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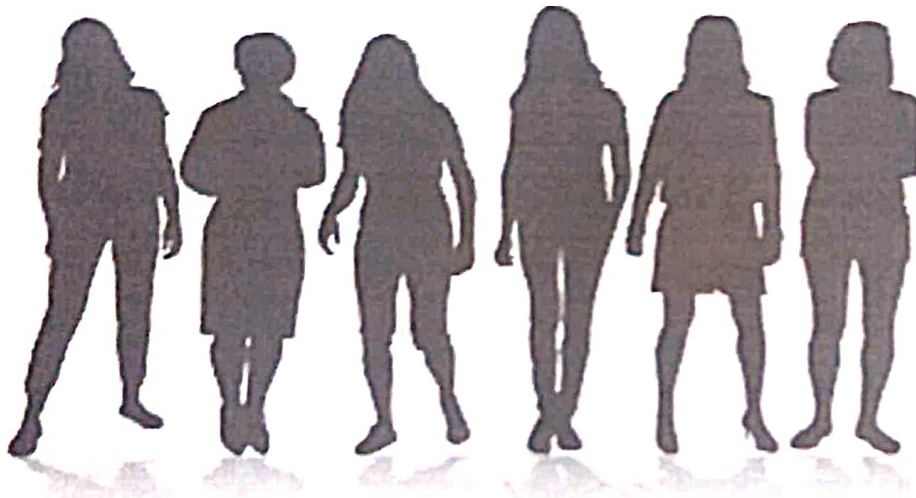
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SCHOOL OF LAW



INTERPLAY OF WOMEN, LAW AND SOCIETY - ISSUES AND CHALLENGES

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EFFORTS TO COMBAT HUMAN TRAFFICKING: IS INDIA SUCCESSFUL?

*Ms. Suma Suresh Kogilgeri**

ABSTRACT

Human trafficking is a global issue. With its large population, economic disparities, and complex social dynamics, India has become a hotspot for various forms of human trafficking. It affects all individuals irrespective of age, gender, and background, but women and children are more vulnerable to this crime. In a few incidents, individuals are forcefully trafficked and sometimes parents/guardians sell their children to traffickers in exchange for money. Human trafficking is rampant in India in various forms like forced labour, child labour, sexual exploitation, organ trade, domestic work, and forced marriage. Victims are moved within the country or across international borders. The Constitution of India prohibits human trafficking in any form. It is considered a crime and punishable under the Indian Penal Code. Moreover, there are specific legislations such as the Immoral Traffic (Prevention) Act, 1956, and the Bonded Labour System (Abolition) Act, 1976 etc. to combat human trafficking in India. Considering the magnitude of the problem, the Government has initiated several programs and campaigns to combat human trafficking. Also, rescue operations and rehabilitation schemes are initiated for the victims. However, despite all these efforts, human trafficking remains a complex and challenging issue in India. This situation is due to the sheer scale of the problem, inadequate law enforcement, legal gaps, corruption, and social norms. Therefore, this paper aims to reflect on the existing legal framework to combat human trafficking in India and contemplate a way forward to curb this evil through effective measures.

KEYWORDS:

Human trafficking, crime, women, children, prevention.

INTRODUCTION

A country like India with an inclusive constitution is said to bestow upon its people a right to life under Article 21, with the ideal object of giving its people the right to live with dignity. Amidst this, human trafficking erupted as the worst form of human rights violation. It violates the rights and dignity of the individuals. "Human Trafficking is the recruitment, transportation, transfer, harbouring or receipt of people through force, fraud or deception, with the aim of exploiting them for profit"¹. Men, women, and children of any age, and any background can become victims of human trafficking. It is a heinous act that involves the trading of humans by humans. Human trafficking today has become a lucrative crime with

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¹<https://www.unodc.org/unodc/en/human-Trafficking/Human-Trafficking.html#:~:text=Human%20Trafficking%20is%20the%20recruitment,ever%20region%20of%20the%20world> (last visited on Oct 28, 2023)



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organized networks around the world. They are trafficked for various purposes like forced labour, organ trade, and sexual exploitation like child pornography, prostitution, etc. People from lower social classes like those who are poor, with no family structure and lack of education, fall easy prey to this crime. These innocent people are trapped with the promise of securing a job abroad, with a false romantic relationship, sometimes also buy them from poor families, or even kidnap them.

It is challenging to combat human trafficking as it poses a threat at the global level. The depth of the problem is disturbing, it needs action immediately otherwise the victim would have travelled miles so far. Delayed action leads to a situation wherein it becomes impossible to trace the victim of human trafficking. Ruchira Gupta², anti-human trafficking activist and journalist said that the most targeted groups are from oppressed and marginalised tribal communities. They fall victim because of their vulnerabilities like food insecurity, unstable housing, and lack of legal protection.³ Recently, India Today's Special Investigation Team visited remote villages of Rajasthan and Madhya Pradesh to uncover the child trafficking issue, it was found that children are being bartered for money. The horrendous fact is that parents are the consenting party who are ready to sell their children in return for money amid poverty. India has taken numerous steps to address the issue of human trafficking within its borders, but the problem remains deeply ingrained. Therefore, the object of this paper is to reflect on the existing legal framework to combat human trafficking in India and contemplate a way forward to curb this evil through effective measures.

CURRENT STATISTICS

In the year 2021, a total of 2,189 cases of Human Trafficking were registered as compared to 1,714 cases in the year 2020. This reveals an increase of 27.7% in crime rate. A total of 6,533 victims are reported to be trafficked of which 2,877 children and 3,656 adults were trafficked. Apart from this, 6,213 victims have been rescued from the clutches of traffickers. A total of 5,755 persons were arrested in 2,189 cases of trafficking.⁴ As per NCRB

² Is an Emmy-Winning documentarian, advisor to the United Nations, and founder of anti-trafficking NGO *Apne Aap*.

³ <https://www.voanews.com/a/in-india-human-traffickers-target-tribal-women-and-girls/7235083.html> (last visited on Oct 24, 2023)

⁴ <https://ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1696831941CI121SNAPStates.pdf> (last visited on Nov 2, 2023).

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data, the conviction in human trafficking cases is very low. Out of 5755 persons arrested only 4120 are charge sheeted and only 64 persons are arrested.⁵

LEGAL FRAMEWORK TO COMBAT HUMAN TRAFFICKING

At present India has several laws to combat human trafficking in one way or the other way. The Constitution of India prohibits human trafficking and its forms under Articles 23 and 24. Human trafficking is dealt with directly or indirectly under sections 360, 361, 362, 363-A, 365, 366, 366-A, 370, 370A, 372, and 373 of the Indian Penal Code and punished accordingly. India has specific legislation in place such as the Immoral Traffic (Prevention) Act, 1956, the Bonded Labour System (Abolition) Act, 1976, the Transplantation of Human Organs and Tissues Act, 1994, The Protection of Children from Sexual Offences Act, 2012. The issue here is in spite of all these legislations there is a surge in human trafficking. Therefore, now let us discuss the Immoral Traffic (Prevention) Act, 1956, and the Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021.

THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956

The Immoral Traffic (Prevention) Act, 1956, was enacted pursuant to India Ratifying the United Nations International Convention for the "Suppression of Women in Traffic in Persons and of the Exploitation in Others" in New York on 9th May 1950. The Act concentrates mainly on the issue of prostitution. The act specifies that keeping and using premises as a brothel⁶, living on the income earned by means of prostitution⁷, pimping, soliciting, seducing a person for prostitution in custody or otherwise⁸, and prostitution in a public area⁹, etc. as an offence. There are provisions for detention in a corrective institution¹⁰, the appointment of a special police officer and advisory board¹¹, the establishment of protective homes¹², special courts¹³, the power to try the case summarily,¹⁴ etc.

⁵ <https://ncri.gov.in/uploads/nationalcrimerecordsbureau/post/1679666438Table147.pdf> (last visited on Nov 2, 2023).

⁶ Section 3, The Immoral Traffic (Prevention) Act, 1956 (Act no. 104 of 1956)

⁷ Section 4, The Immoral Traffic (Prevention) Act, 1956 (Act no. 104 of 1956)

⁸ Section 8, The Immoral Traffic (Prevention) Act, 1956 (Act no. 104 of 1956)

⁹ Section 7, The Immoral Traffic (Prevention) Act, 1956 (Act no. 104 of 1956)

¹⁰ Section 10A, The Immoral Traffic (Prevention) Act, 1956 (Act no. 104 of 1956)

¹¹ Section 13, The Immoral Traffic (Prevention) Act, 1956 (Act no. 104 of 1956)

¹² Section 21, The Immoral Traffic (Prevention) Act, 1956 (Act no. 104 of 1956)

¹³ Section 22A, The Immoral Traffic (Prevention) Act, 1956 (Act no. 104 of 1956)

¹⁴ Section 22B, The Immoral Traffic (Prevention) Act, 1956 (Act no. 104 of 1956)



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Critical Analysis Of The Immoral Traffic (Prevention) Act, 1956

The point to be noted here is that the punishment prescribed for these offenses is inadequate. Moreover, the Act provides for the detention of females if found seducing or soliciting for the purpose of prostitution under section 8 of the Act¹⁵. Under Section 20¹⁶ prostitutes can be removed from the place when a complaint is made to a magistrate. The Act only speaks about protective homes and corrective institutions, where an application is to be filed by the victims themselves under section 19¹⁷. The Act fails to define the forms of

¹⁵ Section 8: Seducing or soliciting for purpose of prostitution.—Whoever, in any public place or within sight of, and in such manner as to be seen or heard from any public place, whether from within any building or house or not—

(a) by words, gestures, wilful exposure of her person (whether by sitting by a window or on the balcony of a building or house or in any other way), or otherwise tempts or endeavours to tempt, or attracts or endeavours to attract the attention of, any person for the purpose of prostitution; or (b) solicits or molests any person, or loiters or acts in such manner as to cause obstruction or annoyance to persons residing nearby or passing by such public place or to offend against public decency, for the purpose of prostitution, shall be punishable on first conviction with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, and in the event of a second or subsequent conviction, with imprisonment for a term which may extend to one year, and also with fine which may extend to five hundred rupees:

1[Provided that where an offence under this section is committed by a man, he shall be punishable with imprisonment for a period of not less than seven days but which may extend to three months.]

¹⁶ Section 20: Removal of prostitute from any place.—(1) A magistrate on receiving information that any 1[person] residing in or frequenting any place within the local limits of his jurisdiction, is a prostitute, may record the substance of the information received and issue a notice to such 1[person] requiring him to appear before the magistrate and show cause why he should not be required to remove himself from the place and be prohibited from re-entering it.

(2) Every notice issued under sub-section (1) shall be accompanied by a copy of the record aforesaid, and the copy shall be served along with the notice on the 1[person] against whom the notice is issued. (3) The magistrate shall, after the service of the notice referred to in sub-section (2), proceed to inquire into the truth of the information received, and after giving the 1[person] an opportunity of adducing evidence, take such further evidence as he thinks fit, and if upon such inquiry it appears to him that such 1[person] is a prostitute and that it is necessary in the interests of the general public that such 1[person] should be required to remove himself therefrom and be prohibited from re-entering the same, the magistrate shall, by order in writing communicated to the 1[person] in the manner specified therein, require him after a date (to be specified in the order) which shall not be less than seven days from the date of the order, to remove himself from the place to such place whether within or without the local limits of his jurisdiction, by such route or routes and within such time as may be specified in the order and also prohibit him from re-entering the place without the permission in writing of the magistrate having jurisdiction over such place.

(4) Whoever,—

(a) fails to comply with an order issued under this section, within the period specified therein, or whilst an order prohibiting him from re-entering a place without permission is in force, re-enters the place without such permission, or

(b) knowing that any 1[person] has, under this section, been required to remove himself from the place and has not obtained the requisite permission to re-enter it, harbours or conceals such 1[person] in the place, shall be punishable with fine which may extend to two hundred rupees not in the case of a continuing offence with an additional fine which may extend to twenty rupees for every day after the first during which he has persisted in the offence.

¹⁷ Section 19. Application for being kept in a protective home or provided care and protection by court.—(1) A 4[person] who is carrying on, or is being made to carry on, prostitution, may make an application, to the magistrate within the local limits of whose jurisdiction he is carrying on, or is being made to carry on prostitution, for an order that he may be—

(a) kept in a protective home, or

(b) provided care and protection by the court in the manner specified in sub-section (3).

(2) The magistrate may, pending inquiry under sub-section (3), direct that the 4[person] be kept in



trafficking, it mainly concentrates on the issue of prostitution. There is no specific provisions for the rehabilitation of the victims of trafficking.

THE TRAFFICKING IN PERSONS (PREVENTION, CARE AND REHABILITATION) BILL, 2021.

Considering the loopholes in 1956 Act, in 2018 a draft bill was introduced but this bill lapsed. However, again in the year 2021 the Ministry of Women and Child Development published the draft Trafficking in Persons (Prevention, Care and Rehabilitation) Bill. This is introduced as a comprehensive law to fight against human trafficking.

The highlights of 2021 Bill are as follows:

- The Bill covers offences committed outside India and cracks down on organised crime syndicates.
- The term “victim” is defined to include transgenders, females, and juveniles as well as other persons to cover offences beyond India.¹⁸
- Crimes are classified into two categories. Firstly trafficking, wherein the maximum punishment is ten years and a fine up to one lakh rupees. Secondly, exacerbated types of trafficking punishable with a death sentence and fine of up to thirty lakhs rupees.
- Prostitution and pornography are recognised as forms of human trafficking.
- Formation of “National Anti-Trafficking Committee” as well as bodies at the State and District level.¹⁹
- Nation Investigation Authority is entrusted with the investigation of cross-border human trafficking.²⁰
- A time limit of 90 days is prescribed for completing the investigation.

such custody as he may consider proper, having regard to the circumstances of the case.

(3) If the magistrate, after hearing the applicant and making such inquiry as he may consider necessary, including an inquiry by a probation officer appointed under the Probation of Offenders Act, 1958 (20 of 1958), into the personality, conditions of home and prospects of rehabilitation of the applicant, is satisfied that an order should be made under this section, he shall, for reasons to be recorded, make an order that the applicant be kept,—

- (i) in a protective home, or
- (ii) in a corrective institution, or
- (iii) under the supervision of a person appointed by the magistrate, for such period as may be specified in the order.]

¹⁸ <https://theleaflet.in/indias-comprehensive-anti-trafficking-bill-to-get-push-from-survivor-groups/> (last visited on Nov 2, 2023).

¹⁹ <https://www.jurist.org/commentary/2021/08/milli-gupta-india-trafficking/> last visited on 2-11-2023.

²⁰ <https://theprint.in/theprint-essential/what-is-draft-anti-trafficking-bill-2021-and-how-it-is-different-from-the-2018-bill/692096/> last visited on 2-11-2023.



- The Bill makes provision for the arrest of public servants, armed forces personnel, or anyone in a position of authority.
- The Bill includes rehabilitation provisions that are not included in Section 370 of the Indian Penal Code.
- The Bill empowers investigating officers to freeze and forfeit bank accounts and property of the accused if they have reason to believe that the same has been obtained by committing the offence of trafficking. It also provides that the proceeds accrued thereto would provide for the treatment, relief, and rehabilitation of the victims. The Bill thus goes beyond jail terms to render the business of trafficking superseded and impracticable.²¹

Critical analysis of the Bill

However, the 2021 Bill is criticised on the grounds that it lacks victim centred approach. It speaks about the rehabilitation and rescue of victims. But in the absence of proper rescue guidelines adult victims may be forcefully rescued when actually they are not willing. In September 2022, the apex court affirmed that “prostitution is not a crime and so an adult female has the freedom to decide her profession”.²² When “forced labour” and “sexual exploitation” are already covered under other laws, the draft Bill leads to confusion as there is an overlapping of laws. The idea of empowering the NIA is not ideal as it is already burdened with the investigation of terrorist activities.

Government initiatives

The Government of India, in collaboration with various NGOs and international partners, has initiated various programs to combat human trafficking. The Government has developed a National Plan of Action to prevent trafficking, protect victims, and prosecute offenders. Also, Anti-Trafficking Units²³ have been established in various states to improve law enforcement efforts to counter trafficking and support victims. The Government of India under the Ministry of Women and Child Development launched the “UJJAWALA” scheme in 2007 to combat human trafficking. A proposed draft scheme “UJJAWALA” in 2019, is a

²¹ <https://delhipostnews.com/anti-trafficking-bill-2021-issues-are-yet-to-delved-into/> (last visited on Nov 2, 2023).
²² <https://www.telegraphindia.com/india/prostitution-is-not-illegal-sc/cid/1866979> (last visited on Nov 3, 2023).
²³ https://www.mha.gov.in/en/divisionofmha/Women_Safety_Division/anti-trafficking-cell (last visited on Nov 3, 2023).



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comprehensive scheme for the prevention of trafficking and rescue, rehabilitation, and re-integration of victims of trafficking for commercial sexual exploitation.²⁴

Rescue and rehabilitation

The Government along with NGOs has established shelters and rehabilitation centres to protect and rehabilitate victims by providing them medical care, counselling, and skill development training to aid them in reintegrating into society.

Awareness and prevention

To sensitize and educate the public about the hazards of human trafficking, public awareness campaigns and community-based programs are conducted. These campaigns should target vulnerable communities.

International cooperation

To combat cross-border human trafficking, the Government of India has signed an MOU with Bangladesh, UAE, and Cambodia. Also ratified the United Nations Convention on Transnational Organised Crime (UNTOC) protocol on the prevention, suppression, and punishment of trafficking in persons, particularly women and children.²⁵

CONCLUSION AND SUGGESTIONS

Human trafficking is an organised crime that violates basic human rights. India lacks an environment that assists and protects victims of trafficking. In spite of many legislations and government initiatives, the issue of human trafficking still remains complex and challenging in India. This situation can be attributed to the sheer scale of the problem, inadequate law enforcement, legal gaps, corruption, and social norms that perpetuate vulnerabilities.

There is a need to provide a victim-centered and human rights approach to tackle the issue of human trafficking. Moreover, the victims should be oriented and protected by the police so that they come forward and participate in the justice delivery process.

The need of the hour is that governmental organizations, non-governmental organizations, civil society, pressure groups, and international bodies, all the stakeholders have to come together to win the battle against human trafficking. Law alone cannot be the instrument to address complex social problems. Human trafficking should not be a matter for discussion only after a disturbing incident takes place and becomes a cover story in the media. It needs sustained and multifaceted efforts involving legislative reforms, law enforcement,

²⁴ <https://wed.nic.in/sites/default/files/Draft%20proposed%20guidelines%20of%20Ujjawala%20Scheme.pdf> (last visited on Nov 3, 2023).

²⁵ https://www.mha.gov.in/en/divisionofmha/Women_Safety_Division/anti-trafficking-cell#:~:text=The%20Government%20of%20India%20has%20signed%20Memorandums%20of%20Understanding%20with%20of%20Trafficking%20in%20Persons%2C%20particularly (last visited on Nov, 4, 2023)

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awareness campaigns, and economic development initiatives to put an end to this menace. If neglected it may fester into a massive problem.

Suggestions

1. It is necessary to organise public awareness campaigns about the dangers of human trafficking. The public should shoulder the responsibility along with the law enforcement officers. The public should be made aware of the importance of reporting suspicious activities. Today it is easy and quick to reach a large audience through social media. The Government should make use of this channel to reach the public.
2. The law enforcement agencies should be strengthened. This can be done by giving effective training to the investigating team on the techniques of investigation. Modern techniques of interrogation like narcoanalysis, brain mapping, and polygraph tests should be adopted.
3. For the successful prosecution of the offenders, victims and witnesses should be protected, so that they come forward to give evidence before the court of law.
4. The vulnerable population like women and children should be provided with education and job opportunities.
5. Strict enforcement of child labour laws is the need of the hour.
6. India should collaborate with neighbouring countries to combat transnational trafficking.

