

Human trafficking and its legal framework in India

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Abstract

Human trafficking is a trade done on human beings. The offenders of such crime are called as traffickers. The traffickers traffic human beings, exploit them in various ways for the purpose of financial earning. Human trafficking violates most of the human rights of the victim. The victims of human trafficking will have to face a lot of aftereffects which include emotional trauma, physical injuries due to assault. The scariest aftereffect of human trafficking is the psychological problems faced by the victims. This can last for a life time on the victim which leave them back alone, not letting them interact with people. This paper deals with the aspect of human trafficking in India. The paper analyses, people who are mostly to be a victim of human trafficking, causes of human trafficking on victims, impact of human trafficking on its victims, reason for the expansion of human trafficking in India. The paper studies on the Indian domestic legislation on human trafficking in the light of the International Conventions on the subject matter. At last the paper recommends some measures on preventing human trafficking

Keywords: human trafficking, human rights, international conventions, domestic legislations

Introduction

Human Trafficking

Human trafficking is the practice of illegally transporting people from one area or country to another, who are the exploited in various ways like for the purpose of organ trade, forced labour, sexual slavery, harboring children for war purposes etc. Women and children are the ones who had to pay the highest price. They are trafficked for the purpose of commercial sexual exploitation and forced marriage. Many children are subjected to forced labour as factory workers, beggars, agricultural workers, while others are used as child soldiers by terrorist groups. India is one primary source of women and children being smuggled for sexual exploitation. It is noted that human trafficking earns global profits of around \$150 billion per year for the traffickers and \$99 billion from commercial sexual exploitation. Traffickers use force, fraud to lure their victims and force them into labour and other commercial exploitation. They look for people who are susceptible for different reasons which include psychological or emotional vulnerability, lack of social safety net, natural disasters or political instability. The trauma caused by these traffickers can be so high that most of the victims may not identify themselves as victims or may push away themselves from seeking help, even in highly public settings. The federal, legal definition of a severe form of human trafficking describes three facets of the crime: 1) an action

1. a means
2. a purpose

Human trafficking can happen in any community and the victims can be of any age, race, gender or nationality. Traffickers use violence, manipulation of false promises like romantic relationships to lure victims to trafficking purposes. Language barriers, fear of traffickers or fear of law enforcement frequently keeps the victims away from seeking help, this makes human trafficking a hidden crime.

Trafficked minors are the most vulnerable due to their age. It may highly impact children's emotional, physical and overall psychological development. Victims might also experience social ostracism. They often get isolated from their social circles, setting them aside being unable to engage socially or to reach out for help.

Who is at risk?

Individuals from any class or category can be targeted in human trafficking schemes. The following groups are especially vulnerable:

- Individuals who have experienced childhood abuse and neglect
- People experiencing homelessness
- Children and youth involved in the foster care and juvenile justice systems
- Survivors of violence
- Lesbian, Gay, Bisexual, Transgender and Questionin (LGBTQ) individuals.
- Migrant workers
- Racial and ethnic minorities
- People with history of abuse
- People with low incomes
- Communities exposed to intergenerational trauma

Causes of human trafficking

The causes are determined by political, economic and cultural factors. Primarily there are various aspects like need for employment, poverty, social conditions, economic stability, lack of access to proper education etc. In developed countries there are demand for less expensive products, cheap labour and low priced services. Certain organised crime groups have found an opportunity for making huge profits. People use smuggling channels for the purpose of human trafficking exposing them to exploitation, violence and abuse. Other causes include:

- Lack of education

- Demand for cheap labour/demand for sex
- Lack of legitimate economic opportunities
- Social and cultural factors
- Huge profit on trafficking
- Lack of safe migration option

Impact of human trafficking

The victims are often abused and exploited in certain conditions which might lead to either short term or long term, minor or severe psychological condition, diseases especially Sexually Transmitted Diseases (STD) or HIV viruses. These conditions can also lead to death of the victim. Studies have said that the injuries and trauma acquired can last for a long period even after the person is free from exploitation. Even rehabilitation might not help the person. Though the victim is free from physical assaults and problems, the trauma and the psychological harm caused to the victim will not let them live a normal life.

Legal Frameworks on Humsn Trafficking

The Indian Penal Code (1860) addresses the issue of human trafficking under Section 370 and 379 A. According to these sections of IPC, it prohibits trafficking of women and girls and it prescribed ruthless punishments for the offenders. It states that if any person who buys or sells a person under the age of 18years for the purpose of prostitution and sexual exploitation or for any other immoral purposes will be liable for upto 10 years imprisonment and fine.

Juvenile Justice Act, 2000

According to Juvenile Justice (Care and Protection of Children) Act there is no difference between a minor and a child. By this act every person under the age of Eighteen years are considered as a child. The child mentioned is a child in need of care and protection.

Constitution of India, 1949

The Constitution of India, 1949 prohibits human trafficking and guarantees many internationally acknowledged human rights norms like right to life and personal liberty, right to equality, right to freedom, right to constitutional remedies. The right against exploitation is also a fundamental right of a Indian citizen.

Immoral Traffic Prevention Act, 1986

Government of India ratified the International Convention for Suppression of Immoral Traffic in persons and also exploitation of Prostitution of others in 1950.As a consequence of this ratification the Government of India passed the Suppression of Immoral Traffic in Women and Girls Act (SITA) in 1956.In the year 1986 the act was amended and changed which was known as Immoral Traffic Prevention Act (1986).

According to its preamble the purpose of this act is to give effect to Trafficking Convention and to prohibit Immoral human trafficking. The offences included here are taking persons for the purpose of prostitution, seducing for prostitution, making life with the earnings from prostitution, detaining a person in premises of brothel, seduction of a person in custody, keeping a brothel or allowing premises to be used as a brothel etc. The Immoral Traffic (prevention) Amendment Bill, 2006 also focuses on trafficking done for the purpose of sexual exploitation. Hence in India, there is no

Proper domestic legislation that combats all forms of human trafficking.

The Scheduled Castes and Scheduled Tribes Act, 1989

Most of the human trafficking victims belong to marginalized groups of the society.The traffickers target such area where the victims are backward in social and literacy aspects.This gives an additional safeguard to women and young girls belonging to scheduled cast and scheduled tribes and also to create a greater burden on the trafficker to prove his lack of connivance in the issue. Section 3 of this act deals with atrocities committed against people belonging to scheduled cast and scheduled tribe.

It covers certain modes of trafficking such as forced labour and sexual exploitation of women. A person who engages in such an offence will be liable to be punished with a minimum imprisonment of nine months which may extend upto five Years if the offence is covered under section 3 of the act.

International conventions: human trafficking

International covenant on civil and political rights

Under article 8(1) and article (2) of ICCPR the person should not be apprehended under bondage and servitude. It is also said that the trade which is done for domestic slavery and servitude must be prohibited.

Ilo convention forced labour

According to this convention, it basically calls for the suppression of forced labour in all its forms. The forced labour is hence defined as " all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".

International Covenant on Economic, Social and Cultural Rights

Under the Article 10(3) of Covenant on Economic, Social and Cultural Rights (ICESCR) provides that every child and young people should be given protection and assistance without discrimination or bias on the basis of caste, reason of parentage and any other condition .They should be protected from economic and social exploitation.

Article 4 of universal declaration of human rights

According to this article a person should not be detained under slavery or servitude. Slavery or servitude trade must be prohibited in all their forms.

International Convention for Suppression of White Slave Traffic, 1910

This convention criminalized procurement, enticement of leading away of a women or girl under 21 years of age, even with her consent for immoral purposes irrespective of the fact that various acts constituting offence may have been committed in various countries.

United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

According to this convention, it specifically provides that, if any person return to his or her state under substantial ground of being in danger of any torture then the compensation is also predetermined under this convention

United Nations Convention against Transnational Organized Crime

This convention consists of forty one articles that require states parties to criminalize *inter alia*, participation in an organized group under article 5, the laundering of the proceeds of crime (article 6) and corruption (article 8). States parties are additionally obliged to adopt measures for prosecution of offenders (article 10 and article 11) and the confiscation and seizure of *inter alia*, the proceeds of such crimes (article 12 to 14). Each protocol sets out a number of obligations for each of the three specific sub areas of transnational organized crime that are focused upon.

Reasons behind the expansion of human trafficking in India

The common factor that was identified as the main driving force behind human trafficking is poverty. Caste based discriminations, lack of resources, lack of human and social capital, social insecurity, gender discrimination, commodification of women, social exclusion, marginalisation, inadequate and outdated state policies, lack of governance, nexus of police and traffickers, unemployment, breaking down of community support system, cheap child labour, child marriage and priority to marriage, attraction of city life, corruption, employment trade, migration policies conflict and lack of awareness among the victims are also some factors leading to human trafficking. The decreasing sex ratio and the increasing demand of women in women starve areas would also be considered as a factor behind bribe trafficking in India. There are also certain other factors that are responsible through direct and indirect means and mode, but, all kind of these push factors force the victim to get further exploitation, vulnerabilities and to become an element of this modern kind of slavery throughout their life span.

The world's most dangerous country for women?

India has been coined 'the world's most dangerous country for women' title ahead of Afghanistan, Syria and Saudi Arabia. It is true that discrimination and violence against women are ingrained in the Indian Society. Discrimination starts at birth where many people think giving birth to a girl child is a curse. Infants are being stolen for beggary and women enrolled in forced prostitution; about 70000 children are working as bounded labourer in private mines while others are being used as domestic servants after inheriting their parent's debt. Some of them are even being sold for organ traffickers. Until recent years, the problem of human trafficking had remained unnoticed due to high prevalence of rural poverty. Children from tribal areas are at greater risk of human trafficking, including the Kuki people from Manipur as well as the Nagas from the Northeast, while Jharkhand state and the Anantapur regions of Andhra Pradesh state are some of the areas prone to human trafficking.

Suggestions

- The domestic legislation for combating human trafficking in India must be strengthened that it must combat all forms of human trafficking
- Not only women and children, men must also be given with adequate means of education and employment.
- Many more rehabilitation centres must be established for the welfare of the victims.

- The migration aspects from one country to another country must be strengthened in order to prevent transnational organized crime of human trafficking.

Conclusion

Human trafficking is one of the worst crimes ever. This can give the victims a life long injury both to their body and mental health. Due to the fear that is created by the traffickers the victims can be psychologically affected. This kind of modern slave trade has washed away the humanity among those who are being involved. The moral values, ethos and sense of belonging as a member of same human race has been curbed by the individual interest and pleasure. People who are in poverty line must be given awareness about human trafficking and its consequences in order to prevent them from becoming victims. The victims of human trafficking are mostly the persons from below poverty line so the offence of human trafficking can be greatly prevented if Government helps the poor sections of the society and provides them with adequate education and employment.

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