

## Combating Trafficking of Women: A Legal Perspective

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### Introduction

Women are subjected to untold discrimination, inequalities and violation of their basic human rights. Violence against women wears many faces. Violence is thrust upon them from the moment they are conceived till they are buried. Women as a separate class subjected to a greater criminal victimization both inside and outside their home. Indian women have been subjected to social restrictions and discrimination right from her birth till death. They are considered as inferior to men and they cannot claim rights equal to men. They are subjected to physical and mental torture economic exploitation in various forms and for various reasons. This may be in the name of religion, caste, poverty, illiteracy. Women accept this exploitation as natural. This has resulted in continuation of the exploitation and the failure of various laws enacted for the protection of women's rights.

Violence against women has become a common phenomenon. It has affected the society directly or indirectly and has significantly increased in the number. Indian Constitution guarantees equality before law and equal protection to all the citizens but the discrimination still continues. Human trafficking is the major problem which has affected every country around the world regardless of socio-economic status or political condition. Women are traded as commodities in the market. Women are trafficked for the purpose of forced labor, extraction of organs, sexual slavery and also for surrogacy. United Nations Office on Drugs and Crime defines trafficking in persons as: the recruitment, transportation, transfer, harbouring or receipt of persons, by means of 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 person having control over another person, for the purpose of exploitation.

### Magnitude of the problem

**President Obama** declared January as National Human Trafficking Awareness Month, making great time to raise awareness, donate to anti-trafficking organization or get involved in a volunteer project to combat trafficking.<sup>1</sup> Trafficking has affected 161 countries worldwide. The United Nation claims that 2.5 million people are victims of human trafficking having been forced into brutal forms of labour usually prostitution or other forms of sexual exploitation. The number of adults and children currently into forced labour, bonded labour and forced prostitution is 12.3 million.

Worldwide, 1.8 per 1000 persons is a victim of human trafficking increasing to 3 persons per 1000 in Asia and the Pacific. Women make up 56 percent of the 12.3 million trafficked adults and children. There is global demand for women and children for sexual exploitation. 75 percent of trafficking involves sexual trafficking. Sixty-two countries have yet to convict a trafficker under the U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, and 104 countries have yet to establish laws or regulations regarding human trafficking.<sup>2</sup>

Men, women and children are subjected to trafficking but women and girls are more vulnerable to become the victims. According to the National Crime Records Bureau, 2014 states that 76 percent of trafficking victims are women. 72 percent of women trafficked are for commercial sexual exploitation.<sup>3</sup> According to a recent survey women are bought and sold with impunity and trafficked at will to other countries from different parts of India. These women and girls are supplied to Thailand, Kenya and Philippines. They are forced to work as sex workers undergoing severe exploitation and abuse<sup>4</sup>

Most victims of human trafficking are in developing countries and quite young 18-20years old. According to the National Crime Records Bureau (NCRB) report, 24747 children and women between the ages of 15-30 years were kidnapped and sold into marriage across the country. Hundreds of girls and women are sold into forced marriages they are bartered at prices that vary depending on their age, beauty and virginity and exploited to a modern form of slavery.<sup>5</sup>

Women are trafficked and subjected to various kinds of exploitation like forced labour, bonded labour, domestic servitude, prostitution, organ transplantation. 80% of women trafficked are in the age group of 18-30 years are victims of prostitution. It is estimated that human trafficking internationally generates 32 billion dollars a year that is 32 billion dollars are being illicitly traded in the world with no taxes each year (over 15 million coming from industrialized countries).<sup>6</sup>

The causes for human trafficking are multifarious which the traffickers take advantage of the helpless condition of the victims. Poverty, unemployment, dysfunctional families, illiteracy, customs and practices are some of the reasons. Women become victims of trafficking when they are promised love, marriage and a secure future, it is this desire for economic security which traffickers take advantage and make huge profit. Girls are forced to become surrogate mothers against their will.

“Ninety percent of India's trafficking problem is internal, and those from the most disadvantaged social strata-lowest caste Dalits, members of tribal communities, religious minorities and women and girls from excluded groups are most vulnerable.<sup>7</sup> The present method adopted by the traffickers in India is by offering the girl's parents that they would meet the entire marriage expenses, unknown to the parents their daughter is going to be sold in the market of traffickers. Depending upon the demand for various purposes the traffickers supply the victims.

India is considered to be hub for this trades it is considered as origin, transit and destination place for trafficking. India is home to more than 14 million victims of human trafficking.<sup>3</sup>. India stands

in the fifth position in the world in the seriously affected list of top 10 human trafficking countries in the world.<sup>8</sup> According to International Organization for Migration; there are 32.5 million international migrants in Asia out of which India has the maximum number of 5.4 million in the year 2010.

Trafficking reports states that India has been rated as a country of extreme risk in origin, transit and destination for human trafficking.<sup>9</sup> India being situated in the golden triangle weaker sections of society are vulnerable to be affected by human trafficking. The government of India does not fully comply with the minimum standards for the elimination of trafficking but it is making significant efforts to do so. India has been ranked in Tier 2 Watch List for the Seventh consecutive year till 2014. At present it has moved to Tier 2 as per 2015 report.<sup>10</sup>

Trafficked victims are subjected to various kinds of physical and mental torture illegal deprivation of liberty, theft of documents which is considered to be a serious violation of human rights. It is difficult to ascertain the exact data of the offence as in most of the cases the victims give consent to the traffickers unaware of the fact they are going to be trafficked, missing women and children remain unreported, and victims feel ashamed to admit to having been trafficked. .

The report by the Thomson Reuters Foundation and Freedom Fund states that although illegal, trafficking is widespread across India while perpetrators go unpunished and many victims are unable to obtain justice and compensation. India is home to more than 14 million victims of human trafficking.<sup>11</sup> Many Indian women trafficked out end up either in the Middle East for sexual exploitation or in Europe, or in USA.<sup>12</sup>

Magnitude of the problem is increasing at an alarming proportion, because this problem remains largely unaddressed by the government. Many states do not consider trafficking as a serious offence as a result they are reluctant to take into consideration when there is any instance of trafficking is reported.

### **State Liability**

The Government of India and the various states have failed in their duty as the problem of trafficking of women is a serious violation of Fundamental Rights as enshrined in Article 21 and Article 23 of the Constitution of India. India is also a signatory to international conventions such as the Convention on Rights of the Child (1989), Convention on Elimination of all forms of Discrimination Against Women (1979), UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000) and the latest South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2002). The Constitutional, International, Statutory obligations and orders of the Honourable Supreme Court makes it mandatory for the Government of India and the different state Government to combat this heinous organized crime and also to provide support to the victims of trafficking.

India and Bangladesh signed an anti-trafficking pact in June 2015. The MoU (Memorandum of

- i) to combat trafficking of women and children for commercial sexual exploitation under the sanction of tradition
- ii) to combat trafficking of women and children for commercial, sexual exploitation in source area and
- iii) to combat trafficking of women and children for commercial sexual exploitation in destination areas. Based on the favourable feedback on the implementation of the pilot projects, it was decided to convert these three projects into a comprehensive scheme in the 11th Plan.

Accordingly, the Ministry of Women and Child Development has launched 'Ujjawala', a new Central Scheme "Comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation and Reintegration of Victims of Trafficking and Commercial Sexual Exploitation"<sup>13</sup>. Human Trafficking racket was busted after the Delhi Police registered a case and started an investigation following the recovery of 105 passports in an unclaimed baggage at Indira Gandhi International Airport on January 2, 2011. On investigation it was found that the traffickers illegally managed to send more than 1000 persons to U.S. through a unique route over the past three years. The human trafficking network, active in more than five states-Delhi, Gujarat, Punjab, Andhra Pradesh and Mumbai-charged around Rs.6-12 lakh for facilitating entry into Guatemala and Rs.25-30 lakh for the U.S<sup>14</sup>

### Judicial Response

Judiciary has played a vital role in eliminating various lacunae in the legislations, drawbacks in implementation, strengths and weakness of police, prosecution and community.

**Vishal Jeet vs. Union of India and others.**<sup>15</sup> This case is a landmark decision where the Supreme Court took it upon itself to give directions for the protection and rehabilitation of those who had been dedicated as devadasis by their families or communities for cultural reasons were currently in prostitution. The Court has given certain directions to the Central Bureau of Investigation (CBI) to bring all inmates of the red light areas and also those who are engaged in the flesh trade to protective homes of the respective States to provide them with proper medical aid, shelter, education and training in various disciplines of life so as to enable them to choose a dignified life and bring up their children along with the other children in the society.

**Guarav Jain vs. Union of India,**<sup>16</sup> The Supreme Court stated that the prostitutes also have a right to live with dignity under Article 21 of the Constitution of India since they are also human beings and their problems also need to be addressed. Court passed an order directing, inter alia, the constitution of a committee to make an in-depth study of the problems of prostitution, child prostitutes and children of prostitutes to help evolve suitable schemes for their rescue and rehabilitation

These two cases have laid down the ground rule for the several executive decisions and for the commencement of many programmes. These judgments flagged off the importance accorded to

Understanding) is for prevention of all forms of trafficking and there is a task force made up of officials from both countries which have been set up to look into this. India is also planning to have similar kind of MoU with other countries like Nepal and Gulf because Gulf is being used as a destination.

The preamble of the Charter of United Nations sets a basic goal to reaffirm faith in the fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women. The Universal Declaration of Human Rights has proclaimed that all human beings are born free and equal in dignity and rights and there can be no discrimination on the basis of sex. World Conference on Human Rights 1993, Vienna has declared that human rights of the girl child and women are inseparable and inherent parts of the Universal Declaration of Human Rights. India and other countries has implemented the provisions of the Conventions in the Constitution as well as enacted related legislation.

### **Anti-trafficking laws and legislations in India**

The constitution of India under Article 23 (1) declares that Traffic in human beings and beggar and other similar forms forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.” The expression “traffic” in human being has a wider meaning. It does not only prohibit slavery, but prohibits any dealing in women and children for any immoral purpose. Though , the article does not use the term “slavery, it uses the expression “beggar” and forced labour , “Beggar” means subordination against will. Perpetrator are subjected to severe punishment under various anti- trafficking laws which includes Indian Penal Code(IPC).Section 374 of IPC criminalized the sale or procure of females under 18 years for the purpose of prostitution or unlawful or immoral purposes and stipulates imprisonment to the perpetrator up to ten years. It also penalized cross-border trafficking into prostitution.

The Suppression of Immoral Traffic in Women and Girls (SITA), 1956 is the principal law addressing trafficking and prostitution which was later amended to the Immoral Traffic in Persons Prevention Act (ITPA) in the year 1986. ITPA is the main legislative tool to prevent and combat trafficking. Its prime objective is to inhibit/abolish traffic in women and girls for the purpose of prostitution as an organized means of living. The Act defines the terms 'brothel', 'child', 'corrective institution', 'prostitution', 'protective home', 'public place', 'special police officer', and 'trafficking officer'. The principle objective of the ITPA is to curb the commercial exploitation of females for trafficking throughout the country. The ITPA also provides for the setting up of special courts by the state governments, as well as by the Government of India.

India has launched a comprehensive scheme to address the sexual exploitation of women and children, cross-border trafficking and the recue and rehabilitation of victims. Collaborating with the UNICEF, the Ministry of Women and Child Development also plans to undertake training programmes for stakeholders from SAARC countries.

India's Ministry of Women and Child Development has been implementing three pilot projects -

the individual human rights and have brought into focus the mandatory role and responsibility of the state in ensuring that such violations do not take place.

Supreme Court has also taken cognizance of miserable conditions of the workers who were unlawfully detained as forced and bonded labourers in the factories. To protect the interest of the workers and also to check the exploitation by the employers the Court authorized the Bharathiya Mahila Federation (NGO) to visit the premises where women employees are working and to find out their grievances. All factory owners, particularly the respondents, were directed to allow free access to the office bearers of above mentioned NGO to places where women employees are working or residing.

The Court gave directions that as and when a report is made regarding missing of any individual, FIR should be registered immediately. A Nodal Officer who is of rank of Inspector General of shall be head of the Cell set up by the States of Punjab and Haryana who shall monitor the entire process of tracing out the missing individuals. He shall also immediately send intimation to the special cells set up by the C.B.I to trace out the missing persons.

#### **Guria, Swayam Sevi Sansthan v. State of U.P.**<sup>17</sup>

Supreme Court discussion on the issue of grant of bail to the victims of immoral trafficking stated that the most of the trafficked victims are minor or young girls are let off on bail. They again in most of the cases are forced to go back to the brothels from where they have been recovered and are subjected to prostitution again at the instance of the same persons. Bails are also granted to other accused who are arrested from the brothels without bearing any distinction in mind as to whether they work from behind or may be held to be guilty of the offences of higher magnitude. The question as regards grant of bail, therefore, should be considered having regard to the gravity of the offence wherewith the accused had been charged.

The Court also pointed out the objectives of the Immoral Trafficking Prohibition Act was to prevent these innocent victims being trafficked. However, it is unfortunate that the investigating officers and the courts ordinarily fail to bear in mind a distinction between the rescued children including girls, on the one hand and the persons who have been organizing such immoral traffic in a systematic manner and have otherwise been aiding and abetting the commission of offences thereunder. The legislature as also the executive have also failed to draw a well- thought out plan for rehabilitation of the rescued children in the society by bringing in suitable legislations or schemes.

National Crime Records Bureau Report states there is increase in the number of cases registered from 2010 to 2014 but the conviction rate is comparatively very low. Traffickers are acquitted due to various loopholes in the implementation and lack of proper coordination among the authorities in collecting the evidence and preparing the victims of trafficking to give evidence against the offender.

In India human trafficking in general has expanded to almost every state in the country. Tamil

Nadu leads with 9,701 cases over the past ten years, followed by Andhra Pradesh (5,861), Karnataka (5443), West Bengal (4,190) and Maharashtra (3,628). Human Trafficking cases in India rose 92% over six years 2009 to 2014.<sup>18</sup>

### Suggestions

1. Government to provide victims access to all available schemes of social security and health facilities
2. Rescued victims to be provided with legal aid and legal support to recover compensation for violation of their human rights.
3. State that rescues the victims of trafficking should take the responsibility in securing their safe return to their country or state and its duty of concerned government to join them with their family members.
4. Law enforcement agencies to be made accountable for their negligence in not registering the missing cases and when they fail to conduct the investigation.
5. A Comprehensive anti-trafficking legislation to be drafted which should punish the perpetrators and also provide necessary relief to the rescued victims of trafficking to restart their lives.
6. Media can play a vital role in creating awareness among the public and the government on the seriousness of the issue.
7. Compulsory registration of employment agencies and government should maintain strict vigilance on their activities.
7. Awareness as to human trafficking related crimes to be created among the students in schools and colleges.
8. NGO's working for the rescue, rehabilitation of the victims of trafficking should be encouraged and supported with financial assistance by the government.

### Conclusion

Judiciary has played a major role in protecting the basic human rights of women and children by rendering landmark judgements. This has resulted in relevant laws being drafted and repealing the laws which have become redundant. It has sensitized the judicial officers and the police authorities on the magnitude of human trafficking. But the directions of the Supreme Court have not been strictly complied by the state. Unless the court takes cognizance of the compliance of directions by the state, the problem of trafficking can never be eradicated. Rescued victims of trafficking are not provided with the basic needs by the government which compels the victim to decide to work as bonded labourer, prostitutes under the trafficker instead of suffering from starvation in the government rehabilitated home. This is reason there is all possibilities rescued victims are re-trafficked and some suffer and die. There is need for the coordination among the police authorities, NGO's and the Government to tackle this problem. Only by community

participation the task can be accomplished and the policies enacted to protect the innocent victims will become a reality.

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