



HUMAN TRAFFICKING SEX BASED TRAFFICKING: LEGAL FRAMEWORK IN INDIA

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ABSTRACT

Human Trafficking is the trade in humans, basically for the purpose of sexual slavery, forced labour, or for the extraction of organs and tissues, including surrogacy and ova removal. Trafficking of human being is a global phenomenon which has gained momentum in recent years. It can be called as the modern- day equivalent of slavery. Human trafficking for the purpose of sexual exploitation has become a largely prevalent issue in the world. Trafficking industry, in today's day, is one of the largest criminal industry. This paper is mainly focusing on the root causes of trafficking and how essentially it is leading to prostitution both forced and free. Causes like structural inequality, cultural sanctioned practice, poverty or economic disability, gender imbalance, organ trade, gender violence, etc., are mainly responsible for the human trafficking. Human trafficking is the absolute violation of the human rights of a person trafficked and hence, in India, the nation being a signatory to the Palermo Protocol of the 2000 Convention against Transnational Organized Crime, has added a penal provision under Section 370 of the Indian Penal Code, 1860 to prevent and punish such heinous crime. Human trafficking of the sheer and worst form of the violation of the human rights which impacts the victims physically, mentally and sexually the most, and in most cases, victims also suffer the post-traumatic stress disorders, anxiety, insecurity, depression and disorientation from the society. The issues that are being faced is the lack of legislation, strict punishment, enactment and enforcement of laws, lack of knowledge and awareness about the laws and rights. Trafficking for marriage because of the less number of girls termed as female ratio is very less. Here we will look forward to the problem of human trafficking, its major causes, its modes and types and the preventive measures for the same. Also, we will critically analyze the legislation in India regarding human trafficking.

Keywords: Human Trafficking, Prostitution, Sex Based Trafficking, Human Rights, Society, Legislation, International Convention, Crime.

INTRODUCTION

Trafficking in person, the dark side of the population in movement, has been a cause of intense anxiety and concernment of individuals, societies and economies at large. Human Trafficking for prostitution is widely recognized as one of the fastest increasing industry of crime worldwide, and hence apprehends a universal threat to individuals. It separates families, uproots social bonds, support networks and under mines economic prosperity of communities at small scale and nations at bigger scale. Trafficking in person is also one of the biggest concern cross borders, because victims are abducted or recruited from a different country origin and are transferred through transit regions to different destinations for their exploitation. This industry of crime exist in every societies, in all type of economies and in all kinds of countries, be it developed, industrialized, developing or in transition and it is increasing exponentially and hence needs global action.

Trafficking in person for prostitution has become a major issue in the South Asian countries. Mainly focusing on India, we see most of the movement from Nepal and Bangladesh. Prostitution consists of knowingly engaging in or offering to engage in a sexual act for hire. Sexual Act is defined as sexual intercourse, cunnilingus, fellatio, masturbation of another, anal intercourse or the causing of penetration to any extent and with any object of the genital or anal opening of another, whether or not there is any emission.¹ This sex-based trafficking of persons seriously undermines human rights and fundamental rights of the victim. Despite of the numerous measures taken over the last two decades to tackle the problem, the causes and effect of sex-based trafficking has not reduced remarkably, thus there is a strict need for more rigid laws and grave punishments for such crimes. There is no doubt that trafficking is a threat to a country's national security. Therefore, a strategy- based analysis of the breach of the national security, human rights and an individual's fundamental rights is necessary to break the trafficking cycle. It seeks to identify and rectify the practices of discrimination and unreasonable and unjust power distribution that encourages trafficking and paves a way for traffickers, and that denies justice to the trafficked. We are emphasizing on fighting the root causes of sex-based trafficking in order to strengthen the human security of victims and enhances the chances for the development of all.

TRENDS OF SEX-BASED TRAFFICKING IN SOUTH ASIAN COUNTRIES: INDIA

This paper addresses the present scenario of sex-based trafficking as well as the extent of it in the South Asian countries, particularly in India. Human trafficking in the South Asian countries is basically divided into two categories, sex-based trafficking and non sex-based trafficking. The non sex-based trafficking in person includes domestic labour, industrial labour, organ trade, surrogacy, adoption, drugs smuggling etc. Human trafficking is not a new- phenomena for the South Asian countries. These countries undergo various types of trafficking of men, women and children, basically from rural to urban areas and from state to internationally across national boundaries. The main reason for such forced and free movement is for better quality of life and high desires for luxury. Human trafficking is driven through undocumented movements of humans for the reasons mentioned above. Due to the globalization process occurring worldwide has made the industrial setup essential for countries which requires cheap labour and hence to fulfil such high demands for cheap labour there is this illegal movement of humans either will-fully or through trafficking. Heavy population growth in this region is also one of the main reasons which encourages migration of people. These people start of being an illegal- migrants and end up being trafficked. The anti-trafficking laws in these countries need to be aggressively enforced because these trends have deep-roots in the society but unfortunately the legislation to combat trafficking is either inadequate (as in India) or unimplemented in a proper way (as in Bangladesh) making it difficult to prosecute and convict them. One of the reasons for this lack in the proper and absolute enforcement of the anti-trafficking legislation is that the victim do not come forward to participate in the justice system either due to fear or criminal intimidation by the traffickers, and since to convict them there is a need of witnesses, evidences and the victims testimony which, for the reasons mentioned, is hard to obtain.

From the regional perspective the no. of detected trafficking victims have increased over the last few years. While the no. of reporting countries did not significantly increase the total no. of victims per country did.² The flow of victims in the South Asian region is mainly from three countries Maldives, Nepal and Sri Lanka, whereby India stays in the center of all. These victims from South Asia have been detected in over more than 40 countries across the world. The main destination appearing to be the Gulf countries in the Middle East and to a lesser extent in the Southern and Western Europe and in the Northern region of America. From

India and Bangladesh the victims are detected in the South-East Asia. From December 2003 to August 2018 most of the South Asian countries have introduced a specific offence and its penal provisions on trafficking in person in their legal framework and out of them very few have reported the convictions for such offences cross borders as stated by the United Nations Office on Drug and Crime Global Report on Trafficking in person 2018. There have been other reports stating that the trafficking in person in the South Asian countries is basically done for two purposes that is, for sexual exploitation and forced labour.³ However, by the report the determination of the sex ratio of the victims is quite difficult.

After China, India is the second largest country for prostitution. In 2016, the no. of victims for sex- based trafficking was 4,980 in India and a total of 8,132 cases of human trafficking were reported under the Indian Penal Code, 1860. There is a 15% increase in this data from previous year. In the year 2016, around 23,117 victims were rescued, out of which 21.5% were being trafficked for prostitution. Due to the imbalance in the sex ratio in India and increasing poverty, there is a boom in the trafficking business for prostitution. India has become a hotbed for human trafficking for the purpose of prostitution due to various

factors like lack of viable sources of livelihood, illiteracy, unstable political and social condition, structural inequality, economic insecurity and many more.⁴ For the situation where women get caught or get abducted by these traffickers in the process of their escape from the insecure and vulnerable condition, the reason is their devalued position, vindictive structure of society, domestic violence, abuse, discrimination and lack of opportunity in this region. As a trafficking destination, south Asian countries are affected by both domestic trafficking and from neighbouring countries as well. A core feature of the trafficking process within south Asia is the use of fraud and deception by the traffickers and abuse of power over the victim.⁵ These traffickers also use many methods like coercion, fraud, intimidation, capture of documents to prevent the escape of the women involved in prostitution.

LEGAL FRAMEWORK FOR THE PREVENTION AND PUNISHMENT

Over the last two decades there have been several efforts made at both national and international level to fight and uproot the menace. In 2000, as the result of the earlier international efforts to take down this heinous and grave offence, The United Nations Convention against Transitional Organized Crime was adopted by the United Nations General Assembly by GA resolution 55/25 of Nov. 15, 2000 and was put forward for the signature of the member states at a high-level political conference convened for that purpose in Palermo, Italy, on Dec. 12-15, 2000. It came into force on Sep. 29, 2003. The main objective of this Convention was to secure the people, enhance the cooperation among states and to combat the crime more effectively. This Convention has three main supporting protocols, of which one is the Protocol to Prevent, Suppress and Punish Trafficking in Person, Especially Women and Children which consists of an elaborated definition of trafficking in person.

Among the south Asian countries, India is the first country which ratified the UN Protocol on May 5, 2011. Apart from India, Bangladesh has given its accession to the UN Convention against Transitional Organized Crime on July 13, 2011. Maldives gave accession on Feb. 4, 2013 while Nepal became a signatory on Dec. 12, 2002 and on Dec. 23, 2011 it ratified it. In particular, these countries did not have any domestic definition or a specified law for the aforesaid crime. Bangladesh, although, necessarily need to ratify the protocol so as to comply with the international frameworks and to develop a bilateral mechanism for retaliation for any such crime.

NATIONAL LEGAL FRAMEWORK

In India, the Constitution has provided, in Article 23, the Right Against Exploitation which prohibits the trafficking for beggary, slavery. Sexual exploitation or of any form it may be. Article 23 is one of the Fundamental Rights given to the citizens of India. Also, it has enacted a separate act known as Immoral Traffic Prevention Act, 1956 to prevent and punish such trafficking from a punishment of imprisonment from 7 year to lifetime. Also, Protection of Children from Sexual Offences (POCSO) Act, 2012, Child Labour (prohibition and PREVENTION) ACT, 1986; Criminal Law (Amendment) Act, 2013 amended section 370 of the Indian Penal Code, 1860 and combats the manse of human Trafficking to the greater extent. There are many other such supportive laws in the existence to uproot the problem completely.

CONCLUSION

Hence to conclude this paper, we would like to suggest that this has been one of the greatest issues and greatest violation of the human rights and to combat it we as a society have to collectively be aware and cooperative with each other. A society can get rid of a problem only if the efforts made are collective and strong. Poverty and illiteracy coupled is one of the root causes to all the social evils and so we have to develop our society to full literacy rate and make it stand on the feet. Social security can be ensured by strict applicability of laws and speedy justice in the judicial system of the country. Voluntary efforts are essential because it's our society and our people.

REFERENCES

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