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# **HUMAN TRAFFICKING IN INDIA-** **A BIRD'S EYE VIEW**

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Human trafficking is a prevalent and significant method used to exploit women, involving the illegal transportation of people for various commercial purposes. The United Nations defines the term "human trafficking" as 'Trafficking is an activity leading to recruitment transportation harboring or receipt of persons by means of threat or use of force or position of vulnerability.'

Human trafficking is a trait of humans for the purposes of sexual slavery, commercial sexual exploitation, forced labor, domestic servitude, forced criminality, organ trade. There are various factors that lead to human trafficking a few of which is faulty lack of employment opportunities, child marriage, internet pornography. The main constitute of this crime is money. Human trafficking is a grave crime and a serious violation of human rights sexual exploitation of women and children. The victims of human trafficking are mostly women and children, not only they are contingent to human trafficking also men are. However mostly attacked and abducted are women and children. In today's society women are not only being worshipped but are also being abducted and exploited in all the ways possible from gender discrimination to marital rape and human trafficking being one of the factors.

The earliest of human trafficking was in the African slave trade later started the white slave trade which prevailed around the years of 1990s trading of women from Europe to Arab and other eastern state for various purposes such as prostitution. In India women are traded and trafficked to other countries from different parts of the world.

This criminal activity is an extreme human rights violation and an issue of economic empowerment and social justice human trafficking violates the rights and dignity of the individual in several ways it violates a person's right to life, security, dignity, education, health and redressal

of grievances. Since India is a hotspot for human trafficking the Indian government has brought in many anti trafficking laws and several measures have been laid down to prevent this hideous crime. However the effects of it are questionable in nature.

**Keywords:** Exploitation, Illegal, Violation, Empowerment, Justice

## INTRODUCTION

Human trafficking is a hideous crime against humanity. Women are being one of the most prominent and vulnerable group for human trafficking. For purposes such as commercial sexual exploitation or for individual sexual exploitation. Women and young girls are being kidnapped, sold and are prey of slavery in most parts of the world. India is one of the most common grounds for such offenses. Though many human rights activists and the government claim the human trafficking is an outrageous violation of an individual's rights the process of punishing or prosecuting of these traffickers close to impossible in majority of cases.

Trafficking of women in the community is an ancient practice it dates back to the beginning of human civilizations. Female slaves were highly valued and exploited for sexual and non-sexual purposes. The most common reason for trafficking of women and young girls is for commercial sexual exploitation i.e. prostitution. Their most frequent way to traffic these vulnerable women is by promise of providing them work facilities or studying opportunities and later smuggled to another country or a faraway city as to not find their way back. They are tortured and starved on days end while being abused and assaulted.

Not only is a woman's right to life, dignity, security are violated, their health is compromised in the process. Various health reports have insisted that the trafficking of women for commercial sexual exploitation causes a significantly higher risk of health for general public especially through sexually transmitted diseases. As women who are forced in the hideous crime do not have access to proper contraceptives pills or condoms, hence sexually transmittance have higher chances of spreading. The women who are victims of such crimes are usually under the watch and control they have near to no access to any health care thus resulting in they themselves suffer from these illnesses.

## TYPES OF HUMAN TRAFFICKING

Human Trafficking majorly has three main types:

1. Sex Trafficking
2. Forced Labor
3. Domestic Servitude
4. Other Types

### Sex Trafficking

Sex trafficking is the exportation of women and young girls for commercial sex that includes pornography, sex tourism, and prostitution. It is a market based and monetarily driven high rate criminal industry that works on the bases of demand and supply. These victims are mainly women and children them being easy victims. The victims of sex trafficking face severe physical injuries, psychological trauma, sexually transmitted diseases such as HIV/AIDS.

### Forced Labor

Forced or Coerced Labor is when the trafficked women are involuntarily commanded to perform any work or provide any services, which can be sexual in nature or any other way against their will. This can be by any means that can be threats, starvation, fraud and violence. The industries such as textile, construction, mineral etc. are usually committing such offenses of forced labor and these laborers often are paid minimal to no wage at all. Forced Labor is very much prevailing in modern India in certain communities.

### Domestic Servitude

This is when women or children are constricted their freedom to the wills and whims of the master to an extent of enslavement. The circumstances of domestic servants are unfavorable and unfair in nature further their rights being compromised. In such situations these victims do not get their basic needs fulfilled and further these predators worsen their situations by exploiting them and take complete control over these victims by confiscation of their Identification documents etc.

### Other Types

Forced Criminality is where the trafficked women are forced into performing criminal activities. Organ Trade is one such where the victims are trafficked for their organs or tissues usually for transplanted that is illegal in nature.<sup>1</sup>

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<sup>1</sup> Jeevan Nair, Jain, U.C. and India (2000). The Constitution of India. Jaipur, India: Pointer.

## **CONVENTION FOR THE SUPPRESSION OF THE TRAFFIC IN PERSONS AND OF THE EXPLOITATION OF THE PROSTITUTION OF OTHERS<sup>2</sup>**

In pursuance of India's international commitment on ratifying the convention for the stopping of or reducing of trafficking, exploitation, prostitution of persons the suppression of Immoral Traffic in Women's and Girl's Act, 1956 currently widely known as Immoral Traffic Prevention Act was enacted after a treaty convention being signed at New York on 9th may 1950. There were few laws existing in some states regarding the suppression of immoral traffic but they were not uniform enough to bring a change drastically. After drastic increase in the cases the central law was passed to not only secure uniformity but also sufficiently disincentive for the purpose. It is impossible to deny the importance of prevention of trafficking but somehow or the other the entire focus of ITPA appears to be on eradicating prostitution rather than prevention of trafficking in persons.

### **A STUDY ON THE INCREASE OF HUMAN TRAFFICKING**

According to a recent report by the United Nations Office on Drugs and Crime<sup>3</sup>, the majority of human trafficking victims, exceeding one-third, are children, while 71% are women. The executive officer of United Nations Office on Drugs and Crime (UNODC)<sup>4</sup> Yury Fedotov stated that the trafficking for sexual exploitation and forced labour remains the most prominent form, they are also being used as beggars, used in benefit of frauds, pornography, and also forced marriages.

The UNODC,2016 Global Report<sup>5</sup> separates the collected data on the basis of gender. It was discovered that women and girls are usually trafficked for marriage and sexual slavery, wherein, men and boys are mostly trafficked into exploitative labour, which includes them working as labourers in mining sector, soldiers, porters, slaves.

Globally, 28% of trafficking victims are children, with higher proportions in Sub-Saharan Africa

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<sup>2</sup> Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others,1951

<sup>3</sup> United Nations Office on Drugs and Crime,1997

<sup>4</sup> Supra 7

<sup>5</sup> Global Report on Trafficking in persons, 2016, available at: [https:// www.unodc.org/documents/data-and-analysis/glotip/2016\\_Global\\_Report\\_on\\_Trafficking\\_in\\_Persons.pdf](https://www.unodc.org/documents/data-and-analysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf) (last visited on 25/01/24)

at 62% and Central America and the Caribbean at 64%. Sixty nine countries detected trafficking victims from Sub-Saharan Africa between 2012 and 2014.

It was also emphasized that armed groups often engage in trafficking in their territories of operation, trafficking women and girls into marriage or sexual slavery and forcing men and boys to forced labour or combats.

The reports indicate that trafficking patterns align with regular migration flows, both converging on the same destination country for criminal activities. Elevated rates of trafficking are often influenced by transnational organized crime in the country of origin and the socio-economic profile of the victim. Although human trafficking has been criminalized in 158 countries, the progress made in the last 13 years is significant. However, as cautioned by Mr. Fedotov, the number of trafficking victims receiving protection and services in various countries remains insufficient. There is a plea for increased resources to identify and support trafficking victims, along with enhancing criminal justice responses for the successful detection, investigation, and prosecution of cases.

## **PREVENTIVE MEASURES OUTLINED BY THE SUPREME COURT**

The trafficking of teenage girls, involvement in the “flesh trade,” brutal treatment, and the persistence of the Devadasi system and Jogin Tradition represent a severe breach of fundamental rights as outlined in both national and international human rights instruments dedicated to safeguarding the well-being of women and children. Necessary steps for speedy trail from prevention of the illegal activities and eradication of prostitution, devadasi system and jogin tradition were focused in the case of *Vishal Jeet v. UOI*<sup>6</sup>, the court directed both the state and central government to take speedy action under existing laws through the law enforcing authorities, to provide adequate rehabilitative homes to victims to re-live the normal life, to set up their separate advisory committee Stringent regulations were established for foreigners seeking to adopt Indian children, requiring them to comply with licensed agencies from their own countries. The Supreme Court emphasized that any deviation from these principles would render the adoption invalid, leading to severe consequences as seen in the matter of *Lakshmi Kant*

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<sup>6</sup> 1990 AIR 1412, 1990 SCR (2) 861

*Pandey v. UOI*<sup>7</sup>, the Article 15 (3), 24 and 39 of Indian constitution were used as a reference to along with the UN declaration on the rights of the child.

The Supreme Court has utilized its exceptional writ jurisdiction powers outlined in Article 145 and Article 142 to establish a comprehensive framework for the rescue and rehabilitation of victims of sexual exploitation, particularly in specific cases. One such case is *Gaurav Jain v. UOI*<sup>8</sup>, the application under Art32 was made through PIL asking the government to make provisions in favor of children of prostitution. The court rejected the demand for providing school and hostels for the children of prostitutes as it was not in the interest of such children.

Further, in the case of *Budhadev Karmakar v. State of West Bengal*<sup>9</sup>, a case of brutal murder of sex workers. The central and state government's sole responsibility is to prepare schemes that include technical/vocational training to sex workers and sexually abused women in the country for their protection and betterment of their lives.

## INDIAN EXISTING STATUTORY LAWS AGAINST HUMAN TRAFFICKING

### **Immoral Traffic Prevention Act 1956<sup>10</sup>**

The parliament of India passed Immoral Traffic (prevention) Act in 1956 which aims to protect the rights and interests of women and girls, it also talks about the penalties/punishment that are given to those offenders who shall commit the offense of prostitution sexual exploitation/ abuse for gain of another person.

### **Child Labor Prohibition of Regulation Act 1986<sup>11</sup>**

The government of India passed the Child Labor Prohibition of Regulations Act in 1986, to regulate laws related to child labor practice in the country. This Act is effective/ works for the basic needs and rights of children in order to protect their interests. This Act protects children from any kind of exploitation and excessive interference.

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<sup>7</sup> 1987 AIR 232, 1987 SCR (1) 383

<sup>8</sup> 1990 AIR 292 1989 SCR Supl. (2) 173 1990 SCC Supl. 709 JT 1989 (4) 315 1989 SCALE (2)1126

<sup>9</sup> 2007 (4) CHN 305, 2007 CriLJ 3677

<sup>10</sup> Immoral Traffic Prevention Act 1956, (Act 104 of 1956)

<sup>11</sup> Child Labor Prohibition of Regulation Act 1986, (Act 61 of 1986)

In the Landmark case of *M.C Mehta v. State of Tamil Nadu*<sup>12</sup>, the court held that the children below the age of 14 year cannot be employed in any hazardous industries, mines and other works. In the landmark case of *Bandhua Mukthi Morcha v. UOI*<sup>13</sup>, the court directed the state of Uttar Pradesh to eliminate the carpet industry's use for child labour, issues welfare access to education, health and other basic facilities.

### **Information Technology Act 2000<sup>14</sup>**

The government of India passed the Information Technology Act in the year 2000. It is also called the IT Act. The Act was further amended in 2008 and 2018 to meet needs and society. The Act protects the privacy of an individual, and also provides penalty to those who create offense/nuisance/breached data and privacy of any other individual. It also regulates and protects the sensitive data stored by social media and other social media intermediates.<sup>15</sup>

### **Juvenile Justice (Care of Protection of Children) Act 2000<sup>16</sup>**

India enacted Juvenile Justice Act in 1986. Latter, changed the terminology for delinquent and neglected children to 'child in conflict with law' and child in need of care and protection respectively.

This Act provides with the establishment of the Juvenile Justice Board for giving justice to the juvenile in conflict with the law.<sup>17</sup>

### **Transplantation of Human Organs and Tissue Act 1994<sup>18</sup>**

The Indian government passed the Transplantation of human organs Act in the year 1994. This Act was introduced to regulate removal, storage, transplantation of organs. This Act mainly talks about brain death scam taking place in the country. As per THOA 1994 talks about the punishment for any person who violates any other provisions of the Act.

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<sup>12</sup> AIR 1997 SUPREME COURT 699, 1996 (6) SCC 756, 1997 AIR SCW 407, 1997 LAB. I. C. 563, 1997 (1) UJ (SC) 243, (1997) 1 JT 286 (SC), (1997) 29 ALL LR 440, 1997 (1) SCC 733, 1997 LAB LR 97, 1997 UJ(SC) 1 243, (1997) 3 GUJ LR 2306, (1998) 1 KANT LJ 582, (1997) 2 LAB LJ 724, (1997) 1 LAB LN 12, (1997) 1 CURLR 198, (1997) 2 BLJ 155, (1997) 1 SUPREME 207, 1997 SCC (L&S) 49

<sup>13</sup> 1984 AIR 802, 1984 SCR (2) 67, AIR 1984 SUPREME COURT 802, 1984 LAB. I. C. 560, 1984 SCC (L&S) 389, (1984) 2 LAB LN 60, 1984 (3) SCC 161

<sup>14</sup> Information Technology Act 2000, (Act 21 of 2000)

<sup>15</sup> Fatima, T. (2017). Cyber Law in India. Kluwer Law International B.V.

<sup>16</sup> Juvenile Justice (Care of Protection of Children) Act 2000, (Act 56 of 2000)

<sup>17</sup> Rathore, V. (2019). An Insight into Indian Juvenile Justice System. Notion Press.

<sup>18</sup> Transplantation of Human Organs and Tissue Act 1994, (Act 102 of 1994)

**Indian Penal Code 1860<sup>19</sup>**

The Indian Penal Code 1860 contains provisions that cover trafficking of children and women for sexual exploitation. Prohibition of kidnapping, selling and buying minors into prostitution are rendered under section 366(A), section 372 and 373 respectively. The provisions regarding the trade of girls/ women are section 366(B) and 367.<sup>20</sup>

**Constitution of India 1950<sup>21</sup>**

The constitution of India 1950 renders the citizens of the country with Article 23 of the Indian Constitution talks about the prohibition and penalization of trafficking of humans and forced labor quoted in the Landmark case of *Raj Bahadur v. State of West Bengal*.<sup>22</sup>

Article 24 of the Indian Constitution states that any child under the age of fourteen years of age shall not work in any hazardous employment like factories or mines to protect the women and children of the country.

**Criminal Procedural Code 1973<sup>23</sup>**

The central government and individual states have the role/responsibility for providing compensation to trafficking victims.

The provisions under Criminal Procedure Code, 1973 for punishments, are sections 375 and 375(A) wherein, section 375 provides fine that can be passed on to the victims and Section 375 (A) provides state fund, which can be extended to victims of any crime who have suffered.<sup>24</sup>

**THE TRAFFICKING OF PERSONS (PREVENTION, PROTECTION AND REHABILITATION) BILL, 2018<sup>25</sup>**

A total of 8,132 cases of human trafficking were reported in India in 2016 under the Indian Penal Code, 1860 according to national crime records bureau. There is 15% increase from the number of cases reported in the previous years. In the year 2016, a number of 23,117 trafficking victims

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<sup>19</sup> Indian Penal Code 1860(Act 45 of 1860)

<sup>20</sup> Gandhi, B.M. and India (2008). Indian Penal Code. Lucknow: Eastern Book Co.

<sup>21</sup> Constitution of India 1950

<sup>22</sup> Raj Bahadur v. State of West Bengal.

<sup>23</sup> Criminal Procedural Code 1973, (Act 2 of 1973)

<sup>24</sup> Abhinav Prakash, Code Of Criminal Procedure, Delhi, 2007, universal law publication

<sup>25</sup> The Trafficking Of Persons (Prevention, Protection And Rehabilitation) Bill, 2018

were rescued. Out of these, 45.5% of persons were trafficked for forced labour, followed by 21.5% for prostitution.

India ratified the United Nations Convention against Transnational Organised Crimes, 2000, including its Protocol to Prevent, Suppress and Punish Trafficking in person in 2011. Being pursuant to an order of the Supreme Court, the Ministry of Women and Child Development constituted a committee to examine the viability of a comprehensive legislation on human trafficking.

This Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 was introduced in Lok Sabha by the Minister of Women and Child Development, Ms. Maneka Gandhi on July 18, 2018 and the bill was passed in the house within 10 days of introducing a bill i.e. on July 26, 2018. The Bill provides speaks about the prevention of trafficking, rescue and rehabilitation of the trafficked persons.

**There are few key features of this bill, and they are as follows:**

The definition of trafficking goes on to be the recruitment, transportation, harbouring, transfer, receipt of a person for exploitation by using the means of threat, force, abduction, fraud, deception, abuse of power through inducement where exploitation includes physical or sexual exploitation along with slavery and forced removal of the organs from the human body.

The purpose of trafficking as aggravated forms of trafficking is also classified under this bill. It includes trafficking for the purpose of forced labour, bearing children, inducing early sexual maturity by administering chemical substances or hormones, or even begging. The punishment of simple trafficking is much lesser if compared to that of aggravated trafficking according to this bill.

Various authorities at the district, state, and national levels are set up for the purpose of investigating the offences and rescuing the trafficked persons. The state government shall appoint anti-trafficking police officers and constitute anti-trafficking units for one or more districts to rescue the people and investigate the offences committed.

Whereas at the state level, the state government shall appoint nodal officer to combat trafficking

in the state, monitor functioning of district anti-trafficking officers, and coordinate and monitor inter-state and trans-border transfer of victims, witnesses, evidence, and offenders. And at the national level, the central government will build up a National Anti-Trafficking Bureau, which shall take over investigation of cases referred to them by two or more states.

The bill orders the central and state governments to set up protection homes and provide shelter, food, counselling and medical services to the victims of the trafficking. It shall also maintain rehabilitation houses in each district, to provide rehabilitation to the victims. There must also be anti-trafficking committees set up in all the three levels i.e. district, state, and national levels for the victims.

The rehabilitation of victims shall not be wholly dependent on criminal proceedings being initiated against the accused, or the outcome of the proceedings. There shall be Rehabilitation Fund created by the central government, which must be used to set up Protection and Rehabilitation Homes for the victims.

Not only there must be setting up of rehabilitation centres and investigation be taking place but also there must be preventive measures taken by the district and state anti-trafficking committees, it must undertake measures to protect and prevent vulnerable people from being trafficked and used for other purposes such as prostitution.

These measures must include facilitating and implementation of the livelihood and educational programmes for vulnerable communities of the societies. Also, facilitating and implementation of various government schemes and programmes for prevention of human trafficking, and the constant developing of law and order framework to ensure prevention of trafficking as there are cases increasing day by day and also many new ways and techniques being used to trafficked humans. The Bill also directs for setting up of designated courts in each district, which will seek to complete trial of trafficking cases within a year or so. The Bill specifies various penalties. All offences are considered to be cognizable and non-bailable where the police officers can arrest the offenders without warrant. If a person is found guilty under the Bill and also under any other law, the punishment which is higher shall be applied.

Currently, various laws address specific forms of trafficking, such as the Immoral Traffic

(Prevention) Act, 1986, which focuses on commercial sexual exploitation, and the Bonded Labour System (Abolition) Act, 1976<sup>26</sup>, dealing with bonded labor. While the proposed Bill aims to be a comprehensive law for all trafficking cases, it retains existing laws, potentially creating a parallel legal framework. This may lead to confusion in enforcement due to different procedures outlined in each law. For instance, both the Immoral Traffic (Prevention) Act and the Bill propose the establishment of Protective Homes, raising uncertainties about the destination for victims of sexual exploitation. Additionally, distinct laws designate special courts for hearing offenses related to trafficking.

## CONCLUSION

Trafficking of women and its impact are unavoidable problem of the society as a whole. It is an issue women face day in and day out. Trafficking happens in the most civilized cities from around the world. Poverty and illiteracy are the root cause of this social evil. Even as numerous NGOs or the government works to eradicate this violation of human rights the result is near to none. Even as these victims are rescued they are not provided with proper rehabilitation and are treated as burden on the society rather than providing them with opportunities build their future fearlessly.

Most of these rescued women and young girls are abandoned as they are no longer considered to be respectful people in the eyes of the parents, family and society. Whereas they need to be the one to provide the support systems they require at that point of time as these victims go through merciless torture and psychological trauma/abuse. Victims of human trafficking need and have to be provided with rehabilitation and support programs for the unimaginable pain and losses they have suffered.

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<sup>26</sup> Bonded Labour System (Abolition) Act, 1976, (Act 19 of 1976)