

HUMAN TRAFFICKING IN INDIA BY MS. RIYA
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The definition of trafficking continues to be the subject of debate, and there is no conclusive or even commonly agreed definition world over, regionally or even nationally.¹ People are often confused by various other very closely related phenomena similar to trafficking such as Migration, Smuggling of people and Prostitution hold particular importance.² It seems reasonable to study these following concepts with Trafficking because all these are entwined. But sometimes mixing these concepts gives a very ambiguous set of objectives not particularly related to trafficking. Hence sometimes “mixing trafficking and migration or other processes can be counterproductive in addressing the complex trafficking issues.”³

Human trafficking is the getting hold of people by inappropriate means such as force, deception or fraud, with the aim of exploiting them. Smuggling migrants for financial or other material benefit of illegal entry of a person into a State of which that person is not a national or resident.

Practically every country in the world is affected by these crimes. The test for all countries, rich and poor, is to mark the criminals who take advantage of desperate people and to guard and aid victims of trafficking and smuggled migrants, many of whom suffer unimaginable hardships in their bid for a better life.⁴ So trafficking should be given importance and should be defined separately so that there is no ambiguity and proper distinction can be done.

Popular perception that is still prevalent uses trafficking synonymously with prostitution. “The historical understanding of trafficking in international law has been focused primarily on the movement of women and girls across borders for the purpose of prostitution.”⁵ But this doesn’t provide a clear picture it leaves out many other purposes for which trafficking is done such as domestic labour, forced marriage, unregulated industrial and agricultural sites, etc. Similarly Trafficking needs to be understood in a different manner than migration and smuggling of people. Trafficking and migration involves identical way of proceeding towards the act of recruitment and transportation.⁶ are common initial phases.

Palermo Protocol marks a major shift in the concept of trafficking and takes a much broader approach. The most significant feature being that it recognizes exploitation as the most

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¹ Save Children Alliance (UNICEF), Trafficking of Women and Children in South Asia Taking Stock and Moving Ahead. A Broad assessment of Anti-Trafficking Initiative in Nepal and India, 1999.

² Donna M. Hughes, “Sex and Race Discrimination against Victims of Commercial Sex Acts,” March 2004, Unpublished

³ Md. Azad, Ambiguous and Confusions in the Migration-Trafficking Nexus: Developing Challenge, 2005

⁴ Aronowitz, Alexis A. *Human Trafficking, Human Misery: The Global Trade in Human Beings*, Greenwood Publishing Group, Westport.

⁵ Save Children Alliance (UNICEF), Trafficking of Women and Children in South Asia Taking Stock and Moving Ahead. A Broad assessment of Anti-Trafficking Initiative in Nepal and India, 1999

⁶ Ibid.

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(International Monthly Journal, I.S.S.N 2321 6417)
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important element. In order to conceptualize the whole picture of human trafficking it is imperative that the misery and sufferings of victims is not ignored. Similarly the process of trafficking doesn't have to be important; it is the person who is trafficked is more important.

Trafficking is not just about physical trauma it is much more about Human Rights violations and long term physical and mental trauma that a trafficked person has to go through.

Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children,⁷ (also known as the first Palermo Protocol or the Trafficking Protocol) which supplements the United Nations Convention on Transnational Organized Crime defines the transnational organized crime of trafficking as follows:

“Trafficking in persons shall mean 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 of the giving or receiving 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...”⁸.

Many nations have not described trafficking in their national laws at all and where trafficking has been defined the definitions frequently fluctuate and are not always consistent with internationally acknowledged ones. Some countries have incorporated the meaning from the Palermo Protocol whereas others have termed the offence in a different way.⁹

In numerous reports India is pointed as a “foundation, end, and passage country.” The vast inhabitants and locale seem to be contributory factors for this. It is less probable that somebody would be caught trafficking amid the residents. The amount of precincts that India shares with its neighbours adds to the predicament. China, Nepal, Bangladesh, and Pakistan all have been notorious as countries with a substantial quantity of human trafficking.¹⁰ It is also assured that many businesses in India involve physical work, which is also a cause. In India, over the last decade, the level of human trafficking has augmented even though the fact that the accurate statistics are not known, it is one of the most money-making illegal trades, next to armaments and substance smuggling undertaken by extremely structured illicit organisations.¹¹

Reported crimes have totalled up to 3,554 as per the national crime data as compared to 3517 during the year 2011. There has been an increase of 1.1. % during the year 2012. 3,029 cases were reported relating to human trafficking in 2008 and in 2009 it was 2,848 and in 2010 it reached upto 3,422. So we can see a steep rise in the number of crimes. On the other hand crime rate has not increased it is stagnant at 0.3 as it was in 2011.

⁷ Retrieved from <http://www.unodc.org/unodc/en/human-trafficking/index.html> on 5th May, 2015 at 1:10pm.

⁸ Retrieved from http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf on 2nd May, 2015 at 6:45pm.

⁹ Shelley, Louise. *Human Trafficking: A Global Perspective*, Cambridge University Press, Cambridge.

¹⁰ Retrieved from <http://traffickingnews.wordpress.com/category/supreme-court/> on 1st May, 2015 at 10:30 am.

¹¹ Retrieved from [http://www.ncpcr.gov.in/Acts/Immoral_Traffic_Prevention_Act_\(ITPA\)_1956.pdf](http://www.ncpcr.gov.in/Acts/Immoral_Traffic_Prevention_Act_(ITPA)_1956.pdf) on 4th May, 2015 at 11:00am.

To do a trend analysis of the whole situation cases of human trafficking have increased by 17.3% over 2008. Cases of Importation of girls have decline by 26.3%. Procuring of minor girls which is an offence under Sec 366 of IPC has accounted for 6.1% decline over 2011 on the national bases. Selling girls for prostitution which is an offence under Sec. 372 IPC as seen a decline of whopping 44.2% over 2011. Buying girls for prostitution has also decreases by 44.4% as 15 cases were reported. This doesn't gives a perfect pictures because most of the times the incident goes unreported so there is no reliable and foolproof way to find out about the overall situation. There were 2,345 incidences reported under Immoral Traffic (Prevention) Act, 1956. Cases under IPTA has increased by 5.3% compared to previous year.¹²

Human trafficking, as sociologist Kevin Bales explains is the—modern day slavery, is the second largest and fastest growing illicit activity in the world. Women and girls are disproportionately affected by trafficking, as criminal syndicates exploit women and girls in marginalized socioeconomic conditions, coercing women and girls into sexual slavery and or forced labor. When women and girls are trafficked for the purpose of sexual slavery and prostitution, it is called sex trafficking.

For ages, the commercial sex trade has been the chief destination for trafficked girls in India.¹³ Sex tourism involving underage girls still remains a highly profitable business, a billion-a-year industry in 2009, with a 30 percent increase from previous years.¹⁴

India is listed in the Tier II list of the United Nations which includes countries which have failed to combat human trafficking. India continues to be a source, destination and transit country for forced labour and sex trafficking. According to a report by the Ministry for Women and Child Development, India has nearly 2.5 million prostitutes in nearly 300,000 brothels in 1,100 red-light areas across the country. 90% or more estimated as in-country and 5 to 10% to cross-border trafficking, reported mainly from Bangladesh and Nepal. The routes of trafficking do not exclude Europe and specifically to UK and United States.¹⁵ Around 1.2 million children are involved in prostitution in India.

India's biggest trafficking problem has been linked to men, women, and children who are held in debt bondage and face forced labour working in brick factories, rice mills, and other small scale rural workings. While no inclusive study of forced and bonded labour has been concluded, NGOs have calculated approximately that this problem affects 20 to 65 million Indians.¹⁶ Women and girls are trafficked inside the country for the purposes of commercial sexual exploitation and forced marriage especially in those areas where the sex ratio is extremely distorted in favour of men. Children are forced to work in factories or employed as agriculture workers, and however some others have been used as armed combatants by some terrorist and rebel groups.

Cities well known as religious and pilgrimage sites have been also infested by child sex tourism. Rampant trade of women and girls is carried out in Nepal, Bangladesh and a rising

¹² Crimes in India, National Crime Records Bureau, Ministry of Home Affairs, 2012.

¹³ P. M. Nair, Sankar Sen, *Trafficking In Women And Children In India* (Orient Blackswan) 2005.

¹⁴ Jody Raphael and Deborah L. Shapiro. *Sisters Speak Out: The Lives and Needs of Prostituted Women in Chicago. A Research Study*, Center for Impact Research, August 2002

¹⁵ India, Trafficking in Persons Report 2008. U.S. Department of State (June 4, 2008)

¹⁶ *Supra* Note 4.

number of females are trafficked from Uzbekistan, Ukraine and Russia.¹⁷ There were escalating reports of females trafficking from north-eastern states and Odisha and girls who are subjected to servile marriages in these states with low female-to-male child sex ratios, including Haryana and Punjab, and also reports of girls subjected to transactional sexual exploitation in the Middle East under the semblance of temporary marriages, Maoist also recruit children for their works. The Government of India does not fully conform to the minimum standards for the exclusion of trafficking; however, it is making considerable pains to do so. The Ministry of Home Affairs (MHA) continued to establish Anti-Human Trafficking Units (AHTUs)¹⁸, which were responsible for combining law enforcement and rehabilitation efforts.¹⁹ The Central Bureau of Investigation launched an anti-trafficking unit in the reporting period and gave investigation authority under trafficking-related laws to all its police officers. Challenges remain regarding overall law enforcement efforts against bonded labour and the alleged complicity of public officials in human trafficking.²⁰

A need was felt for engaging formal and voluntary agencies which are working in the field of combating trafficking as it would enhance the quality and objectivity of the research. NGOs, civil society, family, etc also play a very important part in combating the evil of human trafficking.

Government organisations such as National Human Rights Commission has an action oriented approach towards protecting and preventing human trafficking. NHRC is mandated to “undertake and promote research in the field of human rights and also undertake any function as it may consider necessary for the promotion of human rights.” Therefore NHRC wanted to study to be action-oriented, under its power conferred under Section 12 (g) of the Protection of Human Rights Act 1993.

Perpetual Factors

The Notion of trafficking is created by demand, supply and impunity with which the trafficking occurs. Sex trafficking is mainly determined by a demand for women’s and children’s bodies in the sex industry, fuelled by a supply of women denied them equal opportunities and rights and education advancements.

Insufficient and inadequate laws, poor enforcement, ineffective penalties, minimal chances of prosecution, the relatively low risks involved all play a role in perpetuating factors in trafficking.

People protesting against trafficking are not enough they are still in minority it is very difficult to fight against this evil. Families or people you are getting their living through this will never utter a word. In the absence of reliable data and awareness this problem creates a lack of seriousness, which provides opportunity for this crime to flourish.

According to National Crime data there has been no available data on the scope of trafficking information other than prostitution/ commercial sex workers in available sources.

¹⁷ Donna M. Hughes and Tatyana Denisova. “The Transnational Political Criminal Nexus of Trafficking of Women in Ukraine,” *Trends in Organized Crime* Vol. 6, No. 3-4: Spr.-Sum., 2001.

¹⁸ Retrieved from <http://mha.nic.in/pdfs/Advisory-on-HTrafficking-150909.pdf> on 1st May, 2015 at 9:00 pm.

¹⁹ Retrieved from (equalityindia.wordpress.com) on 2nd May, 2015 at 3:40m.

²⁰ Retrieved from <http://www.gujaratglobal.com/2011-10-20-13-20-43/953-mha-institutes-awards-to-check-human-trafficking.html> on 3rd May, 2015 at 5:01pm.

Indian ministry of Home Affairs collects data on trafficking through state crime report Bureaus and Union territories. Data that is made available to NCRB is collected through first information reports (FIRs), lodged in police stations. National data from NCRB gives an in-depth investigation trends in various Indian Penal Code (IPC) crimes, including: importation of girls, kidnapping and abduction of girls' etc. Offences under Immoral Trafficking Prevention Act (IPTA) which are made from information gathered from state and union territories. Taking in mind the nature of the crime there is no guessing that there is very inadequate data available on the extent of trafficking. As per one estimate, 50% of the trafficked victims worldwide are children

Legal Framework and Laws Dealing With Trafficking

India has a fairly wide framework of laws enacted by the Parliament as well as some State legislatures, apart from provisions of the Constitution which is the basic law of the country.

Article 23 of the Constitution²¹ It talks about rights against exploitation, prohibits human trafficking and forced labour.

Article 24 of the Constitution²² - It prohibits employment of children below 14 years of age in factories, mines or other hazardous employment.

- Under Indian Penal Code, 1860 there are 25 provisions relevant to trafficking; significant among them are:

Prohibitions on acquiring of a minor girl (below 18 years of age) from one part of the country to another are punishable.²³ Importation of a girl below 21 years of age is punishable.²⁴ Also provides punishment for compelling any person to labour against his will.²⁵

Immoral Traffic (Prevention) Act, (ITPA) 1956 [renamed as the Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA)] deals exclusively with trafficking; objective is to inhibit / abolish traffic in women and girls for the purpose of prostitution as an organized means of living; offences specified are taking or detaining persons for prostitution; prostitution in public places; living on the earnings from prostitution; keeping a brothel and allowing a place to be used as brothel.

Child Labour (Prohibition and Regulation) Act, 1986- It prohibits employment of children in certain specific occupations and also lays down conditions of work of children.

Information Technology Act, 2000- Punishment is given for publication or transmission in electronic form of any material which is in electronic form, any material which is lascivious or has any relation to pornography. The law has relevance to addressing the problem of pornography.

²¹ Article 23, The Constitution of India.

²² Article 24, The Constitution of India.

²³ Section 366A, IPC 1860

²⁴ Section 366B

²⁵ Section 374

India has also adopted a code of conduct for Internet Service Providers with the objective to articulate and uphold high standard of ethical and professional practises in the field of Internet and related services.

Juvenile Justice (Care and Protection of Children) Act, 2000- It was enacted in consonance with the Convention on the Rights of the Child (CRC); and it also incorporates and amends laws relating to juvenile care and protection. The law is especially relevant to children who are exposed to the danger of trafficking.

Karnataka Devadasi (Prohibition of Dedication) Act, 1982- Act of dedication of girls for the ultimate purpose of engaging them in prostitution is declared unlawful – whether the dedication is done with or without consent of the dedicated persons.

Andhra Pradesh Devadasi (Prohibiting Dedication) Act, 1989- Penalty of imprisonment for three years and fine are stipulated in respect of anyone, who performs, promotes, abets or takes part in Devadasi dedication Ceremony.

Goa Children's Act, 2003- Specially defines trafficking and every type of sexual exploitation is included in the definition. Special point taking in consideration the locales of Goa is that the responsibility of safety of children in hotel premises is assigned to the owners and managers of the establishment. Photo studios are periodically checked in case they have not sought any obscene photographs of children. Stringent measures are established to protect children from child trafficking and pornography.

THE IMMORAL TRAFFIC (PREVENTION) AMENDMENT BILL, 2006

The Immoral Traffic (Prevention) Act, 1956 makes trafficking and sexual exploitation of persons for commercial purpose a punishable offence. The Act was passed keeping in mind the International Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, signed by India on May 9, 1950. Although the Act was amended twice (1978 and 1986), it did not establish to be an effective restraint to trafficking or sexual exploitation for trade purposes.²⁶ The Immoral Traffic (Prevention) Amendment Bill, 2006 aims to punish traffickers and provide for stringent punishment to offenders.²⁷

International Convention for the Suppression of Immoral Traffic in Persons and the Exploitation of the Prostitution was ratified by Indian Government in 1950 ,later it passed the Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA). The act was further amended and changed in 1986, resulting in the Immoral Traffic Prevention Act also know as PITA. Setbacks of PITA were that it only discussed trafficking in relation to prostitution and not in relation to other purposes of trafficking such as domestic work, child labour, organ harvesting, etc. The subsequent result is that that the sketch of the provisions in this law that pertains to children below the age of 18.²⁸

²⁶Retrieved from <http://legalservicesindia.com> ; Extent to Which Immoral Trafficking is Addressed by Akhila Bansali on 4th May, 2015 at 2:00pm.

²⁷ Kara, Siddharth. *Sex Trafficking: Inside the Business of Modern Slavery*, Columbia University Press, Columbia

²⁸Retrieved from <http://childlinepathanamthitta.wordpress.com/2011/12/27/immoral-traffic-prevention-act-1986/> on 1st May, 2015 at 2:30 pm.

This act defines that a child is any person who has not completed eighteen years of age. Further it goes on defining 'prostitution' and the offence of 'trafficking in person'. The act has provisions that delineate the illegality of prostitution and the punishment for owning a brothel or a similar establishment, or for living of earnings of prostitution as is in the case of a pimp. The person will be punishable with imprisonment for up to 3 months or fined up to Rs 20,000 or with both. On subsequent conviction, he can be imprisoned for a maximum period of six months and fined up to Rs 50,000.²⁹ It states that if a person procures, induces or takes a child for the purpose of prostitution then the prison sentence is a minimum of seven years but can be extended to life. To ensure that the people in the chain of trafficking are also held responsible the act has a provision that states that any person involved in the recruiting, transporting, transferring, harbouring, or receiving of persons for the purpose of prostitution if guilty of trafficking. In addition any person attempting to commit trafficking or found in the brothel or visiting the brothel is punishable under this law.³⁰ It has made provisions for in-camera trials. And trafficking in persons was added to the offences listed in the Money Laundering Act, 2002.³¹

Objective of the Bill is to combat trafficking in persons for sexual exploitation. It does not make prostitution illegal. It addresses the issue of trafficking through both supply sides (by measures to punish traffickers) and demand side (penalties for clients) mechanisms. There are three issues that need to be considered. First, whether prostitution ought to be a legitimate way of earning a living if the person enters or stays in the profession out of choice. Second, whether the demand side mechanism of punishing clients would be the best way to tackle trafficking. Third, whether trafficking in persons for purposes other than sexual exploitation would be penalised.

In 2006, the Ministry of Women and Child Development in their proposed amendment bill related to many important consequences for the right of women sex workers.

In 1998, Ministry of Women and Child Development has formulated a National Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children with the objective to mainstream and to reintegrate the women and child victims of commercial sexual exploitation in society. Certain amendments were also proposed to widen the scope of Immoral Traffic (Prevention) Act, 1956, to make its implementation more effective.³²

Role of State in Combating Trafficking

Human trafficking requires several types of intervention from all spheres of society. There is lack of awareness and sensitization among public, especially among the vulnerable sections.

The Government should create compulsory education, employment opportunities and programmes to generate income. Government should come ahead with new ways to educate the people and create awareness about trafficking. Government should introduce gender

²⁹ Article 1,ITPA

³⁰ Retrieved from <http://www.childlineindia.org.in/Immoral-Traffic-Prevention-Act-1986.htm> on 2nd May, 2015 at 6:35pm.

³¹ Retrieved from <http://www.childlineindia.org.in/CP-CR-Downloads/Immoral%20Traffic%20Prevention%20act%201956.pdf> on 2nd May, 2015 at 6:45pm.

³² Retrieved from <http://wcd.nic.in/> on 1st May, 2015 at 7:00pm

centred education curriculum in schools and introduce subjects of child abuse and trafficking. There are many international laws conventions and guidelines which they should try and incorporate in the nation's domestic laws.

Role of NGOs

NGOs play a very big part in creating awareness in the society, where government proves to be inefficient. NGOs should motivate the society to be vigilant about any irregular movement in the society. NGOs working in rural areas should ensure that the parents are well ensure and aware of the safety of migration practices that usually occur in villages.

Role of Media

Media called the forth pillar of judiciary has taken an active role in creating awareness. Media can play a very big role in preventing trafficking by sending the message of awareness to every nook and corner. Media can transmit appropriate messages to ensure that the victims do not feel cornered or alone. Usually the victims are so much traumatized that they do not know what to do with their lives after going through so much. NGOs cannot always locate the victims, Media on the other hand has much wider reach it can make victims aware of places and institutions where they can seek justice. Media can create awareness that trafficking is inappropriate and illegal and has negative consequences. Legal, provisional provisions against trafficking should be highlighted and mode of operation of traffickers and their ways and means.

Recommendations for India

Recommendations for India will be to develop a comprehensive anti- trafficking law or to amend anti-trafficking legislation to be in synch with the 2000 United Nations TIP Protocol, with satisfactory penalties approved by the UN Transnational Organized Crime Convention; increase prosecutions and convictions on all forms of trafficking, including bonded labour; prosecute officials supposedly complicit in trafficking, and convict and punish officials complicit in trafficking; push states to establish special anti-trafficking courts; improve allocation of state and central government rehabilitation funds to victims under the Bonded Labour (System) Abolition Act (BLSA); develop protections for trafficking victims who testify against their traffickers; encourage AHTUs to address both sex and labour trafficking of adults and children; encourage state and district governments to file bonded labour cases under appropriate criminal statutes; improve central and state government implementation of protection programs and compensation schemes to ensure that certified trafficking victims receive benefits; and increase the quantity and breadth of public awareness and related programs on bonded labour.³³

Conclusion

India is one of the predominant countries as both the origin and end point for human trafficking. According to estimates ninety percent of Indian's trafficking scenario is domestic whereas ten percent is international which is a totally different from the global scenario. Taking India's size into perspective, human trafficking happens across state borders. While no comprehensive study of forced and bonded labour has been completed, NGOs estimate

³³ *Supra* Note 17.

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(International Monthly Journal, I.S.S.N 2321 6417)

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this problem affects 20 to 65 million Indians. Trafficking has social, health and economic impacts. Socially it causes the imposition of patriarchal values which leads to subjugation of women. Health wise it increases the risk of STD's and AIDS. Lastly, economically it causes a loss of livelihoods as the employment remains outside the formal economy of India. These are the major issues in India regarding trafficking. The causes of trafficking in India are marginalisation of women, patriarchal society, low regard for women's rights; low level of education, low employment and various other cultural factors but the main cause of trafficking has been identified as poverty.

The major thrust of the government's efforts is aimed at prevention and protection and not towards prosecution and the absence of compensation schemes is also a hindrance. The want for a definition of "trafficking" is a must as it needs to be differentiated from prostitution. The suggestion for adoption of the definition of trafficking as it is in Palermo Protocol is a must as it is all encompassing. Then, there is a need for more stringent measures and cooperation between NGO's and the state to eradicate the problem. From border control to providing employment and education both these institutions need to join hands and work together. Now there are clear cut mentions of the international protocols present to combat this problem and the remedies provided by Indian laws. The gap between the two and the gaping holes in Indian laws are clearly seen. There is a strong need for adaption of some of the provisions of these laws as they have proved effective in the international scenario as well. From evident definitions to the presence of a group of highly trained professionals, all these could easily be encompassed in Indian laws with a few amendments or the formulation of new laws to curb this problem at a national level. Identification of the causes and the need for a higher rate of prosecution is a must if this crime is to be rooted out entirely.

These are the major problems regarding human trafficking in India and the brief outlining of the plausible solutions to them. It is time we take a stand and root out the evil that is pervading our society and damaging our ethnic roots.