

TRAFFICKED CHILD VICTIMS: CHALLENGES AND RESPONSES BY Dr. R. SEYON *

Introduction

Trafficking in women and children is the gravest form of abuse and exploitation of human beings and the worst form of crime. The Crime of human trafficking has emerged as one of the most formidable challenges of the new millennium. Human trafficking remains the third most profitable illicit trade, after that of arms and drugs. This immoral trafficking is linked to other organized crimes like human smuggling, drug trafficking, and money laundering. *Tamil Nadu ranks first in immoral trafficking*, followed by Karnataka, Andhra Pradesh and Maharashtra and Kerala; Delhi, the National Capital, is on the top in the chart of Union Territories, as per the Home Ministry Data for 2007, reported on May 10, 2010. The laws are especially relevant to children who are vulnerable and are likely to be inducted into trafficking. Further, the “sensitive judges” have ensured victim-friendly ambience in the court to the extent possible. Despite of having so many legal provisions and various statutes and judiciary, the guardian of justice, is very sensitive to the core of the issue, the trafficking is not eliminated altogether. The various conditions force the victim to succumb to this evil. Immoral trafficking is prevalent in the society from the ancient times so it is difficult to combat trafficking.

It is hard to look for the light when you are lost in darkness

The *cross border trafficking* is increasing alarmingly in India. Every year a mammoth chunk of women and children are being migrated from Nepal and Bangladesh and many of them are absorbed in the flesh market of human beings in India. West Bengal is the main transit point in India for Nepal and Bangladesh involving cross border trafficking.

The developing countries for earning more money encourage tourism by foreigners and they take advantage of the situation. In Third World Countries, still now, it is not very difficult to get a poor child for sex by spending some money and India is not an exception. Large number of tourists visits India from Europe and America each and every year with the object of “sex tourism”, leading to sex enjoyment. Trafficking in children is on rise and most of the victims of trafficking are below 18 years of age (NCRB, 2005). Among women, men and children trafficked annually, the majorities are girls and women of there, over fifty percent are children (UNFPA Report, Aug.2007). Practice of *child trafficking is economically unsound, psychologically disastrous and morally dangerous and harmful* even on individual child.

Trafficking of children is defined as the recruitment, transport, transfer, harbouring or receipt of person under the age of 18 for the purpose of exploitation including prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organ.

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Trafficked children have to play *many roles* such as prostitutes, mail order brides, beggars, child soldiers, and labourers in homes or plantations and in mines. They are also recruited to aid in the manufacture of drugs and weapons.

Definition of Trafficking

Oxford English Dictionary defines Traffic as “trade, especially illegal (as in drugs)”. Merriam-Webster Dictionary defines Human Trafficking as: “organized criminal activity in which human beings are treated as possessions to be controlled and exploited (as by being forced into prostitution or involuntary labour)”

In a landmark judgment of “*Raj Bahadur v. Legal Remembrancer*”¹, the Calcutta High Court defined trafficking in human being as selling and buying of men and women like goods and includes trafficking in women and children for immoral or other purposes.

The legal definition of “severe forms of trafficking in persons” as defined in the “U.S. Trafficking Victims Protection Act, 2000” is: Sex trafficking in which a commercial sex act is inducted by force, fraud, or coercion, or in which the person inducted to perform such an act has not attained 18 years of age.”

Factors Contributing Human Trafficking

Human trafficking is being carried out throughout the world, with the victims having many personal and societal reasons. In descending order of significance the reasons are: poverty and unemployment, lack of proper reintegration services, lack of options, stigma and adverse social attitudes, family expectations and pressure, resignation and acclimatization to the lifestyle.

Also trafficking is done for labour-bonded labour, agricultural labour, construction work, domestic work etc., illegal activities –begging, organ trade drug peddling, smuggling; sexual exploitation –forced prostitution socially and religious sacrificed forms of prostitution, sex tourism, pornography; entertainment and sports – circus, dance troupes, beer bars etc., camel jockeys, take marriages, as child soldiers or combatants in armed conflicts, lack of birth registry system, etc. The trauma that a child undergoes is extreme and even unimaginable.

Human trafficking can be referred to as modern-day-slavery. Almost all countries abolished slavery, but it still exists all over the world with a changed face namely – *Human trafficking*. Trafficking is not only an act of degradation of moral values but also an act of human rights abuse. Trafficked women and children are used for a variety of purposes, like prostitution, domestic work, and camel jockeying, illegal adoption of children, organ transplant, begging drug trafficking, forced marriage and various other exploitative forms of work. Both demand and supply factors relentlessly drive the trafficking operations.

¹. AIR 1953 Cal 522

Multiple causes are responsible for perpetuating problem of Human Trafficking. Some of the key push factors are inadequate employment opportunity, absence of social safety net, and globalization, open border facilitating movement of population. Other factors are erosion of old family system, unabashed pursuit of consumerism and practice in some community of dedicating girls to gods and goddesses. In India, social acceptance of prostitution in some communities encourages this reprehensible trade.

Effects of Immoral Trafficking include many diseases in this pathetic process which end up with advanced stage of STD. The effect on child cannot be erased but to a certain extent can be minimized by the medical help. The victims who suffer from STD in India are mostly found to be affected by tuberculosis, meningitis scabies, chronic pelvic infections anaemia syphilis, chaneroid, tineacruits, ververcal war etc., Victims of trafficking are frequently exposed to physical and sexual abuse, dangerous work environments and denied access to education. Trafficking has a frequent *catastrophic long-term effect on the mental and physical health of its victims* and sustains poverty and marginalisation. The social, psychological and moral consequences are serious lifelong and even life threatening – threat of unwanted pregnancy, maternal mortality, torture, physical injury, physical disease including the presence of HIV/AIDS;

Legal Framework to Combat Human Trafficking in India

The **Constitution of India, 1950** contains provisions to curb trafficking; The **Indian Penal Code, 1860** with some provisions deals with traffic in human beings as punishable. The provisions of the **Constitution of India**, Articles 14, 15, 16, 23, 39, 46 and 51A do not expressly talk about trafficking but form a part to curb trafficking. Among these articles, Article 23 expressly talks about prohibition on trafficking in human beings: Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. Article 24 of the Constitution prohibits employment of children below 14 years of age in factories, mines and other hazardous employment; Articles 23 and 24 of the Constitution determine the term “child labour”; Section 366A of the **Indian Penal Code, 1860** makes procurement of minor girl (below 18 years of age) from one part of the country to the another a punishable offence. Section 366B views importation of girl below 2 years of age as punishable. Section 374 of the code provides punishment for compelling any person to labour against his will. The **Indian Penal Code** and the **Criminal Procedure Code** have separate provisions prohibiting traffic in human beings.

The **Suppression of Immoral Traffic in Women and Girls Act, (SITA) 1956**., drastically amended and renamed as the **Immoral Traffic (Prevention) Act, (ITPA) 1956**, a special legislation, deals exclusively with trafficking with an object to inhibit / abolish traffic in women and girls. ITPA is successor of SITA; the **Immoral Traffic (Prevention) Amendment Bill, 2006** aims to punish traffickers and provide for stringent punishment and penalties to offenders.

The offences specified under the ITPA, 1956 are: procuring, including or taking persons for prostitution; detaining a person in premises where prostitution is carried on; prostitution is in visibility of public places; seducing or soliciting for prostitution; living on

the earnings of prostitution; reduction of a person in custody; and keeping a brothel or allowing premises to be used as a brothel.

The **Juvenile Justice (Care and Protection of Children) Act, 2000** passed as a result of **Convention on the Rights of the Child (CRC, 1989)** sets out the punitive and rehabilitative provisions and protection of human rights. This law is especially relevant to children who are vulnerable and are likely to be inducted into trafficking. The **Information Technology Act, 2000**, penalizes publication or transmission in electronic form of any material which is lascivious or appeals to prurient interest. This law has relevance to addressing the problem of pornography. The standards are set forth regarding implementing procedures by the **International Conventions related to child prostitution and Child Pornography, 2000**.

The **Child Marriage Restraint Act, 1929** sets out the legal age for marriage of girls as eighteen and for boys as twenty one. By virtue of this Act, the Court is empowered to issue injunctions to prohibit child marriage. This Act enables to stop the cases of fake marriages and forbids such unlawful acts; the **Child Labour (Prohibition and Regulation) Act, 1986** prohibits employment of children in certain conditions of work of children.

Judicial Attitude for Prevention of Trafficking In Women and Children

The cases decided by the Supreme Court in the first quarter century after Independence in India have focused mostly on punishment perspective of traffickers and less on rescue and rehabilitation perspective. However in later years, a shift in the judicial response to the growing menace of immoral trafficking is noticed, where Courts have emphasized more on the rehabilitation aspect of the victims of the prostitution including inmates of Protective Home etc.,

In *Kamalabai Jethamal v. State of Maharashtra*², the Bombay High Court which had set aside the order of acquittal of the appellant and sentenced her to undergo one year rigorous imprisonment and evicted her from the premises which she was occupying as tenant. The main charge against the appellant was that she supplied girls for prostitution to a named person and kept/managed a brothel at a named place. She lived on the earnings of prostitution and procured women for this purpose. The police laid a trap and sent two named persons to complete the assigned job, later these persons were used as witnesses and the entire evidence produced before the High Court was including recovery of given money showed that the appellant under Section 3 of the SITA. Hence the appeal was dismissed.

In *Krishnamurthy Alias Tailor Krishnan v. Public Prosecutor*³, Madras, the Supreme Court observed that circumstances about the place and the person keeping it can be nothing else than the place was being used as a brothel and the person in charge was so keeping it. Dismissing the appeal the court further observed that 'it is not necessary that there should be evidence of repeated visits by persons to the place for the purpose of prostitution. A single instance coupled with the surrounding circumstances is sufficient to establish both that the place was being used as a brothel and that the person alleged was so keeping it'.

². AIR 1962 SC 1189

³. AIR 1967 SC 567

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In *Bai Radha v. State of Gujarat*⁴, the Supreme Court while dismissing the appeal observed that a search which is to be conducted under SITA 1956 must comply with the provisions contained in Section 15, but it cannot be held that if a search is not carried out strictly in accordance with the provisions of that section the trial is rendered illegal.

In *Upendra Baxi v. State of U.P.*⁵ a letter which was treated a writ petition brought to the notice of the Apex Court the Conditions in which girls/women were living in the Government Protective Home at Agra, were being denied their right to live with basic human dignity in that Protective Home. Several directives were issued by the Court inter-alia; include setting up of a Board of Visitors.

The Supreme Court of India has passed two important judgments on the subject of rescue and rehabilitation programmes and the commercial sexual exploitation of women and children in India.

The Apex Court showed its great concern about immoral trafficking in *Vishal Jeet v. Union of India*,⁶ by observing that prostitution always remains a running sore in body of civilization and destroys all moral values. This case has brought into sharp focus the miseries of many more victims being exploited by the highly organized profession of prostitution. In *Vishal Jeet's case* Justice S.Ratnavel Pandian recalled that parents owing to acute poverty and unbearable miseries sold their teen-aged female children for paltry sum hoping that they would be engaged in household duties or manual labour but subsequently pimps or brokers in the flesh trade and brothel keepers forcibly land them into *flesh trade*. The Court observed this malady is not only a social but also a socio-economic problem and, therefore, the measures that are to be taken in that regard should be more preventive than punitive. The Supreme Court further issued some remedial and preventive directions to all State Governments and Union territories to setup Advisory Committees within the respective zones.

In the case of *Gaurav Jain v. Union of India*,⁷ the plight of prostitutes and fallen women in the flesh-trade and their progeny was highlighted. In this case the *Supreme Court of India was concerned more with the rehabilitation aspect than with prevention of the crime*. The Court emphasized on the review of the relevant law in this behalf, effective implementation of the scheme to provide self-employment, training in weaving, knitting, painting and other meaningful programs to provide the fallen women the regular source of income by self-employment or after vocational education or the appropriate employment or after vocational education or the appropriate employment generating schemes in Governmental Semi-Governmental or private organizations.

Feeling stunned and horrified at the agony of the female child and the manner of their being traded like commodity, the Apex Court gave precious piece of judicial legislation for evolving a procedure to prevent illegal sale of children in the grab of adoption by child

4. AIR 1970 SC 1396

5. AIR 1987 SC 191

6. AIR 1990 SC 1412

7. AIR 1997 SC 3021

welfare agencies in *Laxmikant Pandey v. Union of India*⁸. In this leading case the court issued several directions regarding adoption of Indian Children by foreign parents.

*Prajwala v. Union of India*⁹ is case which has come up before the Apex Court in the form of public interest litigation wherein the question of protection of women has been raised in the context of Immoral Traffic (Prevention) Act, 1956. The Supreme Court showed concern for creating a monitoring agency to have a look on the activities of Protective Homes and desired that National Legal Services Authority should also be made a party to the petition. In this case, the observations, of the Apex Court as well as the submissions of the Solicitor General exhibit of fair amount of concern towards victims of trafficking and their rehabilitation.

In the Supreme Court in *State of Maharashtra v. Mohammad Sajid Husain*,¹⁰ held that in cases involving such as one punishable under section 376 of IPC and Section 5 of ITPA, should be investigated thoroughly by the investigating agency and victims who are lured or coerced for immoral trafficking should be accorded protection. This case brings about some new hopes for this discarded and neglected segments of the society, Justices S.B. Sinha and H.S. Bedi speaking for the bench stated that if the accused had taken a girl to hotel, Government, guest house or even on occasions to his own apartment and staring behaving indecently with her and even if the prosecutrix -girl was a girl of easy virtue, made statement there after implicating the respondent accused as such and gave statements under 164 of Cr.PC and her evidence should not be rejected out rightly.

In Supreme Court of India in *Majappa v. State of Karnataka*¹¹ held that if the accused appellant had kidnapped a girl of 13 years age from her house and had sold her to a brothel house for the purpose of prostitution. In these circumstances he is surely liable under section 316-A, 372 and 373 IPC. Further the accused, which used to engage her daily for prostitution against her wish, be accorded deterrent punishment as it is an offence under section 5 of Immoral Traffic (Prevention) Act, 1956. There should therefore be proper rehabilitation and reintegration programmes for those who return to their homes.

Preventive Measures

- A high level of *legal reforms are* needed for combating this menace. An exclusive enactment like that of the **U.S. Trafficking Victims Protection Act, 2000**, may be thought of to attend the ills of trafficked women and children in India.
- Trafficking for commercial sexual exploitation of women and children is a fundamental violation of the rights of women and children. The *problem of trafficking requires essentially human rights perspective* for its eradication as it's violating the rights and dignity of the victims. The women and children who have been trafficked mostly suffer various forms of exploitation.
- Children in Observation homes should not be made to stay long, and as long as they are there, they should be kept occupied and made them aware of humane virtues. The

8. AIR 1984 SC 469; (1987) 1 SCC 67

9. 2005 (4) SCALE 517(2)

10. (2008) 1 SCC 213

11. [2010] 9 SCC 334.

violation of the rights of the children of tender age has become a very disturbing factor for their proper growth, Welfare and protection.

- Since good number of Mathadishs (priests) of the Ashrams has been involved in child abuse at a large scale, serious efforts need to be made the Government on war footing to streamline these Ashrams and save the children from their clutches. Those Ashrams which are found to be involved in such shameful, and nefarious activities, should be taken over by the Government forthwith.
- Prevention as a strategy to combat trafficking has to focus on areas of sensitization and awareness among the public – especially, the vulnerable pockets of trafficking.
- Prevention of human trafficking requires several types of interventions such as role of state, role of NGOs, role of Media and awareness and advocacy at the policy level.
- *Protective Custody*, as a means of dealing with victims of trafficked should be reconsidered. The victims of human trafficking should not be detained and the stay should be voluntary.
- Proper training programmes should be organized to train the police forces and sensitize the judges and trial magistrates. The proceedings in the court need to be monitored so that even the defence does not indulge in *revictimisation* and *traumatisation* of the victims. To combat trafficking in humans the training should consist of raising on the issue as well as development of investigative skills for the police officials.
- The rehabilitative measures given to the victims of trafficked women and trafficked children subjected to sexual exploitation are intended to ensure that trafficked persons are not treated as criminals but as victims of crime who have suffered serious human rights abuse.
- A recent UN report says: “The judiciary is one of the most important sectors that need to be sensitized on gender issues and violations of rights of women due to trafficking. An analysis of the attitude of judges reveals of protectionist approach in their judgment of criminal cases against trafficking.
- The report of the Department of Women and Child Development (DWCD) mentions: “The judiciary is accused of playing a role in *secondary victimization*, by its mode of questioning during court procedures, the long tedious legal processes and legal system is seen to be forbidding for victims who seek justice;”
- The Government must launch media campaigns that promote children’s right and elimination of exploitation and other forms of child labour. Wide publicity may be given regarding the legal, penal provisions against trafficking and the *modus operandi* of the traffickers through radio, television, etc., The media should transmit appropriate message to ensure that the victims learn that they are not alone;
- Exclusive forums may be established to support voluntary organizations working in the field to restrict further exploitation of the trafficked victims.
- Proper implementation should doe by the Government with a monitoring mechanism of the principles contained in the convention of Rights of women and children.
- At school level, institutions should be encouraged to include trafficking in their curriculum.

Failure of Implementation

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A failure to implement the aforesaid legislation has caused and continues to cause severe injury and prejudice to the victims of prostitution. The **legislative deficit** is coupled by callousness displayed by the State authorities having failed and neglected to accept responsibility and discharge their duty as mentioned by law.

In *Vishal Jeet v. Union of India* – a PIL against forced prostitution of girls, Devadasis and Joginis and for their rehabilitation – the Supreme Court held that despite stringent and rehabilitative provisions under various Acts, results were not as desired and, therefore, called for evaluation of the measures by the Central and State Government to ensure their implementation. The Court called severe and speedy legal action against exploiters such as pimps, brokers and brothel owners. Several directives were issued by the Court, including setting up of separate Advisory Committees, providing rehabilitative homes, effectively dealing with the Devadasi system, Jogin tradition, etc.,

In *Gaurav Jain v. Union of India* the Supreme Court passed an order, directing the Constitution of a committee to make an in-depth study of the problem of prostitution, child prostitutes and children of prostitutes, and to evolve, suitable schemes for their rescue and rehabilitation. The apex court issued directions ensure the protection of human rights of such persons. In 1998 the Central Government, pursuant to the directions issued by the Apex Court in “Gaurav Jain case” Constituted “committee on prostitution, child prostitutes and children or prostitutes” and the Action Plan highlighted on law enforcement and legal reforms.

Trafficking for commercial-sexual exploitation of women and children is a fundamental violation of the rights of women and children. Economic crisis in India has made women and children vulnerable to commercialization by the organized criminals as more and more children and women has to look for work to support themselves and their family.

Victimological studies show the unfortunate trafficked victims, mainly women and children are suffering in the machine of the law and court process. Victims of trafficking are frequently exposed to physical and sexual abuse, dangerous work environments and denied access to education.

UNICEF’s ‘Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe’ remarks : “Traffickers exploit the fact that children have a less-developed capacity than adults to assess risk, to articulate and voice their worries (about being exposed to danger), to distinguish right from wrong (when being required to commit a crime) and to look after themselves (including taking action to defend themselves from harm)” children are turned into mere pawns in the criminal syndicates which lead to a steady deterioration of morals.

In the fight against trafficking Government organizations, Non-Governmental Organizations, Civil Society, pressure groups, international bodies – all have to play an important role. Law cannot be the only instrument to take care of all problems.

Conclusion

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In his “Child : Basic Rights”, as justice Bhagwati, has quoted: “The child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into maturity, into fullness on physical and vital energy and most breath, depth and height of its emotional, intellectual and spiritual being” . Children require guidance and support. Child is the most precious asset of the society, and so it is only the society itself who can save it from stepping forward into the heinous world of crime. Child is supremely important national asset, the greatest gift to the humanity and an organic cell of the society. The great Poet Milton said *child shows the man as morning shown the day*. The name of the child is not tomorrow but his name is *today*. Child is a future custodian and torch bearer of the society and messenger of knowledge. Protection of child from and all forms of abuse and exploitation across the globe is the need of the hour.