendra Baxi and Lotika Sarkar v. State of Uttar Pradesh, (1983) 2 S.C.C. 308)

In *Budhadev Karmaskar Vs. State of West Bengal* ((2011) 11 SCC 538) in this case Supreme Court appoints a Panel to monitor and suggest rehabilitation scheme for trafficked sex workers and trafficked victims.

An analysis of the cases reveals that the courts have given decisions that provide protection from trafficking including trafficking of women for sexual exploitation. Thus, even though the court granted formal rights by expanding the scope of Article 21, it desisted from applying the same to real fact situations such that the abstract could be contextualized.

Conclusion

It is very important to understand the existing political, economic and social context of society to understand trafficking of women for sexual exploitation. This dimension of trafficking involves forced sexual exploitation that is not limited to prostitution only but also it has many other forms

of exploitation like slavery etc. In the last few years, world community as well as Indian government has taken many steps to curb trafficking in women which in itself includes trafficking of women for sexual exploitation which already discussed above. Supreme Court of India has also given very significance judgment and passed order to protect the women and curb the same offence.

But on the ground reality is far different from the paper, the implementation of laws is not proper and on some point the laws are weak and provide loop to offender to save themselves from the hand of authority. But with the positive hope, one day world community will come over with this problem and will make perfect world for women free from all form of exploitation.

REFERENCE

1. Troubnikoff, M., Anna 2003. *Trafficking in Women and Children: Current Issues and Developments*. Nova Science Publishers. New York.
2. Nair, P.M and Sen, Sankar 2005. *Trafficking in Women and Children in India*. Orient Longman Private Limited. New Delhi.
3. Roy, Rekha 2010. *Women and Child Trafficking in India: A Human Right Perspective*. Akansha Publishing House. New Delhi.
4. Deshpande, NA and Nour, NM 2013. Sex trafficking of women and girls, *Rev Obstet Gynecol*. 6(1), 22–27.
5. Feingold, A., David 2005. Human Trafficking, *Slate Group LLC*. 26-30.
6. Sarkar, Siddhartha 2014. Rethinking Human Trafficking in India: Nature, Extent and Identification of Survivors, *The Round Table*. 483-495.
7. Persaud, E, Navindra *et.al.* (eds.) 2000. Sexually transmitted infections, drug use, and risky sex among female sex workers in Guyana, *BMJ journal*. 318-332.
8. Ghosh, Biswajit 2009. Trafficking in women and children in India: nature, dimensions and strategies for prevention, *IJHR*. 716-738.
9. Sripati, Vijayashri 1997. Human Rights in Indian Fifty Years after Independence, 26 DENV. J. INT'L L. & POL'Y. 93-112.
10. United Nations office on drugs and crime, United Nation, *available at: <https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html>*

11. Trafficking in women and children: a contemporary manifestation of slavery, UNHCR, available at: <https://www.refworld.org/docid/3c58099b8.html>
12. Morrison, John and Crosland, Beth 2001. The trafficking and smuggling of refugees: the end game in European asylum policy? UNHCR, available at: <https://www.refworld.org/docid/4ff57a0c2.html>
13. Phinney, Alison. Trafficking of Women and Children for Sexual Exploitation in the Americas, *Women, Health and Development Program* 1, available at: <https://www.oas.org/en/cim/docs/Trafficking-Paper%5BEN%5D.pdf>
14. United Nation, Report: *Current Status Of Victim Service Providers And Criminal Justice Actors On Anti Human Trafficking* (United Nations office on drugs and crime, 2013) available at: https://www.unodc.org/documents/southasia/reports/Human_Trafficking-10-05-13.pdf
15. United Nations, Report: *Trafficking in Human Beings in Southeastern Europe* (UNICEF, 2002).
16. United Nations, *Report: Integration Of The Human Rights Of Women and The Gender Perspective Violence Against Women: report of Ms. Radhika Coomaraswamy* (Economic and Social Council, 2000), available at: <https://undocs.org/en/E/CN.4/2000/68>
17. Srivastava, Mihir 2010. The new white flesh trade” India Today, February 1.
18. Editorial 2012. 7 Thai Women Arrested in Massage Parlour Raid. *The Times of India*, Jun 23.