

ISSN :2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 6

www.ijlra.com

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A large, semi-transparent watermark of the IJLRA logo is centered on the page. The logo features a stylized building facade with columns and a pediment, with the acronym 'IJLRA' in a bold, sans-serif font below it. Underneath the acronym, the full name 'INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS' is written in a smaller, all-caps, sans-serif font.

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There Is One Absolute Commonality Amongst The Victims Of Human Trafficking; The Loss Of Personal Freedom.

Authored By- Ashiev VM

ABSTRACT

Human Trafficking is the action of capturing and illegally transporting people from a particular region or place to some other region. According to the United Nation, “Human Trafficking is the recruitment, transportation, transfer, harbouring or receipt of people through force, fraud or deception, with the aim of exploiting them for profit.¹” Even today a large number of people across the world are subjected to Human trafficking and it tends to be one of the horrendous violations of Human Rights. There are various reasons for which people are subjected to trafficking, out of which the major reasons are for sexual exploitation and forced labour. In India, the major reason for human trafficking is for forced labour.

Articles 22 and 23 of the Indian Constitution talks about Human Trafficking and Article 51(e) “imposes duty on every citizen to renounce practices that are derogatory to the dignity of women.” There are various provisions in the Indian Penal Code, which deals with human trafficking. However, the significant provisions - Sections 366A, 366B and 374 of the Indian Penal Code deal with human trafficking. The other statutes governing Human Trafficking include “**Immoral Traffic (Prevention) Act 1956, Child Labour (Prohibition and Regulation) Act, 1986, Information Technology Act, 2000, Juvenile Justice (Care and Protection of Children) Act, 2000, Karnataka Devadasi (Prohibition of Dedication) Act, 1982, Andhra Pradesh Devadasi (Prohibiting Dedication) Act, 1989, Goa Children’s Act, 2003.**” Apart from these, there are various judicial precedents concerning Human Trafficking which are discussed. The researcher² also analyses if there are need for reforms in the existing laws.

Research Objectives

1. To examine the causes and consequences of Human Trafficking
2. To examine various legal provisions in India concerning Human Trafficking
3. To analyse the reforms needed in these laws

¹Defined by the United Nations Office on drugs and crime

² Ashiev VM, Student, School of Law, Christ (Deemed to be University)

Research Methodology

This research is based on doctrinal research.

Introduction

Human Trafficking is defined as the process in which humans are illegally transported from one place to another, either within the country or abroad for illegal activities like prostitution, organ trafficking or slavery. Cross border human trafficking has become a serious issue in recent times and it tends to be one of the horrendous violations of human rights. Therefore, combating it through stringent laws becomes essential. This article discusses on the causes and consequences of Human Trafficking, examines into various legal provisions in India concerning Human Trafficking and analyses the reforms that are required.

Causes Of Human Trafficking

For a better understanding on the subject matter, an idea on the causes of the same becomes essential. The causes of Human Trafficking include “**poverty, unemployment, oppression, scarcity of resources, lack of social security, violence against women and children, political instability, corruption, exploitation, fraudulent acts, fake promises, need for cheap labour, lack of knowledge, lack of familial unity, cultural and societal practices, migration, sex tourism, pornography, etc.**”

Human trafficking can be for the purpose of **prostitution, slavery, domestic servants, begging, drug peddling, smuggling, organ trafficking, forced criminal activities, forced inclusion as soldiers, etc.**

Consequences Of Human Trafficking

Human Trafficking can affect the victims in severe ways. It can physically, emotionally and psychologically affect the victim in various ways. Since the victims are treated in inhumane ways, they undergo fear, mental trauma and other mental health issues which may have various other complexities in the lives of the victim.

Victims who are subjected to sexual exploitation and prostitution are prone to various ailments like HIV/AIDS and other Sexually transmitted disease and are further prone to substance abuse which in turn affect their health entirely. Serious sexually transmitted diseases may also result in the death of the individuals. In case of children and other illiterate victims, their lack of education further complexifies the graveness of these diseases. The victims may also be subjected to physical abuse

such as beatings, physical tortures, etc which may result in serious injuries, thereby hampering their future.

Apart from affecting the personal lives of the victim, human trafficking also affects the nation as a whole. Being an illegal activity and an organised crime, the funds arising from human trafficking are in turn used for illegal activities like terrorism, drug mafia, etc. This in turn, increases the transaction cost of the state to devise mechanisms to combat all the illegal activities arising out of Human trafficking. Ultimately, hampering the economic growth of the nation as a whole. Combating this social evil becomes necessary in order ensure the security and growth of the nation as a whole.

Legal Framework

International Instruments

There are various international treaties and laws relating to Human Trafficking, out of which India has ratified a few of them, which are as follows:

1. “United Nations Convention on Transnational Organized Crime (UNTOC), 2000.”
2. The SAARC Convention on “Preventing and Combating Trafficking in Women and Children for Prostitution”.
3. Palermo Protocols which include protocols such as “Prevention, Suppression and Punishment of Trafficking in Persons, especially Women and Children, 2000” and “Protocol against Smuggling of Migrants by Land, Sea and Air, 2000.”
4. “The Convention on the Elimination of All Forms of Discrimination against Women, 1979.”
5. “The United Nations Convention on the Rights of the Child, 1989.”
6. The Optional Protocol on the “Sale of Children, Child Prostitution and Child Pornography, 2000.”
7. “International Covenant on Civil and Political Rights, 1966.”
8. “Universal Declaration of Human Rights, 1948.”
9. The Convention for the “Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949.”
10. The Convention against “Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.”

Constitution Of India

Article 23(1) of the constitution states that “traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law³.” Thus, the constitution of India expressly bans human trafficking and states that doing such an act would result in punishment as per the appropriate law.

Article 24 of the Indian constitution states that “no child below the age of 14 years shall be employed in any industry, mine or any other hazardous employment⁴.” This provision prohibits employment of children from hazardous employment which implicitly denotes that children should not be trafficked as, the children are trafficked for employment in hazardous and illegal activities.

Article 51(e) “imposes duty on every citizen to renounce practices that are derogatory to the dignity of women⁵.”

Clauses (e) and (f) of Article 39 of the constitution briefly states that the people must be protected from “exploitation and abandonment.”

Indian Penal Code, 1860

The Indian Penal Code, 1860 governs various criminal offences in India and also has various express provisions concerning Human Trafficking.

As per **Section 370** of the Indian Penal Code, 1860, “any person for the purpose of exploitation-recruits, transports, harbours, transfers or receives a person through use of threats, force or coercion, abduction, cheating, abuse of power, fraudulent activities or paying the person to attain the consent is said to have committed the offence of human trafficking⁶”

The punishments prescribed by IPC include rigorous imprisonment for a term from 10 years, which may extend to life imprisonment including fine in case of trafficking of one or more persons. In case of trafficking of minor, the term may extend from 14 years to life imprisonment with fine and in case of habitual trafficking, the punishment is life imprisonment, with imprisonment for remaining natural life with fine. In case of trafficking by a public servant or a police officer, the punishment is life imprisonment, with imprisonment for remaining natural life with fine.

Clause (1) of Section 370A states that if a person has knowledge that a minor has been trafficked and still engages the minor in sexual exploitation in any manner, the person shall be imprisoned with a term which may vary from 5 to 7 years with fine.

Clause (2) of the provision states that a person having knowledge of a person being trafficked, still subjects him/her to sexual exploitation in any manner shall be punished with a term which may vary from 3 to 5 years with fine. The nature of the offences is “cognizable, non-bailable, non-compoundable”

Section 371 of the Indian Penal Code, 1860 deals with habitual dealing with slaves. It states that “whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished with imprisonment for life, or with imprisonment of either description for a term not

³ Article 23(1) of the Constitution of India, 1950

⁴ Article 24 of the Constitution of India, 1950

⁵ Article 51(e) of the Constitution of India, 1950

⁶ Section 370 of the Indian Penal Code, 1860

exceeding ten years, and shall also be liable to fine⁷.”

Sections 372 of the IPC and **373** of the IPC illegalises buying and selling minors for prostitution and states that the persons involving in such act shall be liable to imprisonment of a duration not exceeding 10 years and shall also be liable to fine.

As per **Sections 366A**, “inducing any girl under 18 years of age to go any such place with intent to forced or seduced illicit intercourse with another person shall be a punishable offence⁸.”

As per **Section 366B**, “Importing any girl under twenty-one years with the intent that she will be, forced or seduced to illicit intercourse with another person is a punishable offence⁹.”

Immoral Traffic (Prevention) Act, 1956

The Immoral Traffic (Prevention) Act, 1956 is the legislation that aims towards prevention of commercial sexual exploitation of women and children. The act specifies the following offences:

- “Keeping a brothel or allowing premises to be used as a brothel”
- “Living on the earnings of prostitution”
- “Attempting, procuring or taking person for the sake of prostitution”
- “Detaining any person in premises for prostitution”
- “Prostitution in the vicinity of public places”
- “Seduction of a person in custody”

Child Labour (Prohibition And Regulation) Act, 1986

This act regulates the employment of children below a particular age in certain hazardous employments and prescribes punishment for contraventions. This act has some connection with human trafficking, because of the fact that children are trafficked for the purpose of forced labour especially in illegal activities.

Information Technology Act, 2000

This act addresses the issue of pornography and prohibits the publishing and transmission of inappropriate content in any electronic form.

Section 67A of the act penalises the publication or transmission of material containing sexually explicit content in electronic form.

Section 68B of the act illegalises the publication or transmission of material depicting children in sexually explicit act in electronic form.

This act ensures that individuals (children in particular) are not pushed into pornography through illegal activities like trafficking.

⁷Section 371 of the Indian Penal Code, 1860

⁸Section 366A of the Indian Penal Code, 1860

⁹Section 366B of the Indian Penal Code, 1860

Juvenile Justice (Care and Protection of Children) Act, 2000

The law is relevant for children who are vulnerable and are therefore likely to be the victim of trafficking. It protects juveniles in need of care and protection.

Karnataka Devadasi (Prohibition of Dedication) Act, 1982

Act of dedication of any girl with or without consent of the dedicated persons engaging her in prostitution is unlawful and punishable.

Andhra Pradesh Devadasi (Prohibiting Dedication) Act, 1989

This law prohibits any ceremony dedicated as Devadasi in any manner and imposes a penalty of imprisonment for three years and fine.

Goa Children's Act, 2003

This act is defined precisely in Trafficking. It includes every type of sexual exploitation in the definition of sexual assault. Manager and owner of the establishment are responsible for the safety of minors or children in hotel premises. There are strict laws on about the safety of children and publishing pornographic materials.

Landmark Cases On Human Trafficking

In **People's Union for Democratic Rights vs. Union of India**,¹⁰ the term 'forced labour' under Article 23¹¹ was interpreted by the Supreme Court.

In **Bandhua Mukthi Morcha v Union of India and Ors.**¹², the Supreme Court held that whenever it is shown that a person has been working under forced labour, it would be presumed that such labour is to be done with some consideration or economic benefits and such labours will be entitled to protection under law.

In **Vishal Jeet v Union of India**,¹³ the Supreme Court ordered an investigation and research into the causes and the consequences of Human Trafficking and ordered the State and Union Governments to devise measures to combat human trafficking.

In **Neerja Choudhary v State of Madhya Pradesh**,¹⁴ the Supreme Court ordered for rehabilitation of Bonded labours.

¹⁰ (1982) 3 SCC 235

¹¹Of the Constitution of India, 1950

¹²AIR 1984 SC 802

¹³(1990) 3 SCC 318

¹⁴AIR 1984 SC 1099

In **M.C. Mehta v State of Tamilnadu**¹⁵, the Supreme Court held that a fine of Rs. 20,000 shall be imposed on premises where child labour is imposed and such premises shall be sealed. The fine imposed shall be used for rehabilitation of the victim.

The Need For Reforms In The Laws Governing Trafficking In India

Human Trafficking has attained periodic growth over the years and has evolved to become an organised crime. Thereby proclaiming itself as a serious issue, that has to be addressed. Some of the provisions of the present law are not consistent enough to combat with the present strength of the crime and therefore reforms stand essential.

Section 370 of the IPC was amended in the Criminal Law (Amendment) Act, 2013 wherein new terminologies were brought to increase the scope of criminalisation of the offence. However, Section 370A has turned out to be a restricted provision as it does not consider the exploitation of trafficked persons in other sectors of forced labour like domestic labour, agriculture works, etc. The ambit of this provision has to be further more widened in order to ensure that all kinds of exploitation are criminalised and are made punishable.

Secondly, the existing laws only focus on commercial sexual exploitation and do not cover trafficking for other purposes like organ trade, soldiers for warfare, etc. Thus, the ambit of the laws has to be further more widened in order to address the modern issues concerning human trafficking.

Thirdly, the existing laws do not have any preventive measures as such against human trafficking. Only when there are measures to prevent, a major fraction of the crimes related to human trafficking can be prevented. Once the victims are subjected to the inhumane conditions arising as a result of this crime, it mentally as well as physically affects them so much that they cannot attain back their normal course of life. Further, the legal framework is insufficient in terms of providing an effective system for the safety, recovery and compensation of victims of trafficking.

The Immoral Traffic (Prevention) Act, 1956 has not undergone any amendments and is not in line with the present situation of the crime or with the current provisions of the Indian Penal Code. Termed as the Governing Legislation for Human trafficking in the country, it has failed to deliver its purpose and has a very limited scope. Besides covering only commercial sexual exploitation, other crimes concerning Human Trafficking must also have to be brought in the scope of the Act.

The act suffers from various definitional inconsistencies. Definitions of key terms like trafficking, commercial sexual exploitation, prostitution, etc are missing under the ITPA Act, 1986. Prostitution is not illegalised in India, but the act considers sex workers as offenders, again failing to address the key issue which is “trafficking for the purpose of prostitution.” Thus, victims of sexual offenders are treated as offenders under this act and sexual exploitation in private premises are excluded in this act. This act further does not put forth the rights of the victim, further exposing the victims to hardships in the trial process. Another major failure of this legislation is that it completely excludes the process of cross-border trafficking including inter-state trafficking.

¹⁵1996 (6) SCC 756

These are the crucial and essential reforms that have to be considered in order to make the law concerning Human Trafficking more competent and ensure social security of the citizens.

CONCLUSION

Human Trafficking is one of the most horrendous violations of Human Rights. Human Trafficking has evolved as an organised crime associating various other illegal activities with it. Therefore, the implementation of stringent and competent laws turns out to be necessary. Co-operation at all levels of governance is essential to ensure that the laws are effectively executed.

Apart from combatting the crime, prevention of the crime through adoption of various measures would be efficient. Creating mass employment opportunities and spreading awareness through media and activities of NGO's are some of the ways with which the crime rate can be significantly reduced.

