

HUMAN TRAFFICKING: A MODERN FORM OF SLAVERY

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Abstract: “Status to contract” is jurisprudential thought laid down by Henry Maine, who is one of the most eminent personalities of historical school. Now it becomes the harsh reality of modern world where individual interest is given priority over societal interest to the extent of causing human trafficking. It is a matter of intense shame for us that, in the world of human rights and development, trafficking in person is increasing day by day resulting into violation of human rights and obstruction in development of human beings in each and every sphere of life. In present century trafficking is one of the worst kind of exploitation and abuse of human being. Trafficking in person is not confined to sex trafficking, rather than it has expanded its ambit including labour trafficking, child trafficking, bride trafficking and organ trade. This complicated issue is influenced by various factors such as poverty, population, forced labour, gender biasness, lack of employment opportunity, pornography, political instability due to wars and civil strife. It leads to adverse psychological, health, social and economic consequences. Immoral Traffic (Prevention) Act 1956 (ITPA), United Nations Convention against Transnational Organized Crime (UNTOC), right to life and personal liberty guaranteed under Indian Constitution, human rights granted under Universal Declaration of Human Rights and some Provisions of Indian Penal Code 1860 are legislative initiatives against trafficking.

Keywords- child trafficking, human rights, human trafficking, sex trafficking.

Introduction: Sell and purchase of human beings and their exploitation in varied forms by traffickers is one of the most despicable forms of violation of human rights, known as human trafficking. Human trafficking is commonly referred as modern form of slavery[1], has truly emerged as global threat. Trafficking in women and children is most abominable violation of human rights including right to life and liberty, human dignity, security of person, right to freedom from torture or cruelty, inhuman or degrading treatment, right to home and family, right to education and proper employment. Here it is very relevant to quote the saying of Mahatma Gandhi- “It is a matter of bitter shame and sorrow and deep humiliation that a number of women have to sell their chastity for men’s lust. Man, the law giver, will have to pay a dreadful penalty for the degradation he has imposed upon the so-called weaker sex. When woman freed from man’s snares rises to the full height and rebels against man’s legislation and institution designed by him, her rebellion, no doubt, non-violent, will be nevertheless effective[2]”.

Most widely accepted definition of human trafficking has been stated in the U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime, 2000, to which India is a signatory. It defines trafficking as: the recruitment, transportation, transfer, harboring or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having

control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or service, slavery or practices similar to slavery, servitude or the removal of organ[3].

Universal Declaration of Human Rights (UDHR) states that no one shall be held in slavery or servitude; slavery and slave trade shall be prohibited in all their forms and no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

1.1 Types Of Trafficking : Child trafficking- definition of child trafficking is provided by UN Convention against Transnational Organized Crimes(UNTOC) which states that child trafficking is the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation. Children are trapped by traffickers for the purpose of labour or sexual exploitation. It is a harsh reality that Child trafficking denies right of children to grow up in a healthy family atmosphere and exposes them to a range of dangers such as violence and sexual assault[4].

Sex trafficking[5]- increasing growth of commercial sex industry is a key factor behind increasing trafficking in women. It is held liable for increasing demand of women and girls and forcing them to fulfill sexual desire of customers against their will. Vulnerability of persons to sex trafficking is directly related to susceptibility. Vulnerable class to sex trafficking is not confined to females rather than males are also part of it.

Labour trafficking- large number of people is trafficked not only for sex ‘trade’ but also for other

forms of non-sex based exploitation that includes servitude of diverse kinds, as industrial labour, domestic labour, agricultural labour and most prominently forced labour. Bonded labour system is facilitating labour trafficking. Children are most susceptible to bonded labour as they have no means and opportunity to escape. Thus, children are born into debt and grow up only to repay such debt.

Bride trafficking- societal preference of boys over girls cause severe atrocities upon fair sex. One of the most adverse impacts is in form of female feticide, resulting into downfall in female sex ratio due to which deleterious practice of trafficking of girls for fake marriage have come to notice. Bride trafficking is prevalent in states of Haryana, Jharkhand and Punjab[6].

Organ trafficking- other form of trafficking is organ trade. Organ trafficking is defined by the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children as: the recruitment, transport, transfer, harbouring, or receipt of living or deceased persons or their organs by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving to, or the receiving by, a third party of payments or benefits to achieve the transfer of control over the potential donor, for the purpose of exploitation by the removal of organs for transplantation[7].

1.2 Position of India : It is a matter of bitter shame and sorrow for us that very rapidly India is becoming source, transit point as well as destination area for trafficking. As per, Global Slavery Index 2013 India has attained first position in list of countries with highest estimated number of population in modern slavery. However India has placed at fourth position in list of Countries with highest prevalence of modern slavery[8]. Karnataka has attained third position in list of states reporting 1379 trafficking cases in four year period (2009-2012). Home ministry data says, Tamil Nadu leads the table with 2,244 cases and Andhra Pradesh snapping at its neighbour's heels at 2,157[9].

2. Factors Prompting Human Trafficking : Human trafficking is a contemporary form of slavery, which is very much prevalent in today's world. Increasing rate of human trafficking worldwide implies serious loss of human rights and continuing marginalization of women's roles in society. It is because mostly women become victimized due to this modern form of slavery. There are several factors which have accelerated the rate of trafficking. Following are some of them:-

2.1 Poverty- poverty[10] is one of the several factors that make individuals vulnerable to trafficking. People who are living under poverty line are forced to

be trapped by traffickers in order to escape the harsh realities of their lives. In order to fulfill basic requirements for their survival they are compelled to indulge their children as a labour, which ultimately results into child trafficking. This child trafficking is part and parcel of human trafficking.

2.2 Population- increasing rate of population also act like catalyst behind human trafficking. Population is increasing day by day but employment opportunity is not increasing in proportion to the rate of population. Increasing rate of population resulting into unemployment is harsh reality due to which people become desperate enough to enter into fraudulent employment schemes. Thus, unemployment facilitates criminals in order to trap these unemployed people in trafficking. Migration is also one of the most adverse consequences of increasing rate of population. People who migrate from their home place to host place in search of employment very easily fall in the clutch of traffickers.

2.3 Forced Labour - forced labour is defined as "all work or service which is extracted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". All kinds of forced labour are strictly prohibited by law. Still they are consistently practiced in society in form of Forced commercial sexual exploitation (CSE) and Forced labour for economic exploitation (EE) that resulted into human trafficking[11].

2.4 Gender Biasness- gender biasness is deeply rooted in society. Female feticide and dowry are two adverse impact of gender biasness which is prominently practiced in society. United Nations' World Population Fund report indicate that India has one of the highest sex imbalances in world and demographers warn that there will be shortage of brides in next 20 years because of adverse juvenile sex ratio. This is harsh social and national reality that female feticide is giving rise to bride trafficking. Haryana is the best example where girls are imported for marriage due to its lower sex ratio. Gender biasness resulting into dowry practice is another most important reason which has accelerated the rate of trafficking. Poor people who are unable to fulfill demands of dowry made by groom's parent are vulnerable to trafficking.

2.5 Prostitution[12] And Pornography- growth of prostitution industry has contributed to the increase in human trafficking. There is high demand for sex workers due to which traffickers target vulnerable people. Prostitution is working as base for growth and rise of trafficking. Freedom Youth Project Foundation reports that thousands of children and young adults are trafficked to make pornographic films. Pornography[13] plays vital role in creating climate in which violence and sexual exploitation of

women and children boost. Pornography is prevalent and destructive which is tolerated and tacitly encouraged. We must acknowledge that pornography is root cause of human trafficking and fuels demand for more victims of trafficking.

2.6 War And Civil Strife- vulnerability also rises when political system collapse due to wars, conflicts etc. In this context current position of Iraq is quite relevant, where Islamic State of Iraq and Syria (ISIS) is involved in trafficking girls and women, mostly from Christian or Yazidi families to Syria "either to be given to ISIL fighters as a reward or to be sold as sex slaves," according to a report released on Oct. 2 by United Nations' human rights office in Iraq.

2.7 Organ Trade- organ transplant is a boon of modern-science. However, there is very high shortage of organs to be supplied in comparison of its demand. This causes discrepancy in supply and demand of organs for transplant, resulting into creation of an opportunity for traffickers to intervene and provide organs by forcing persons to donate. Immense scarcity of organs and mounting demand for organs produce circumstances in which trafficking in human to obtain organs flourish. This is also referred as 'transplant tourism'[14].

2.8 Begging- begging is developing industry which is working as base for growth of trafficking. Handicapped children are more vulnerable in situation where trafficking is for the purpose of begging, in belief that these handicapped children will induce sympathy in the giver. This belief puts the trafficked child at serious risk of being deliberately maimed in order to increase his or her earning potential. Street children, who are easily available to be picked up, are another vulnerable category.

3. Consequences Of Trafficking : Buying and selling of women and children for sexual and non-sexual purposes is an expanding activity which is adversely affecting the human resource of country. Alarming rise in trafficking causing adverse impact upon human resource ultimately results into downfall of country in each and every sphere of development. Following are some of the impacts[15] of trafficking upon victims-

3.1 Physical Impact- women, men and children who are victims of labour trafficking are vulnerable to range of occupational health risks, such as-exhaustion, dehydration, repetitive-motion syndromes, heat stroke or stress, hypothermia, frostbite, accidental injuries, respiratory problems and skin infections. These risks are result of poor ventilation and sanitation, extended hours of work, poor training in use of heavy or high-risk equipment, chemical hazards, lack of protective equipment, heat or cold extremes, airborne and bacterial contaminants prevalent at work place. Maximum victims of sex trafficking are suffering from Sexual

Transmitted Disease (STD). It is also a cruel fact that one out of every three rescued victims is testing HIV+ve and linkage between these two is strengthening day by day.

3.2 Mental Health Impact- poor mental health is a dominant, persistent and adverse impact upon victims of human trafficking. It includes depression, post-traumatic stress disorder and other anxiety disorders, suicidal tendency and somatic conditions including disabling physical pain or dysfunction. Trafficked persons are mentally exhausted, humiliated, afraid and lack self-sufficiency required to disobey their trafficker and escape victimization.

3.3 Economic Exploitation- trafficking causes huge exploitation of trafficked persons in economic sphere of life, compelling them to remain in slavery. Rarely victims of trafficking have decision making power in respect of payment for their services. Trafficking of human beings is one of the major ways through which victims are forced to render their services in slave like condition. They are confined within the ambit of performing their duty of fulfilling the demands of traffickers and not entitled for having any say in payment of charges required to be paid in lieu of services rendered by them.

3.4 Violation Of Human Rights[16]- trafficking results into immense loss of human rights which are guaranteed as basic rights for existence of human life. Right to life is not restricted to mere survival but it extends to living life in dignified manner. Right to life and personal liberty guaranteed under article 21 of Indian constitution is absolutely violated due to human trafficking. It also causes deprivation of human rights assured under Universal Declaration of Human Rights (UDHR) and many other enactments.

3.5 Social Isolation- victims of trafficking are treated as societal stigma which is the biggest hurdle in making them part of mainstream of society. This leads to social boycott causing emergence of self humiliation and confinement, due to which sometimes they voluntarily become part of trafficking under self compulsion. This is the concentrated truth which we are facing today. Their criminalization as workers severely stigmatizes them. Trafficked girls and women are more victimized by society because they are made to bear responsibility of upholding family honour through their sexual purity/chastity.

3.6 Turning Into Criminals- Trafficked persons are repeatedly traumatized by their experiences. This psychological trauma permeates all aspects of their lives. Since it usually remains unaddressed and unresolved, that's why "abused turn into abusers", with high probability of becoming criminals. It is rightly said "criminals are made not born". Crime itself sufficient to turn an individual into criminal minded person.

4. Current Legal Framework For Prevention Of Trafficking

Trafficking in person is a blatant violation of human rights which has caused social, political and legal outrage. In world it has emerged as third largest criminal industry, after arms and drug dealing. Indian government has taken steps in order to curb this most evil form of human right violation.

4.1 Immoral Traffic (Prevention) Act, 1956 (ITPA)[17]

It is originally enacted as 'Suppression of Immoral Traffic in Women and Girls Act', 1956. Provisions of ITPA criminalize persons who procure, traffic and profit from trade in human beings. Provisions of ITPA provide penalty for immoral trafficking and punish those persons who live off the earnings of woman (Section 4). On first conviction Section 3 of the Act provides maximum three years rigorous punishment for keeping brothel or allowing premises to be used as brothel. In the event of subsequent conviction, section 3 provides maximum seven years rigorous punishment. Act also provides welfare measures for rehabilitation of sex workers.

4.2 Criminal Law (Amendment) Bill 2013[18] : It is most significant step taken by legislators bringing major amendments in Indian Penal Code, Indian Evidence Act, and Code of Criminal Procedure on laws related to sexual offences. It resulted into addition of Section 370A to Indian Penal Code which criminalizes human trafficking. An offence of trafficking shall be punished with rigorous imprisonment for a term of at least seven years, which may extend to ten years, and shall also be liable to fine. Where offence involves trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to life imprisonment and shall also be liable to fine.

4.3 Indian Penal Code, 1860 : Section 372 and 373 strictly prohibits selling and buying of minors for purpose of prostitution. According to these provisions one who sells or buys, disposes or obtains possession of any minor for the purpose of prostitution or illicit intercourse or for any unlawful and immoral purposes, then such person will be punished with imprisonment which may extend to ten years with fine. Same quantum of punishment is awarded under Section 366 which deals with kidnapping a woman and compelling her to marry or forcing to illicit intercourse. Section 366A deals with procurement of minor girl (below 18 years of age) from one part of country to another, is punishable with imprisonment which may extend to ten years with fine. Section 366-B deals with importation of girl from foreign country. Section 374 provides punishment for compelling any person to labour against his will.

4.4 Indian Constitution : Right to live[19] with dignity is guaranteed under Article 21 of Indian Constitution. Article 23 of Constitution guarantees right against exploitation, prohibiting human trafficking and forced labour and make such practice punishable under law. Article 24 of Constitution prohibits employment of children below 14 years of age in hazardous industry.

4.5 CEDAW[20] AND UNTOC[21] : India is signatory of both these conventions. Convention on Elimination of all forms of Discrimination against Women, 1979 provides equality between women and men and equal opportunities in political and public life which includes right to vote, education, health and employment. United Nation Convention against Transnational Organized Crime targets specific forms of organized crime. It is associated with three protocols. Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Protocol against the Smuggling of Migrants by Land, Sea and Air, Protocol against Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition.

4.6 Judicial Pronouncement : In the case of *Prerana v. State of Maharashtra*[22], Bombay High Court held that cases relating to sex trafficking should be disposed off expeditiously. Trial Courts should take victim's statement within one month and complete the trial within six months from the date of filing charge sheet.

In the case of *Bachpan bachao andolan v. Union of India*[23], Supreme Court has issued direction for protection of missing children and other untraced child victims. It held that there must be compulsory registration of cases by police. Bench remarked that investigation should be conducted to ascertain involvement of organized gang in trafficking and child labour.

5. Suggestion With Concluding Remarks : Trafficking is one of the kaleidoscopic images nurtured by social, religious and economic disparities wishing to perpetuate the status of human being as object. It has clandestine nature of operation causing difficulty in arriving at authentic figure. However, as per Global Slavery Index 2013, India is at fourth position in list of countries with highest prevalence of modern slavery. Trafficking in human is not only confined to sex trafficking, rather than it is extended to labour trafficking, child trafficking, bride trafficking and organ trade, causing adverse atrocities upon victims. Victims of trafficking are living in most miserable condition. Many significant steps are taken at national and international level but still we are far lagging behind fulfilling the goal of uprooting this contemporary form of slavery.

Suggestion- By taking an overview of problem of trafficking, researcher wants to make humble submission in form of following suggestions.

- Whenever we make discussion about trafficking, women and children are always emerged as most vulnerable to this curse. But in reality male members of society are also victimized due to this modern form of slavery. Its best example is developing industry of male prostitution. At large scale men are trafficked for this purpose. Child pornography is also accelerating the rate of trafficking of male child. That's why it is suggested that trafficking of male member of society should also be equally highlighted as that of women.
- Policies and schemes should be made in order to increase public awareness about trafficking in person, as modern day slavery and to sensitize public about it.
- Government should ensure that qualitative education, employment opportunity, income generating programs should be put into operation.

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