



HUMAN TRAFFICKING AND THE PROCESS OF REVICTIMISATION

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ABSTRACT

The time has come when Human beings should also become commodities capable of being bought and sold in the international market. In the recent years human trafficking has become the third largest source of transitional illegal activities after arms and drugs¹. Trafficking is not confined to the commercial sexual exploitation of women and children alone but also has myriad of forms like slavery, bonded or forced labour, begging and drug peddling. The present article focus on the growing trade of human trafficking, purposes for which human trafficking is committed, methods adopted by traffickers to accomplish their goals, factors responsible for trafficking, the process of rescue and rehabilitation of victims, and how again they fall in hands of traffickers even after rescue. The article attempts to analysis present legislations, statics & reports presented by various domestic and international authorities and judicial response towards human trafficking. In addition to discuss on the Rights of victims, witness protection protocols, reasons of growth of human trafficking and failure of state to control it, this article also suggest the way forwarding to deal with this issue concretely. Hence,

¹Malhotra Divya, Trafficking of Women and Children: A culture of silence, Eastern Book Company, PL web Jour 1, 2005.

through this article author try to throw light on the hidden aspects of human trafficking.

INTRODUCTION

“In their eyes there’s pain, because they are held by an invisible chain”. The victims of human trafficking are caught by an invisible chain of traffickers who employ all kinds of means to satisfy their own ends. Victims are given different offers to trap them under the net spin by human traffickers and once they are trapped under this they are force to live in inhumane conditions and to work irresistibly to satisfy their greed. If they are rescued from their workplace, they are treated as criminals with no dignity and respect and due to the failure of state, pressure of traffickers, lack of alternatives left to live livelihood and without proper counselling they have remain no option other than to end their journey of rescue by going back to similar workplaces. Policemen throughout the country have a warm relationship with traffickers and brothels holders, visiting them regular and are paid bribes as protection money. The legal system is so utterly useless that not even they protect the traffickers but also when prosecution was initiated they instruct the public prosecutor in such a way that the accused was granted bail and ultimately acquitted.

We have no legal definition of trafficking at the national level, but trafficking is illegal act and is prohibited under Art. 23 of the constitution of India². Being a signatory to

² Prohibition of traffic in human beings and forced labour- (1) Traffic in human beings and beggar and other similar forms of forced labour are prohibited



the “International Convention for the prevention of Immoral Traffic(1950)”, India developed a specific act against trafficking; The immoral Trafficking Prevention Act, 1956(ITP Act). However, even in this act the definition of trafficking is vague and only deals with the commercial sexual exploitation of women and children. The ITP Act, 1956 is also criticised because of being more against sexual exploitation rather than human trafficking. The most accepted definition of Human Trafficking at the world level is one which is given in Palermo Protocol. According to United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children(2000), Trafficking in person is defined as:

- (a) “Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion or abduction or fraud or deception, of the abuse of power or of a position of vulnerability or of giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes 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;

and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the state from imposing compulsory services for public purposes, and in imposing such services the state shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) shall be irrelevant where any of the means set forth are used.
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a)”³

Looking down into the definition of trafficking given in Palermo Protocol (2000), the question arose about the women who voluntarily enter into this profession by their own choice. And the women who want to remain within the profession. What about the rights of those women? Did you ask to have sex with all those men? Did you ask to be sold as sex slave? No, no one is like to be sold herself as sex slave. The issue is not whether adult women are coerced or deceived into prostitution, but even if they are voluntarily into prostitution it is abhorrent. Prostitution in itself is a violation of human rights of women. The trapped victims are physically and emotionally abused, they have to face mental trauma and immense stigma and are also economically exploited. Since prostitutes are victims, the right they have concern the right to be rescued and rehabilitated.

According to GAATW(Global Alliance for Trafficking in Women), 1994 a large number of women do enter or continue

³https://en.wikipedia.org/wiki/Protocol_to_Prevent,_Suppress_and_Punish_Trafficking_in_Persons,_especially_Women_and_Children



in the profession out of choice and it is crucial that what they do is recognised as work and it is important to help them in getting better and non abusive working conditions and other rights within prostitution like right to safe work environment, access to health care and social security need to be protected. Because of complete emphasis of the present discourse on rescue and rehabilitation (which rarely happens) the issue of rights of sex workers who want to remain within the profession are totally ignored.

PURPOSES OF TRAFFICKING

There are various purposes for which women and children are trafficked, some of the more common forms that trafficking has grown to include are discussed below.

(i) **Commercial sex work/ forced sexual exploitation**

This is the most common destination of the victims of trafficking. The children and women who are trafficked often found themselves in forced or commercial sex trade. This can result through two different ways. Firstly, the victims are directly sold through a chain of criminal activities. Here owners further sell their services to the clients. Along with girls boys are equally vulnerable. Depending on their age, look and likeability the price is fixed. One of the modern avenues for trafficking is 'Sex tourism'. According to World Tourism Organisation, a specialised agency of the United Nations 'sex tourism' is defined as "trips organised from within the tourism

sector, or from outside this sector but using its structure and networks, with the primary purpose of effecting a commercial sexual relationship by the tourist with residents at the destination". The 'residents' are the trafficked victims who are trafficked to broadcast the beauty of their nation through sexual favour. Asia has large market for sex tourism and India has becoming a favourite destination for this because of availability of girls and women's at cheaper rates. Many Nepali's girls are brought to India by traffickers by giving false hope of providing better job and living conditions and are coerced to promote sex tourism.

Secondly, the victims land up in commercial sexual exploitation through 'incidental exposure'. Isolated from family, community and normal protection mechanisms, often unable to speak the language and deprived of legal status.

(ii) **Forced/ Exploitative labour**

Trafficking is also takes place for the purpose of forced labour. The trafficked people are employed in domestic work, circuses, camel jockeys, brick industries etc. They are forced to do work in sub-human conditions at the risk of their health and life. These people are forced to do work irresistibly in lack of basic amenities. Some Bangladeshi and Nepali are also subject to forced labour in India through recruitment fraud and debt bondage. In short, these trafficked victims live and died as brutally exploited slaves.

(iii) **Marriage**

The demand of male child over the years has resulted in a situation where entire villages in states like Haryana, Rajasthan etc. where there is very low sex ratio do not have any



women of marriageable age. This has created a highly lucrative market for traffickers who supply women to meet the growing demand for brides. Another form of trafficking for marriage is also gaining prominence. Girls from poor villages are married off to wealthy sheikhs from the gulf countries in a temporary form marriage sanctioned by the Shariat called a 'mutah' marriage. It is a temporary marriage lasting for an indefinite period from 24 hours to 99 years. In most of the cases family of girl has given a lump sum as a 'mehr' and middlemen play an active role in getting the girls. In most cases, after the marriage has been consummated, the girl is either sold into commercial sex work or abandoned. Numerous instances are there in which women either abused physically and sexually or abandoned at their own consequences.

(iv) **Organ transplantation**

People are also trafficked for organ transplantation. When families or individuals are tired of spending years on a medical waiting list, they sometimes purchase body parts – kidneys, eyes, lungs, heart, limbs and more. The demand for organs is just so high in the United States, according to the United States Department for Health and Human Services, there were, as of 6 January 2014, 120,999 candidates waiting for organs but only 10587 donors registered in the U.S. as of March that year.⁴ As a result, there is a huge scramble to find

organs, legitimate or otherwise. The WHO estimated in 2007 that organ trafficking accounts for 5-10% of kidney transplants performed annually across the globe, and that in India, around 2,000 Indians sell a kidney every year.⁵ In most of the cases victims are unaware of what is in store for them. In some cases they give their consent for some pressing needs. Many of sold their organ by giving consent for paying off debts.

(v) **Drug peddling**

Every years hundreds of women and children are abducted or brought from open markets for the purpose of drug smuggling to various destinations around the world. The women and children are threatened, beaten, starved and even warned with the death of family members if they hesitate in any way. The victims are made to swallow balloons containing illicit drugs and are then transported across borders. The balloons are made with multi-layered condoms and are often force fed to the victim. The traffickers use a special machine to open the condom and put drugs into it.

On many occasions, the drug mules are first given a soup laced with drug to numb their throats. The soup is very oily and makes the balloons slide down their throat. The victim's mouth can also be sprayed with anaesthesia, enabling them to swallow up to 120 balloons⁶. Once they have reached their destination, they are fed laxatives and the

⁴ UNODC (United Nation office on Drugs and Crime) Assessment toolkit, 2015 on 'Trafficking in person for the purpose of organ removal'; https://www.unodc.org/documents/human-trafficking/2015/UNODC_Assessment_Toolkit_TIP_for_the_Purpose_of_Organ_Removal.pdf

⁵ <http://www.livemint.com/Politics/pxj4YasmivrvAha nv6OOCJ/Why-organ-trafficking-thrives-in-India.html>

⁶ https://www.unodc.org/southasia/frontpage/2012/october/drug-mules_-swallowed-by-the-illicit-drug-trade.html



balloons passthrough theirbodies. This medically dangerous way of transporting drugs can lead and has led to the death of persons, if and when balloonsrupture within the body. Stomach acids can sometimes cause the rupture ofthe balloons anddeath is very quick.The women are paired with men andtheir falsepassport indicates that they are married and the children they arewith as their biological children. Even after full cooperation and deliveryof drugs,they are likely to be sold for commercial sex work and slavelabour. If caught, they face prison and in some countries, the deathsentence.

According to NCRB (National Crime Record Bureau) report “ Crime in India, 2015 statistics”⁷released by Ministry of Home Affairs, Union of India human trafficking in India increased by 25% in 2015 compared to the previous year, with more than 40% of cases involving children being bought , sold and exploited as modern day slaves. The NCRB said there were 6,877 cases across the country related to human trafficking last year against 5,466 in 2014, with the highest number of cases reported in northeast state of Assam, followed by the eastern state of West Bengal. The data released on 30th Aug. 2016 showed 43 % of the 9,127 victims were below the age of 18 years, crimes included inducing a minor girl with intent of sexual intercourse, buying or selling a minor girl for prostitution, and keeping a person as a slave. The NCRB data showed there were 19,717 cases related to human trafficking awaiting trial in 2015, of which 15,144 were cases from the previous year. Only 2,075 trials were completed

resulting in 1,251 acquittals and 824 convictions. The statistics revealed that total 17612 cases were still pending trial at the end of 2015. The conviction rate accounts of 39.7% while pendency rate is of 89.3%

FACTORS RESPONSIBLE FOR HUMAN TRAFFICKING

While it is true that the causes and effects of the issue are multifarious, there are some common factors that lead women/ children to become victims of this inhuman act. There are series of social, economic or political conditions which create a situation of vulnerability for the women and children that they unknowingly or knowingly get trapped into trafficking. The traffickers take full advantage of these situations for their own benefit. While it is not possible to point out causes of trafficking concretely, some push and pull factors have been discussed below.

The Push Factors

In many instances, though the trafficked victims would not want to leave the place of origin and move to other places, the undesirable living conditions makes it impossible for them to remain in the present situation. In the hope of better future, the women get easily trapped in trafficking.

- (a) **POVERTY** - Though this is not the only reason for trafficking, it holds a huge potential in making the victims vulnerable. Poverty leads to deprivation of basic needs and difficult living conditions leading them to look for better options elsewhere. Traffickers may offer fraudulent job training or educational opportunities to the people

⁷http://ncrb.nic.in/StatPublications/CII/CII2015/FILES/Statistics-2015_rev1_1.pdf



who are desperate enough to try anything for a better life for themselves or for their families. Due to poverty, some parents sell their children. Parents may feel forced to sell one child so that the others may eat. The greater the degree of impoverishment, the higher is the risk of falling prey to trafficking.

girls for marriage if the groom is not demanding high dowry and instead ready to bear the cost involved, it becomes a great deal. Parents are in too hurry that not even they bother to give second thought to their decision. The children thus easily trafficked under the guise of marriage.

(b) **DYSFUNCTIONAL HOME ENVIRONMENT** – Breakup of the family, physical abuse, sexual abuse, drug abuse and discrimination within the family also increases the vulnerability to trafficking. Feeling misunderstood by parents, and seeking romantic relationships with a person older than them can increase girls’ susceptibility to the recruitment tactics of sex traffickers or pimps. An abusive family environment encourages the family members to leave home, thus putting them at risk of being trafficked.

The Pull Factors

Lack of informed choice regarding the place and occupation makes them vulnerable. Limited access to education and information aggravate these situations.

(c) **DOMESTIC VIOLENCE** – The vulnerability of women and children gets accelerated also due to high prevalence of domestic violence. Women feel pressured to escape from the existing conditions to free them from physical, psychological and mental torture. The situation gets more aggravated if the women is single, divorced, widowed or sexually abused. The social stigma makes them getting unaccepted in the society leading to frustration, isolation and with no support system to provide them security, they fall an easy prey to traffickers.

(a) **COMMERCIAL SEX WORK** – It is the most common pulling factor for trafficking. The nature of this industry necessitates regular fresh supply of women, which keeps trafficking profitable. In addition , growing demand of commercial sex work due to increased trend of migration and separated family also contributes equally in pulling out the women for trafficking.

(b) **URBANISATION AND GLOBALISATION** – It has increased the demand for cheap labour. People trafficked from rural areas to urban areas for providing labour flow. Many middlemen also reach the place of origin in search of potential labour.

(d) **MARRIAGE** – It is one of the main reason in the grab of which trafficking takes place. Parents are more than eager to ‘dispose off’

Along with these pull and push factors, insufficient or inadequate laws and their poor implementation, ineffective penalties, minimum chances of prosecution, corruption and complacency, invisibility of the issue, the failure of government to implement policies and provide adequate services for



victims- all play a role in perpetuating trafficking.

METHODS USED FOR TRAFFICKING

Traffickers use a wide range of methods to move their victims from the place of origin to the place of destination. Instead of using physical violence or restraints, traffickers, some of whom are women, often use psychology to keep their victims enslaved. Traffickers can be friends, family members or neighbours. Some of the tactics used for trafficking are discussed below.

(i) Deceit/ False Promises

The traffickers befriends the victim and persuades her to accompany them. The traffickers uses the bait of false promises and lure of job/ marriage/ love to trap the victim. The victim who is already in a situation from which she/he wants to escape very easily believes the trafficker in the hope of a better future. They willingly and happily accompany them and in turn find themselves in the worst situations. The trafficker claims to love the victim and leverages this power to convince the victim to perform sexual acts. It often comes down to this type of statement, "If you love me, you will do this for me." As tragic as it is, it is an incredibly common way that victims are pulled onto the streets and then held in invisible chains.

(ii) Material Inducements

Usually, the traffickers are the people who seem to be prosperous and well connected. They display a lot of wealth and become a symbol of success. They often offer some kind of monetary support as advance to the

victim family. The trafficker convinces the victim that it will lead to high material gain and prosperity. The trafficker also gifts to the victims so as to make it appear real. After this 'grooming' process, the victims are easily taken from one place to another.

(iii) Bleak Hope Regarding Future

The trafficker uses the strategy wherein she/he makes the victim to believe that there is a very bleak hope regarding the future. They make the victim to believe that they are helpless, without the help of trafficker they can't do anything. By thinking all this victim easily get ready to accompany them. The victim usually believes that she/he has no viable alternative but to perform the work, service or activity, whether that is objectively correct or not. Therefore, the option that is being offered is the most appropriate option for the victim.

(iv) Debt Bondage

An extortionate extension of credit and debt bondage is also used in entrapment of the victim for trafficking. When the person finds himself/herself in a situation where it is difficult for the person to run away from the intent of the trafficker. Thus the victim knowingly get into it. In some cases, due to inefficiency to pay the debt families sell their children to traffickers. In rare cases, parents sell a child out of greed and receive a monthly income. These families often build relationships with traffickers and will misrepresent the nature of the work to entice other families to sell their children.

(v) Force or Coercion

The victim is posed in front of a very difficult situation, where she doesn't have any option but to give in to the traffickers,



knowingly or unknowingly. This also includes forceful methods like use of drugs, kidnapping and abduction.

According to the U.S. Department of state “Trafficking in person report -2017”⁸ India is placed under TIER -2 which includes those countries whose governments do not fully meet the Trafficking Victims Protection Act’s(TVPA) minimum standards, but are making significant efforts to meet those standards. In this order, the Ministry of Home Affairs (MHA) revised its strategy guiding Anti-Human Trafficking Units (AHTUs), to ensure more effective identification and investigation of trafficking cases and coordination with other agencies to refer victims to rehabilitation services. The government of India has also signed various MOU’s with other countries for better coordination.

PROCESS OF REVICTIMISATION

The provisions for rescue and rehabilitation is clearly spelt out in Immoral Trafficking Prevention Act. According to this act, if a Magistrate has reason to believe that any person is living or is carrying, prostitution in a brothel he may direct a police officer to remove such person from there and produce before it(section 16). Also, S.19 of this act a person who is carrying on, or is being made to carry on prostitution to apply to the Magistrate for an order that she may be kept in protective home or provided care and protection by the court. The petition- “Prajwala V. Union of India” filed in Supreme Court of India deals extensively on the issue of rescue and rehabilitation. The

rescue of the trafficked victims has acquired the form of ‘mass raids’ on the brothels carried out by the police. The rescued women and girls are treated like criminals, with no dignity and respect. Their need for information, counselling or any other medical assistance is completely overlooked and are housed in sub-human conditions. Most of the girls were on alcohol or drugs and had withdrawal symptoms but no counselling was provided, many of them were HIV positive and had sexually transmitted diseases or were pregnant and needed medical attention. But their requirement of medical assistance is totally ignored and they are forced to live in inhuman conditions. The lack of confidentiality makes them more vulnerable to the threats, blackmails and luring by the same traffickers to the same brothels. There is no understanding of the fact that the victims of trafficking undergo an immense trauma and no support whatsoever is provided for the emotional, mental, physical or social healing and recovery. Rescue without these reintegration is incomplete. As a result, the rescued children/women end up going back to the same or similar workplace. Most of the cases land up in more exploited conditions, sometimes to be rescued again and to undergo the same cycle of revictimisation.

The UNIFEM-ISS-NHRC⁹ study clearly indicates that ‘re-trafficking’ of the victim was of a common occurrence. 24.2% of the respondents of the study said that they had been rescued earlier also. The vast majority of the survivors said that even after returned to their community, they had

⁸<https://www.state.gov/documents/organization/271339.pdf>

⁹ 2003, NHRC-UNIFEM-ISS, A report of Trafficking in women and children in India, p 97.



no alternatives source of income of livelihood options. The basic reason which leads to this vicious cycle is clear, since they is no component of ‘victim protection’ in the present methodology of raids, rescue and rehabilitation. Their access to justice and right to legal redressal must be addressed so as to ensure that the opportunities for securing justice are not denied and their human rights get protected. The legal redressal should include the issue like obtaining compensation and conviction of the traffickers.

WITNESS/VICTIM PROTECTION PROTOCOL

The role of victim/witness to combat trafficking is also very critical. Unless the witness feel protected, the attempt to break the silence will always be curbed by threat to victim. This means protection is provided to witness/victim to reach the traffickers. In terms of giving evidence at trial, countries need to ensure that they are able to give evidence safely and make efforts to reduce the secondary trauma that victims often face in the courtroom. At present India does not have a comprehensive law on witness protection. The supreme court has observed that in case of serious criminal offences ‘witness anonymity’ and ‘witness protection programs’ are necessary wherever the life and property of the victim and his or her family are in danger. Under the present circumstances, if a raid happens in the night, the girls are taken to the police station and are kept there throughout the night. The facilities for victim protection and recovery in these police station is low and sub-standard. The victims are huddled together

in the small room and in these hostile environment are forced to give their initial statement. A landmark judgement ‘Delhi Domestic Working Women’s Fourm V. UOI and others’¹⁰ has been made in the context of victim protection. It makes the following directions for legal representation of the victim.

- Right to representation: the police should be under a duty to inform the victim of her right to representation before any question were asked of her and that the police report should state that the victim was so informed. A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable. The advocate shall be appointed by the court upon the application by the police at the earliest convenient moment but in order to ensure that victims were questioned without undue delay, advocate would be authorised to act at the police station before leave of the court was sought or obtained.
- Compensation for victims: Compensation for victims shall be awarded by the court on conviction of the offender and by the criminal injuries compensation board whether or not a conviction has taken place. The board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result of the rape.

¹⁰1995 SCC (1) 14



NATIONAL LEGISLATIONS ON TRAFFICKING

The constitution of India has recognised the right to freedom from forced labour and trafficking as a fundamental right under article 23. The Immoral Trafficking Prevention Act, 1956 was also in response to the ratification of the International Convention on suppression of Immoral Trafficking and Exploitation of Prostitution in 1950 by India. ITP Act although is the only act dealing specifically with the issue of Trafficking but it fails to define the term trafficking. The section 2 of the Act provides definitions in which 'Brothel' is defined as "any house, room, conveyance or place, or any portion of any house, room, conveyance or place, which is used for purposes of sexual exploitation or abuse for the gain of another person or for the mutual gain of two or more prostitutes". This definition of a brothel as a place for 'the mutual benefit of two or more prostitute' converts commercial sex workers who work voluntarily into criminals who have to be penalised. This act has also criticized for being against prostitution than against trafficking, it completely neglects the various purposes of tracking other than the prostitution. Although- prostitution per se has not been declared as offence. One of the amendment in ITP Act is addition of S.5C that punishes clients of prostitutes for the first time. It penalise person 'who visits or is found in a brothel for the purpose of sexual exploitation of any victim of trafficking in persons' with a term of imprisonment and/or fine.

Section 370 of the IPC¹¹ prohibits slavery, servitude, and most forms of sex trafficking, and prescribes sufficiently stringent penalties ranging from seven years' to life imprisonment, which are commensurate with those prescribed for other serious crimes, such as rape. But Section 370 does not define the prostitution of children younger than age 18 as an act of human trafficking in the absence of coercive means—the standard of the 2000 UN TIP Protocol—although other statutes criminalize the prostitution of children. S.7 of the Child Labour (Prohibition and Regulation) Act, 2016 also specifies the hours a period of work for adolescent (a person who has completed his fourteenth year of age but has not completed his eighteenth year).

THE WAY FORWARD

There is no doubt that the gravity of the issue of trafficking is intensifying every passing day. There is a need of a legislation which clearly sets out a criminal offence of 'trafficking' that covers trafficking for all purposes. Along with the legislation there is great requirement of effective administrative body and judicial system which helps in the implementation of the laws made. There is a need of acquiring holistic approach towards the victims of trafficking and their family. Segregating the children of prostitutes by locating separate schools and providing separate hostels would not be in the interest

¹¹Buying or disposing of any person as a slave.- Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.



of the children and the society at large. The rescued victims who are send to protective homes shall not be treated like criminals, they shall not be forced to wear uniforms and shall not always be trap within the surrounding of four walls. They shall be allowed to mingle with others and become a part of the society. Because in author view the victims are send to these rehabilitation centre for the purpose to make them recover from their present vulnerable conditions by assisting them with medical, emotional and physical support and not for to trap them within four walls like prisoners and to separate them from society. If they are to be treated as different then the objective of any legislation made to curb trafficking will never be achieved and the victims who already passing through mental stigma will never recover from that. So at last the author would like to conclude from this thought of Helen Keller “If I am only one, but still I am one, I cannot do everything, but still I can do something; and because I cannot do everything, I will not refused to do something that can I do”. If we all raise voice against human trafficking, we can save many life’s. The moment you decided to care, it's the moment this world becomes a better place to live in.


