

HUMAN TRAFFICKING: AN INVISIBLE TRADE IN INDIA

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INTRODUCTION

The supreme ethical confront faced by the world in this present day is human trafficking. Trafficking as an unjustified trade has become so profitable that it knows no borders. Trafficking takes place inside a nation state or might involve movement across boundaries. Globally, after drugs and the arms trade, human trafficking is the third largest organized crime. Each year an estimate of 700,000 to 4 million people around the world are being trafficked for labour and sexual exploitation¹. Around 80% of the human trafficking across the world is done for sexual exploitation and the rest is for bonded labor.² Trafficking is an umbrella term that is, problematically, often condensed to mean prostitution, when it involves sex trafficking.³

Trafficking has placed human beings in an abusive situation for financial gain. Women, men and children are trafficked for a range of purposes, including forced and exploitative labour in factories, farms and private households, sexual exploitation, and forced marriage. Trafficking affects all regions and most countries of the world.⁴ Trafficking of human beings has become a trade or commercial dealing as it is a process of people being recruited in their community and country of

¹Ibu Sanjeeb Garg , Human Trafficking In India, THE SHILLONG TIMES (last visited Aug. 25,2017), <http://www.theshillongtimes.com/2017/07/12/human-trafficking-in-india>.

² Admin Lawnn, Legal protection against Human Trafficking in India, LAWNN NETWORK (last visited Aug. 25, 2017), <http://lawnn.com/legal-protection-human-trafficking-india>.

³Melissa Ditmore, Sex Work, Trafficking: Understanding, The Difference, REWIRE (last visited Aug 26, 2017), <https://rewire.news/article/2008/05/06/sex-work-trafficking-understanding-difference>.

⁴Aarti Singh, Human-Rights and Human Trafficking, Lambert publishing (last visited Aug .26,2017), <https://www.lap-publishing.com/catalog/details/store/gb/book/978-3-659-93132-1/human-rights-and-human-trafficking>.

origin and transported to the destination where they are being exploited for purposes of forced labor, prostitution, domestic servitude, and other forms of exploitation.

Trafficking is a global phenomenon and it has become an organized billion dollar industry and has its core ,investors ,unscrupulous recruiters and corrupt public officials as principal participants⁵ . Trafficking is a serious crime and it involves grave exploitation of men, women and children for financial gains. Fatalities of trafficking undergo a violation of fundamental human rights and are to be considered as persons in need of safeguard. Trafficking employs human tricks to abuse the vulnerable by depriving their dignity and self worth. .

Human trafficking is an offense that benefit from vulnerable groups for different purposes together with forced labour and sex. Globally, 21 million people are fatalities of forced labour are estimated by ILO which also includes victims of human trafficking for labour and sexual exploitation. While it is not known how many of these victims were trafficked, the estimate implies that currently, there are millions of trafficking in persons victims in the world. Every country in the world is affected by human trafficking, whether as a country of origin, transit, or destination for victims. Children make up almost a third of all human trafficking victims worldwide, according to the United Nations Office on Drugs and Crime Global Report on Trafficking in Persons. Additionally, women and girls comprise 71 per cent of human trafficking victims, the report states.⁶

Human trafficking is one of the most rampant crimes in a labour surplus and developing country like India. As envisaged in the United Nations charter human trafficking is the most inhuman practice which curtails a person's dignity of life. The United Nations has listed India under the Tier II list of countries which have failed to combat trafficking. Thousands of Indians are trafficked everyday to some destination or the other promising good jobs and are forced to lead lives of slavery. They survive in brothels, factories, guesthouses, dance bars, farms and even in the homes

⁵Human Rights Dialogue 2.1 (Winter 1999) "Human Rights for All?",CARNEGIE COUNCIL (last visited Aug.26,2017), <http://www.carnegiecouncil.org/publications/articles>.

⁶ World Day against Trafficking in Persons ,Un.org,UNITED NATIONS(last visited Aug .27,2017), <http://www.un.org/en/events/humantrafficking/>.

as well.⁷ Thus human trafficking is a part of the bigger problem of slavery. The cruelty towards people of any race, gender, sexual orientation, or ethnicity is intolerable at any time, in any place. In spite of rigorous efforts to combat human trafficking such trade prevails and also continues to grow.

Through this article, the author would discuss human trafficking by exploring the applicable legal and policy framework against human trafficking in India with special reference to the “Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill 2016”. By examining human trafficking problem in India, this article aims to elucidate a deeper understanding for the reasons for increase in human trafficking and what can be done to stop such abuses.

DEFINING HUMAN TRAFFICKING

The Oxford English Dictionary defines traffic as trade, especially illegal (as in drugs). It has also been described as the transportation of goods, the coming and going of people or goods by road, rail, air, sea, etc. The word trafficked or trafficking is described as dealing in something especially illegally (as in the case of trafficking narcotics).⁸

In the year 1994, the United Nations General Assembly defined trafficking as:

"the illicit and clandestine movement of persons across national and international borders, largely from developing countries and some countries in transition with the end goal of forcing women, girl and children into sexually or economically oppressive and exploitative situations for the profit of recruiters, traffickers, crime syndicates, as well as other illegal activities related to trafficking, such as forced domestic labour".

⁷Akhila Basalal, Extent to Which Immoral Trafficking is Addressed, Legal Services India (last visited Aug .27, 2017), <http://www.legalservicesindia.com/article/article/extent-to-which-immoral-trafficking-is-addressed-595-1.html>.

⁸ Enakshi Ganguly Thukra, Children in Globalising India: Challenging Our Conscience (last visited Aug .28, 2017), <https://books.google.co.in/books?isbn=8190163809>.

Article 3, paragraph (a) of the **Protocol to Prevent, Suppress and Punish Trafficking in Persons** adopted by the UN office of Drugs and crime in 2000 under the UN Convention against Transnational Organized Crime (UNTOC) defines Trafficking in Persons, especially women and children 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. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.⁹ India ratified UNTOC and its three protocols including UN Trafficking Protocol.

HUMAN TRAFFICKING TRADE IN INDIA

Women and children is the key target as victims of trafficking. The poverty and illiteracy makes children and women belonging to the poor sections of the society highly vulnerable to human trafficking. As Compared to previous year of 2016, there was a rise of nearly 25 percent women and children who are victims of trafficking in India. The Indian states like Karnataka, Bihar, Jharkhand, West Bengal, Andhra Pradesh, Tamil Nadu and others, along with neighboring countries like Bangladesh and Nepal have witnessed incidents of human trafficking.¹⁰ *The New York Times* reports on the extensive problem of human trafficking in India especially in the state of Jharkhand. *The Times of India* reports that Karnataka is the third state in India for human

⁹Human Trafficking and Migrant Smuggling, *Unodc.org*, United Nations (last visited Aug .28 ,2017), <https://www.unodc.org/unodc/en/human-trafficking/index.html>.

¹⁰What do you understand by human trafficking? , INSIGHTSLAS (last visited, <http://www.insightsonindia.com/2016/04/06/1-understand-human-trafficking-examine-trafficking-rise-indian-states-neighbouring-countries-especially-bangladesh>).

trafficking. According to an article in *Firstpost*, Delhi is the hub of human trafficking trade in India and half of the world's slaves live in India.¹¹

The problem of trafficking in India is complex and the human trafficking trade in India has certain “supply” and “demand” factors. Poverty, child marriage, no girl child are the “supply” factors. The “demand” factors are migration, sex tourism. Women and children living in rural areas of India or from other states are engaged in domestic helps or small-scale establishments in urban centers. Also these children and women are forced to beg or sell on the streets in towns and cities often become victims of the illegal organ trade racket.¹² Women and children are sold into commercial sex trade market and these vulnerable groups are eventually exploited economically, physically and also sexually. People from Northeast part of India especially children from tribal areas are sold in faraway states of India for sexual exploitation and to work as bonded labour.

Porous borders has led to the rise of the traffickers to commit crime especially India – Nepal border, India- Bangladesh border .Though India started constructed the fence between the nation with which it shares the longest border, yet fences remain porous or unguarded at various places both land and riverine border. Thus no proper demarcation of borders is a reason for increase in trafficking in India.

Foul politics in India has led people to become the victim of sexual and labour exploitation especially the Bangladeshi nationals are provided Indian voter card illegally to vote in the favour of party for material benefits. Once election is over those promises are easily forgotten. Bangladeshi migrants are subjected to forced labour in India and also some Nepali, Afghan and Bangladeshi women are subjected to sex trafficking in major Indian cities.

¹¹Ramandeep Kaur, Human Trafficking in India must end, MAPS OF INDIA (last visited sep. 25, 2017), <https://www.mapsofindia.com/my-india/society/human-trafficking-in-india-must-end>.

¹² Manju Mohandas, Human Trafficking in India and the invisible victims, JAAGORE (last visited sep. 25, 2017), <https://www.jaagore.com/current-issues/human-trafficking-in-india-and-the-invisible-victims>.

Corruption on the path of security forces on international borders is another reason for rise in trafficking in India. Some corrupt law enforcement officers protect suspected traffickers and brothel owners from law enforcement efforts, take bribes from sex trafficking establishments and sexual services from victims, and tip off sex and labor traffickers to impede rescue efforts.¹³

Natural Disasters render people homeless. Nepali women movement through India is increasingly subjected to trafficking in the Middle East and Africa. People of Bihar are forced to work as bonded labour in embroidery factories in Nepal, while others from Nepal and Bangladesh are subjected to forced labour in coal mines in the state of Meghalaya.¹⁴ Burmese Rohingya, Sri Lankan Tamil, and other refugee populations continue to be vulnerable to forced labor in India. Brides are in high demand in the State of Haryana and other States due to the low sex ratio caused by sex selective abortions.¹⁵ Adopting a human rights-based response to those affected by natural disasters is a concrete way to ensure that natural disasters do not exacerbate existing or provoke new conflicts.

Victims or his family members do not report the crime or report it too late as the fear of bringing shame to the family honour. People are not aware of their legal rights and there is low level of awareness among police about laws dealing with trafficking. The existing laws do not treat the issue of human trafficking cautiously and moreover the victim and the perpetrator both are treated under the same foreign act of 1946 and a trafficked person is reported to a shelter in India before being transferred to Homeland. Other factors that contribute to the rise in human trafficking in India include non inclusive definition of 'human trafficking' in Indian laws and also failure to target the acquaintances of human traffickers results in prolongation of practice..

¹³Trafficking in Persons Report 2016,USDept.of State(last visited sep.18,2017) , <https://www.state.gov/j/tip/rls/tiprpt/countries/2016/258784.htm>.

¹⁴ Ibid13.

¹⁵ Responses to HUMAN TRAFFICKING in Bangladesh, India, Nepal and Sri Lanka,UNICEF, (last visited sep.26,2017), https://www.unodc.org/documents/human-trafficking/2011/Responses_to_Human_Trafficking_in_Bangladesh_India_Nepal_and_Sri_Lanka.pdf

LEGAL PROTECTION AGAINST HUMAN TRAFFICKING IN INDIA

Constitutional Protection and trafficking

- **Article 23(1)** Prohibits trafficking. The right against exploitation is a Fundamental Right guaranteed by the Constitution of India under Article 23(1) which provides that “traffic in human beings and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law”. This right is enforceable against the state and private citizens.¹⁶
- **Article 39(e) and 39(f)** prohibits exploitation of persons, children and youth to perform work which does not suit them. This provision is covered under Directive principle of state policy.

Legal Provisions and Trafficking

- **The Immoral Trafficking Prevention Act (ITPA)**, trafficking for commercial exploitation is penalized in India for a period of seven years to life imprisonment¹⁷.this act does not define trafficking but defines prostitution to mean sexual exploitation.

India also prohibits bonded and forced labour through

- **Juvenile Justice (Care and Protection OF Children)Act,2000** which was passed in consonance with the conventions on the right of the child. The act prohibits begging and bonded labour.
- **Bonded Labour System (Abolition) Act, 1976** which abolished bonded labour practice which was prevalent in India. The act prohibits from compelling a person to render bonded labour .
- **Child Labour (Prohibition and Regulation) Act, 1986.** This act prohibits the employment of children in the specific occupations and lays down the conditions of the work of the children.

¹⁶Puneet Jassal,Victims of Trafficking, LEGAL SERVICE INDIA (last visited Aug.27,2017), <http://www.legalserviceindia.com/article/1132-Victims-of-Trafficking.htm>

¹⁷Human Trafficking in India. In Wikipedia(last visited sep.26,2017), https://en.wikipedia.org/wiki/Human_trafficking_in_India.

Other legislations enacted to prevent trafficking are:

- **Scheduled Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989** prohibits sexual exploitation of a Scheduled Caste or Scheduled Tribe women.
- **Transplantation of Human Organs Act, 1994** guarantees the regulation of removal, storage and transplantation of human organs for therapeutic purposes and also prevents commercial dealings in human organs.
- **The Information Technology Act, 2000** section 67 penalizes the publication and transmission of any material in electronic form and the sentence may extend up to three years.
- **Prohibition of Child Marriage Act, 2006** prohibits minors used for immoral purpose and solemnization of child marriages making it void
- **Protection of Children from Sexual offences (POCSO) Act, 2012** is a special law to protect children from sexual abuse and exploitation.it provides precise definitions for different forms of sexual abuses.¹⁸

Indian Penal Code, 1860

- Under **Sections 366(A) and 372** prohibits kidnapping and selling minors into prostitution respectively. Penalties under these provisions are a maximum of 10 years' imprisonment and a fine.¹⁹
- Substitution of new sections **370 and 370A for section 370** under the **Criminal Law (amendment) Act 2013** providing comprehensive measures to counter the menace of human trafficking including trafficking of children for exploitation in any form including physical exploitation or any form of sexual exploitation,slavery,servitude,or the forced removal of organs.²⁰

¹⁸ Human Trafficking, MEA.org(last visited sep.26,2017), <http://www.mea.gov.in/human-trafficking.htm>.

¹⁹ Ibid15

²⁰ Ibid18.

Other Initiatives by Government against Human Trafficking:

- The Government of India launched an **anti human trafficking web portal** in February 2014 as an effective way for interested parties to share information.²¹ India's Central Bureau of Investigation incorporated anti-trafficking training, by Dr. Gilly McKenzie of the Interpol Trafficking and Organized Crime Division, into its standard curriculum.²²
- State Governments enacted specific legislations to deal with the issue of human trafficking such as **Goa Children's Act, 2003, The Punjab Prevention of Human Smuggling Act, 2012.**
- Ministry of Home Affairs under a Comprehensive Scheme strengthening law enforcement response in India against Trafficking in Persons through Training and Capacity Building has released fund for establishment of **Anti Human Trafficking Units** for 270 districts of the country.²³
- Various Training of Trainers (TOT) workshops on Combating Trafficking in Human Beings for Police officers and for Prosecutors at Regional level, State level and District level were held throughout the country to enhance the capacity building of **law enforcement agencies** and generate awareness among them²⁴.
- Ministry of Home Affairs have issued comprehensive **advisories** to all States/UTs to improve the effectiveness in tackling the crime of human trafficking and to increase the responsiveness of the law enforcement machinery.²⁵
- In order to train and sensitize the judicial officers about the various issues concerning human trafficking and to ensure speedy court process, eleven **Judicial Colloquiums** have been held at Chandigarh, Delhi, Himachal Pradesh, Maharashtra, Chhattisgarh, Tamil Nadu, Andhra Pradesh, Bihar, Uttar Pradesh, Jharkhand and Odisha²⁶

²¹Ibid14.

²² Ibid18

²³ Ibid 22

²⁴ Ibid 23.

²⁵ Ibid19.

²⁶ Ibid 17.

TRAFFICKING OF PERSONS (PREVENTION, PROTECTION AND REHABILITATION) BILL 2016

Women and Child Development (WCD) Minister Maneka Gandhi released a draft of the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill which is India's first ever anti-human-trafficking law. The aim of the bill is to prevent trafficking of persons and to provide protection and rehabilitation to the victims of trafficking and to create a legal, economic, and social environment against trafficking of persons. This draft bill increases the definition to cover labour-trafficking and not just sex-trafficking, as earlier legislations like the Immoral Trafficking (Prevention) Act Of 1956. The bill also makes it clear that it is designed for the victims of trafficking, and it differentiates between the two terms 'trafficker' and 'trafficked'.

Article 21 of the Constitution of India guarantees the right to life and personal liberty under the procedure established by law. Every person has a right to life and personal liberty. Therefore, trafficking of a person needs to be prevented, and the victims need care, protection, and rehabilitation.²⁷

The bill if becomes a law have extensive benefits, like curbing the informal labour industry and ensuring that fair wages are paid. The draft's unveiling has also already added to an ongoing debate on whether prostitution should be legalised. The draft also indicates a welcome move away from the antiquated, bureaucratic, and loophole-packed legislature that currently exists in India. If the bill succeeds in reducing human trafficking in South Asia, it will lead to a decline in child labour practices.²⁸

Key Highlights of the Anti-Trafficking Bill

²⁷ Sylvine, brand new bill against trafficking of persons, I PLEADERS (last visited sep.20, 2017), <https://blog.iplayers.in/brand-new-bill-trafficking-persons/>.

²⁸ Ibid2.

- Rehabilitation has been accepted as a right and there are provisions for cross border repatriation of victims in case they come from Nepal or Bangladesh.
- The Bill envisage creating district and state-level anti-trafficking committees with government officers and NGO representatives to mobilize efforts to prevent, rescue, protect and rehabilitate victims of trafficking, in addition provides medical care, psychological assistance and skills development.
- The state governments are to form specialized schemes for women in prostitution or who have been the victims of other forms of commercial sexual exploitation.²⁹
- There is provision for special court and special public prosecutor for cases registered under trafficking and there is a proposed central team for investigation.
- There is stricter punishment for traffickers and also for paying fines trafficker's property is confiscated and the burden of proving innocence is on the accused.
- The bill introduces 'anti-trafficking fund' for welfare and rehabilitation of victims of trafficking.
- The new version of the bill introduced punitive measures for a range of offences from using victims as bonded labour, forced begging, human shield etc.
- The bill penalizes the contravention of the registration requirements for protection homes, special homes and placement agencies.
- The penalty and sentences are enhanced in case of repeat offenders and the penalty for most of these crimes is a fine of Rs 1 lakh to 10 lakh and a jail term of anywhere between seven years to life imprisonment.
- The bill proposes for setting up a national coordinating body which will ensure that a victim rescued from reaches her home safely. Compensation is provided to victims of trafficking under this proposed bill.

²⁹ Prabha Kotiswaran, India's New Anti-Trafficking Bill is an Empty Gesture, THE WIRE (last visited sep.15,2017) ,<https://thewire.in/48494/indias-new-anti-trafficking-bill-is-an-empty-gesture/>.

LACUNAE OF THE ANTI-TRAFFICKING BILL

- The anti trafficking bill does not have provide any protection from traffickers nor provides about preventing re-trafficking but only deal with victims post trafficking.
- There is lack of clarity on rehabilitation on how rehabilitation will take place and who will be responsible for it which in turn obstructs the very purpose of the legislation.
- The draft bill provides for district-level committees but there is no clause enabling a sex worker to be a member. The draft bill allows any law-enforcement official to raid at will without a warrant.³⁰
- There is no provision dealing with mistreatment of victims at the Shelter homes.
- The bill is not clear as to how the 'anti-trafficking funds 'will be allocated, how it will be used, how it will be managed, etc.
- The bill is unclear about which agency should undertake the raid and rescue operations.
- There is no clarity on the definition of trafficking, whether it would include those taken for organ harvesting or forced labour and the bill nowhere mentions the word sexual exploitation or prostitution.
- Though the bill talks about the broad concept of human trafficking it remained silent as previous laws and statutes regarding reintegrating the victims in to the society.
- The draft reportedly lacks how various agencies will coordinate among themselves. It also does not cite funding or a single investigating agency to monitor trafficking.³¹

CONCLUSION

³⁰ Sex workers oppose anti-trafficking bill, THE TELEGRAPH(last visited Sep.5,2017), https://www.telegraphindia.com/1170128/jsp/nation/story_132745.jsp.

³¹ Why-india's-trafficking-of-persons-bill-2016-needs-to-be-urgently-revised, SAVE THE CHILDREN (last visited sep.24,2017), <https://www.savethechildren.in/resource-centre/articles/>.

In the words of eighth UN Secretary General Ban Ki-moon, *“let us reaffirm the inherent dignity of all men, women and children. And let us redouble our efforts to build societies in which slavery truly is a term for the history books.”*

Today in this 21st century also when we look at the issue of human trafficking we are not in a position to place this social phenomenon in history. Human Trafficking – the trade in human lives – is a vile and heinous crime; it is the scourge of the mankind, and a gross abuse of human rights.³² Human beings are not to be treated as commodities and they should not be offered for sale. Human trafficking reduces the significance of human life and harms the society by violating our belief in the human ability for a change.

In India there are three set of laws applied for human trafficking, the Indian Penal Code, the Immoral Traffic Prevention Act and several other labour legislations. In most of the cases reported on trafficking issues in India studies have shown that convictions have been abysmally low and that very often victims have been re-victimized in the process.³³³⁴ Unfortunately the trafficking bill Human trafficking is a violation of human rights and any strategy to eliminate trafficking should be framed within a human-rights perspective by placing the victim at the centre. Rights of the victim, directions to the appropriate government and children’s right are the positive impact on the approach of judiciary to cases of trafficking. There is a need of unique vision of dealing with extreme exploitation that is understood today under the conceptual umbrella of ‘trafficking ‘by prioritizing improved labour conditions and the redistribution of wealth and resources. Empowerment, self-representation and participation of those affected by trafficking are fundamental principles for a human rights-based approach.³⁵

³² Maggie Laidlaw, Human Trafficking, BLOG (last visited sep.25, 2017), <https://bad3maggie.wordpress.com/2011/01/05/conclusion-of-research-paper-human-trafficking/>.

³³ Ibid 15

³⁴ Ibid 24.

³⁵ , Kara Napolitano, Human Trafficking: A Human Rights Violation, LABORATORY TO COMBAT HUMAN TRAFFICKING (last visited sep.25, 2017), combathumantrafficking.org/2016/12/human-trafficking-human-rights-violation/.

As a result of conducting this research, the author propose to respect victim's right to live with dignity and to guarantee other fundamental rights such as right to work, right to education . The author, in this article, also highlights and emphasizes that borders must be properly fenced and there is a need of stringent monitoring and implementation measures to break the networks of traffickers and strict disciplinary action against people involved in such crimes. The non-governmental organization working in this field should focus on preventing trafficking rather than rescue, post rescue including protection of victims of trafficking. To combat the problem of trafficking it is necessary to address the poor infrastructure and economic opportunities that create vulnerability in India. Social media can play a major role in creating awareness among the public's regarding trafficking. Thus in order to tackle the problem of human trafficking in India, The Citizens, Government Bodies, Non-Governmental Organizations, Civil Society, International Bodies have a major role to play as law cannot be the only mechanism to solve all the evils relating to trafficking.