

## Article on EMERGING DIMENSION OF HUMAN TRAFFICKING: A CRITIQUE OF THE EFFICACY OF LEGAL FRAME WORK

ARADHANA TRIPATHI  
Prof. (Dr.) SHASHANK SHEKHAR (Co-Author)

Shri Ramswaroop Memorial University, Lucknow

### Introduction

This Chapter tries to demystify certain concepts about trafficking which have often been misunderstood and distorted. The clarity of these concepts is essential for proper understanding of the trafficking situations and for taking appropriate response.

Trafficking does not mean prostitution. They are not synonymous. In understanding trafficking, one should delink it from prostitution. As per the existing law, Immoral Traffic (Prevention) Act 1956 (ITPA<sup>1</sup>) prostitution becomes an offence when there is commercial exploitation of a person. If a woman or Human is sexually exploited and any person gains out of the same, it amounts to commercial sexual exploitation (CSE), which is a legally punishable offence wherein the culpability lies against all exploiters. Trafficking is the process of recruiting, contracting, procuring or hiring a person for CSE<sup>2</sup>. Therefore, trafficking is a process and CSE is the result. The 'demand' in CSE generates, promotes and perpetuates trafficking. This is a vicious cycle. Trafficking could also be a means for other types of violations such as for developing pornographic material, for promoting sex tourism, for sexual exploitation under the facade of bar tending, massage parloursetc, or even for exploitative labour where sexual abuse may or may not coexist. ITPA envisages only trafficking for CSE. Commercial activity need not be in a brothel, but could also occur in places including a residential dwelling, a vehicle, etc. Therefore a police officer who is acting under ITPA has powers to take steps in all such situations where trafficking leads to or is likely to lead to CSE in any form, including those under the facade of massage parlours, bar tending, 'tourist circuit', 'escort services', 'friendship clubs'. Trafficking in human beings, a modern-day slavery, is a complex and multidimensional problem that has spread worldwide.

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<sup>1</sup>Immoral Traffic (Prevention) Act 1956

<sup>2</sup>commercial sexual exploitation



Like pollution trafficking has permeated our day to day lives. The present situation of trafficking in human beings is a clear manifestation of the lopsided economic development, lack of political will and social disintegration. The failure of the state machinery including law enforcement puts vulnerable sections of the society at the receiving end of this multi-dimensional problem.

The last few decades have seen significant development of the response in combating trafficking in human beings at the national, regional and international levels. However, critical and concrete efforts have been lacking to curb the menace of human trafficking. The transnational nature of this crime requires an integrated global action with the involvement of different stakeholders. Much work has been done in terms of research on human trafficking, but reliable data both at national and international level is lacking. There is a lot of repetition in the work. It seems that the studies undertaken are a replica of one parent research, which has created a lot of confusion about the existence and the conceptual dimensions of human trafficking. However, testimonies of various stakeholders clearly confirm its existence worldwide. Consequently, human trafficking has been put at the top of the international agenda and various efforts have been made to curb this crime. Most importantly, in this regard, the United Nations Convention against Transnational Crime<sup>1</sup> has been a path breaking achievement. For more than a century human trafficking has been linked only to one form of exploitation namely, commercial sexual exploitation, but the United Nation's Trafficking Protocol defined trafficking in persons in such a way that it diluted the age old belief that human trafficking is just for the commercial sexual exploitation. The Trafficking Protocol, currently forms the basis of various State human trafficking laws.

1 The United Nations Convention against Transnational Crime (UNCTC) is a 2000 United Nations sponsored multi-lateral treaty against transnational organized crime. This Convention was adopted by a resolution of the United Nations General Assembly on 15 Nov. 2000.

2 The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Humane (also referred as the Trafficking Protocol or UNITIP Protocol) is



a Protocol to the Convention against Transnational Organized Crime. It is one of the Palermo Protocols, the others being the Protocol against the Smuggling of Migration by Land, Sea and Air and the Protocol against the Illicit Manufacturing and Trafficking in Firearms.

Trafficking in persons is both a human rights as well as a criminal justice issue. More importantly, the issue of commercial sex work is highly controversial and sensitive.<sup>3</sup> The UN Protocol was preceded by the Convention for the Suppression of the Traffic in Persons, 1949, but this Convention got a mixed reaction. It was not widely signed and ratified by the States. This, clearly reveals that the international community is divided on this issue. However, the UN Trafficking Protocol subsequently expanded the definition of trafficking in persons without dealing with the issue of states regulating internal prostitution. It is due to this liberal approach that within a few years the Protocol has obtained more ratifications than the Convention for the Suppression of the Traffic in Persons. The main focus of the Protocol is on three main elements which can eradicate various forms of exploitation. The Trafficking Protocol also proposes the three P's approach namely, measures to prevent trafficking in human beings, prosecution of the traffickers, and protection of the trafficked victims. However, it must be considered that the Human Trafficking Protocol is mainly a criminal law instrument, focusing more on the prosecution of traffickers rather than the protection of victims of offence. Therefore, in this regard, states must follow and rely on other recommendations laid down in various soft law instruments like the UNHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking and the UNICEF Declaration for the Protection of the Rights of the Human and Victims of Human trafficking.<sup>4</sup>

Most importantly, as regards the Humane, the Convention on the Rights of the Human<sup>5</sup> can to a large extent provide impetus to protection of the rights of Humane and prevention of Human trafficking. There are other numerous international instruments

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<sup>3</sup>Silvia Scarpa, *Trafficking in Human Beings: Modern Slavery*, Oxford University Press, (2008), p. 206

<sup>4</sup>*Ibid.*

<sup>5</sup>U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Humanren, Supplementing the United Nations Convention Against Transnational Organized Crime, 2000.



which if consistently implemented, reduce if not eliminate any form of exploitation including trafficking in human beings.

There has been an improvement in this area on account of the establishment of the mandate of the Special Rapporteur on Trafficking in Human Beings. The work assigned to this new establishment is the annual submission of reports on human trafficking to the Human Rights Council. It also conducts State visits and receives information about the menace of human trafficking from different stakeholders. This Rapporteur along with other Rapporteurs (Violence against Women, Migrant Workers and Sale of Humanren) to a greatThe Convention on the Rights of the Human was adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 and into force 2ndSeptember 1990.extent fills in the loopholes which exist in the monitoring mechanism of the Human Trafficking Protocol.<sup>6</sup>

At the regional level, the SAARC nations have drafted a well formulated Convention namely, the Convention on Preventing and Combating the Trafficking in Women and Human ren for Prostitution in 2002. The main objective of this Convention is to promote cooperation amongst the member countries to deal effectively with the various aspects of prevention, interdiction and suppression of trafficking in women and Human Ren, the repatriation and rehabilitation of victims of trafficking, of the use of women and Human Ren in international prostitution networks, particularly if the SAARC member countries (Bhutan, Bangladesh, India, Maldives, Nepal, Sri Lanka, and Pakistan) are countries of origin, transit and destination. This legal instrument is legally binding on its signatory parties and is the first regional anti-trafficking treaty to emerge from Asia. As of March 2004, the Convention was ratified by all member countries of the SAARC except Nepal and Sri Lanka.

Trafficking in human beings is undoubtedly a criminal justice issue. However, it affects the territorial integrity of the nations as well. As in many cases trafficking in human beings involves facilitations of illegal crossing of borders in clear violation of national

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<sup>6</sup>Ninth SAARC Summit (May, 1997) that the feasibility of a regional Convention to combat the grave crime of trafficking in women and Humanren for prostitution should be explored.



immigration laws and policies. It also to a large extent threatens the rule of the law of the nations, because traffickers and violators most often resort to violence, corruption and complicity in order to advance their guilty plans.

Thus, in order to check this growing phenomenon at the national level many steps have been taken. First and foremost, the Constitution of India expressly prohibits trafficking in human beings.<sup>7</sup> To carry forward the mandate of the Constitutional provisions and responsibility of International agreements, the Immoral Traffic (Prevention) Act, 1956 has been enacted to tackle the problem of immoral trafficking of human beings. However, this legislation only focuses on trafficking for commercial sexual exploitation. There is no mention of other forms of human trafficking like forced labour, bonded labour, organ trade, begging etc. in this legislation. Although the Act has been amended twice till now,<sup>8</sup> there is nonvisible reduction in trafficking. This is largely due to the reason that no efforts have been made to consider other forms of trafficking in human beings and the lack of effective implementation.

Apart from the Immoral Traffic (Prevention) Act there are a number of provisions in the Indian Penal Code, which in one way or another help in the prevention of crimes like human trafficking. Recently, after the Delhi Nirbhaya gang rape there has been a widening of focus on the gender related issues which in turn paved the way for the appointment of the Justice Verma Committee. The Verma Committee submitted its reports within a short time of one month.<sup>10</sup> Following the Verma Committee recommendations, the President of India passed an Ordinance which was followed by the enactment of Criminal Law (Amendment) Act. 2013. By this amendment section 370 of the Indian Penal Code was substituted by sections 370 and 370(A). These provisions provide for stringent punishment for offences like human trafficking.

Other relevant legislations which address the issue of human trafficking in India are; the Juvenile Justice (Care and Protection of Human Rights) Amendment Act, 2006;

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<sup>7</sup>Constitution of India, 1950, Article 23, 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 law.

<sup>8</sup>Amended in 1978 and 1986.



Andhra Pradesh Devdasi (Prohibiting Dedication) Act, 1989; the Karnataka Devdasi (Prohibition of Dedication) Act, 1982; the Human Labour (Prohibition and Regulation) Act, 1986; Information Technology Act, 2000; and the Goa Human Ren's Act, 2003. Beside these, there are other collateral laws which are relevant to trafficking in human beings. These are the Indian Evidence Act, 1872; Young Persons (Harmful Publications) Act, 1956; Bonded Labour System (Abolition) Act, 1976; Human Marriage Restraint Act, 1929; Probation of Offenders Act, 1958; Criminal Procedure Code, 1973; Indecent Representation of Women (Prohibition) Act, 1986; and the

## 2. LITERATURE REVIEW :

Human Rights Watch. Hidden in the Home: Abuse of Domestic Workers with Special Visas in the United States. Vol. 13, No. 2 (G).2001. This report examines the treatment of domestic workers with special visas in the United States, providing case studies of several women including those from Guatemala and Peru. The report examines specific abuses suffered, including physical and psychological abuse. The report includes a specific examination of forced labor, servitude, and trafficking in persons. Government procedures, guidelines, laws, and regulations are also covered, as are U.S. laws and enforcement and international organizations 'internal requirements. The report also provides a comparison study of the U.K., and includes recommendations.

Another research carried out by the National Human Rights Commission on Trafficking in women and human in India (2002 -03) states that "maximum percentage of interviewed individuals has been trafficked from the states of Andhra Pradesh (25.9%). Mora, Luis. Las Fronteras de la Vulnerabilidad: Género, Migración y Derechos Sexuales y Reproducción. Equipo de Apoyo Técnico, Oficina para América Latina y el Caribe, Fondo de Población de las Naciones Unidas (FNUAP). Documentopresentado en la Conferencia Hemisférica sobre Migración Internacional, 20-22 de noviembre de 2002, Santiago de Chile. 2002.

This report analyzes patterns of migration and trafficking in Latin America and the Caribbean, with a focus on the health of women. Internal migration patterns are most often from rural to urban settings, but can be to locations with a high proportion of male laborers, such as the trafficking of 50,000 Brazilian girls to the gold mining towns in the Amazon. International trafficking from Latin America is most common to Europe and North America, and within



Central America either as a destination or a transit site. The report claims that restrictions on trafficking in Thailand and other South Stop Human Trafficking

East Asian countries have lead to an increase in sex tourism in Central America, Argentina and the Chiapas. In the Dominican Republic alone, migration officials estimate that there are 400 groups involved in human trafficking. In Paraguay, advertisements for domestic work in Argentinathinly veil prostitution networks. In Venezuela, the report claims that police and medical staff sexually abused victims seeking assistance. In Colombia, women and girls are used as sex slaves by both sides of the conflict. Adolescent girls trying to cross borders from Mexico to the US often find themselves stuck in prostitution on either side of the border. Traffickers promise girls a reduction in their fee, or “protection” from victimization by other men, in exchange for sex.

The Indian states policy approach, theoretically at least, is aimed at balancing between the view that sex work is immoral, and that the right of sex workers ought to be protected. In practices however, state policy has been influenced by the dominant view that sex work is immoral (Misra,Mahal,&Shah,2000) since its purpose is to inhibit or abolish commercialized vice which the ITPA defined as trafficking in women for the purpose of prostitutions as an organized means of living (ProtectionProject,2002).

### **3. OBJECTIVE OF THE STUDY:**

Following are the objectives which are given below :

1. To understand the patterns of trafficking, the process that perpetuate the phenomenon of trafficking.
2. To analyze the role and function of the agencies which are involved in containing and combating this phenomenon and
3. To study the various national and international measure relating to trafficking.
4. To study the essential ingredients of the offence of trafficking
5. To study the national framework of laws related to Human trafficking in India

### **4.SCOPE AND LIMITATIONS OF THE STUDY**

The object of this study was shaped by concerns about the consistency and genuineness of existing data and has been carried out with the following purposes:



1. To understand the trends and patterns of trafficking, the process that perpetuate the phenomenon of trafficking;
2. To analyze the role and function of the agencies which are involved in containing and combating this phenomenon; and
3. To study the various national and international measures relating to trafficking.
4. Considering Human trafficking as one of the heinous crime, it also involves the violation of the basic victim rights of the victim. The Govt. and NGO's have implemented various programs for the welfare of the victims of trafficking.
5. The study undertakes multidisciplinary approach relating to Human trafficking which involves the analysis of national-international measures regulating the field of human trafficking. Suggestions are also given which can be used by the legal jurists for study purposes and the legislature for enacting new laws.

## **5. Hypothesis**

The laws and provision related to human trafficking are insufficient to tackle with the problem of human trafficking in India.

## **6. RESEARCH METHODOLOGY**

This present study is based on the collection of academic references including data from secondary sources such as books and internet, crime reports, journals and other published material which is primary data interviews, surveys and other research techniques, and could include both present and historical information. This study involves the use of doctrinal method of research. Textbooks etc. have been used. Case reports like All India Reporter, Supreme Court Cases, etc. have also been referred to. Internet sources are also used.

## **7. BIBLIOGRAPHY**

### **ACTS/BILL/CHARTER/CODE/CONVENTIONS/DIRECTIVES**

1. The Immoral Traffic (Prevention) Act, 1956
2. Abolition of Forced Labour Convention, 1957.
3. The American Convention on victim rights, 1969.
4. The Bonded Labour System (Abolition) Act, 1986.

### ARTICLES/REPORTS

1. Amy O' Neill Richard, "International Trafficking in Human to the United States: A Contemporary Manifestation of Slavery and Organised Crime", *Centre for the Study of intelligence*, USA, 1999.
2. Asian-African Legal Consultative Organization, "Establishing Cooperation against Trafficking in Human and Human Ren", *Asian-African Legal Consultant Organisation Secretariat*, New Delhi.

### BOOKS

1. P.M. Nair, Sankar Sen, *Trafficking in Women and Children in India*, Orient Blackswan, 2005.
2. Aronowitz, Alexis A., *Human Trafficking, Human Misery: The Global Trade in Human Beings*, British Library Cataloguing Publication, USA, 2009.
3. Arora, Vibha, *Law Relating to human and Human Ren*, Central Law Publications, Allahabad, 2004.
4. Bajpai, Asha, *Human Rights in India: Law, Policy and Practise*, Oxford University Press, New Delhi, 2003.

### NEWSPAPERS

1. Times of India
2. Hindustan Times