

WOMEN TRAFFICKING IN INDIA – AN OVERVIEW

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Abstract: -

Trafficking in human beings mostly girls and women are the fastest – growing forms of transnational organised crime, which is next to drugs and weapons, generating unaccountable profits annually. However, trafficking carries out various factors like social, economical and environmental which gives rise to trafficking. The most unprivileged and vulnerable group, girls and women come across different situations which lead them to trafficking. They are trafficked for two purposes i.e – labour and sex where their rights are violated. The national legal mechanisms came into force for combating immoral trafficking and suggested the adoption of possible measures to combat the crime. The legal system should be turned in a strict manner so the traffickers and not the victim is punished.

Key Words – Trafficking, Crime, Unprivileged, Vulnerable, Labour, Sex, Violated, Combat

INTRODUCTION

Human trafficking has become the third largest crime in today's world. It is one of the worst forms of exploitation, on the globe. Men, women and children are bought, sold and forced to cross- international borders.¹ Historically, the term 'traffick' was used in reference to movement of persons for immoral purposes and prostitution. Traditional meaning of the term 'trafficking' refers to kidnap and enslavement of workers, especially women and girl children for commercial sexual exploitation.² However, present literatures have broadened the definition of trafficking by describing it as modern slavery, rape for profit and other similar practices that includes forced labour of various kinds.³

Trafficking in women and children constitutes one of the most egregious violations of human rights. It violates the fundamental rights of life and dignity. It further violates the right to health and health care, liberty and security of the person and the right to freedom from torture, violence, cruelty and degrading treatment. Over the decades, due to operation of forces such as globalisation, feminisation of poverty, inadequate migration and labour laws adopted by various countries, incidence of war and violence, trafficking has become a burgeoning form of organised crime.⁴

FACTORS OF WOMEN TRAFFICKING

There are various factors which lead to women trafficking.

Social Issue:-

In the society the girl child and women come across through different discriminations. They are deprived of their basic rights and privileges which they should get in the existing society. Their rights are violated due to

different traditions performed in the society. It is found that in several ways girls and women are more discriminated in the society. It not only violates human rights of women but also fundamental rights. The practice of female foeticide and infanticide is the cruel act towards girl child.⁵ when examining the problem of trafficking from a gender-perspective, it is noted that a similar of prominence of the under privileged and marginalised gender (woman) are major victims of trafficking.⁶

Mostly, the rights of the girls and women are violated in the marriage. Different kinds of families exist in the society where patriarchy and matriarchy systems are practised. In patriarchy system, the male dominance society exists, where the rights of women are violated. In a patriarchy society, the status of women remains secondary.⁷ Another factor that violates the rights of the girl and women in society is tradition. Child marriage, Widow Marriage, Forced marriage and Devadasi practice are some of the examples of traditions.

Economic Reason

It is a situation where an individual come across some financial crisis due to various reasons, poverty is the main cause of economic factor. Poverty is deprived in terms of minimum level of living, rather than a reasonable level of living.⁸ The main cause that affects poverty is lack of skill and unemployment. The girls and women were adversely affected by poor economic condition due to lack of educational facilities. The girls and women are not able to realise their actual potential and become unskilled labour and get fewer wages in formal and non – formal sectors. Due to lack of education the girls and women were unaware of their rights and privileges provided by the law.

Environmental Condition

It had a great impact on women trafficking. People living in rural areas get less facility than people residing in urban areas. People in urban areas have more opportunities in education and employment and get better and advanced medical facilities which provide better treatment to people. Bu the rural people get less opportunities and move from place to place in search of job. But in few cases, the natural disaster strikes the economic conditions of the poor who stay in the urban areas. The weaker section of the society, children and women migrate from their native place to other urban areas in search of job to meet their basic needs. Due to such poor economic condition, they easily fall as prey in the hands of the traffickers.

TRAFFICKERS ROLE

Traffickers can be alone individuals or extensive criminal networks, pimps, gangs, family member, labour brokers, employers of domestic servants, small business owners, and large factory owners who were found guilty of human trafficking. Their common trend is a willingness to exploit other human beings for profit. Traffickers promise a high paying-job, a loving relationship, or new and exciting opportunities. In other cases, they may kidnap victims or use physical violence or substance abuse to control them. Traffickers employ a variety of control tactics, including physical or emotional abuse, sexual assault, confiscation of identification and money, isolation from friends and family, and even renaming victims.

VICTIMS ROLE

Victims can be men or women, adults or children, foreign nationals or U.S.Citizens. Victims of human trafficking are frequently lured by false promises of lucrative jobs, stability, education, or a loving relationship. Run away and homeless as well as victims of domestic violence, sexual assault, war or conflict, or social discrimination are frequently targeted by traffickers. Foreign nationals who have paid significant recruitment and travel fees often become highly indebted to traffickers or other intermediaries. Victims face many challenges in accessing help. The trafficker's confiscate the identification documents and money of the

victims. They may not speak English. They may not know where they are, because they have been moved frequently. They are often not allowed to communicate with family or friends. And they may have trouble trusting others, due to their trafficker's manipulation and control tactics.⁹

PURPOSES OF TRAFFICKING

Most of the girls and women are trafficked for two purposes; labour trafficking and sex trafficking. The traffickers mainly seek and target the most oppressed, distressed and poor economic condition migrants for trafficking. They try to win their trust by giving fake love and affection and lure them with good job opportunities, false promises of marriage and secured good life. Once they trust them and get into their trap, they pull them to labour market and push them to sex trade.

Labour Purpose

Labour trafficking is a type of modern day slavery, in which individuals perform labour services through the use of force, fraud or coercion. Labour trafficking includes situations of forced labour, debt bondage and involuntary child labour. Common types of labour trafficking include farm workers, coerced through violence as they harvest crops, people forced to work in homes as domestic servants and factory workers held in inhumane conditions with long work hours with low wages. Labour traffickers use violence, threat, lies and other form of coercion to force people to work against their will in many industries.

Most of the children are trafficked for domestic help, or servants. Different variety of household services is performed by them such as child caring, household maintenance including cooking, cleaning, laundry, ironing and other household errands. They work for long hours without break, lack of access to education which can contribute to social isolation and lack of future opportunity. Children working as domestic servants, come across a number of risks such as long and tiring working days, handling dangerous items, such as knives, axes and hot pans, carrying heavy loads, insufficient and inadequate food and accommodation, humiliating or degrading treatment including physical, verbal and sexual abuse.

Sex Purpose

Sex trafficking is a form of modern slavery that exist throughout India. Sex traffickers use violence, threats, lies, debt bondage, and other forms of coercion to compel adults and children to engage in commercial sex acts against their will. Sex trafficking is one type of business where different types of illegal activities are involved such as prostitution, pornography and sex tourism. It is performed through exchange for any item of value such as money, drugs, shelter, food or clothes.¹⁰

i. Prostitution

Prostitution is the business or practice of engaging in sexual activity in exchange for payment. Prostitution is sometimes described as commercial sex or hooking. Prostitution occurs in a variety of forms. Brothels are establishments specifically dedicated to prostitution. In escort prostitution, the act may take place at the client's residence or hotel rooms (referred to as out-call). Another form is street prostitution. Although the majority of prostitutes are female and have male clients, a prostitute can be and have clients of any gender or sexual orientation.¹¹

ii. Sex tourism

Sex tourism is travel to engage in sexual activity, particularly with prostitutes. Sex tourism may be domestic, which involves travel within the same country or transnational, which involves travel across national borders. Sex tourism is a multibillion-dollar industry that supports an international workforce

estimated to number in the millions, that also benefits service industries such as the airlines, taxi, restaurants and hotel industries. Sex tourism can be formally or informally arranged, and local sex workers in the tourist destination and often migrants. These migrants can be either voluntary migrants, or trafficked sex workers.¹²

iii. **Pornography**

Pornography is the portrayal of sexual subject matter for the exclusive purpose of sexual arouse. Pornography may be presented in a variety of media including books, magazines, postcards, photographs, sculptures, drawings, paintings, films and videos. The term applies to the depiction of the act rather than the act itself, and so does not include live exhibitions like sex shows and striptease. The primary subjects of present-day pornographic depictions are pornographic actors or porn stars who perform n pornographic films.¹³

ENFORCEMENT OF LAW IN INDIA TO COMBAT WOMEN TRAFFICKING

India has widened certain framework of laws to combat the issue of human trafficking especially women and children and the protection of the human rights have also been addressed in the following legislative framework. The makers of the Indian constitution and the founding fathers were very determined to provide equal rights to both men and women. The Indian constitution is one of the finest equality documents in the world and various articles, rights, policies and other constitutional provisions safeguards to secure women's human rights.

The preamble of Indian constitution

In the Indian constitution the Preamble contains various goals, including "the equality of status and opportunity" to all citizens. This particular has been incorporated to give equal-rights to both men and women in terms of the status as well as opportunity.

Fundamental rights of citizen

Even though, all the fundamental rights contained in part iii, Article 12 to 35 are applicable to all citizens irrespective of sex, certain fundamental rights contain specific and positive provisions to protect the rights of women.

i. Article 14: Equality before Law

The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

ii. Article 15: prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

1. The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them.
2. Nothing in this article shall prevent the state from making any special provision for women and children.

iii. Article 16: Equality of opportunity in matters of public employment.

1. There shall be equality to opportunity for all citizens in matters relating to employment of appointment to any office under the state.
2. No citizen shall, on grounds only of religion, race, caste, sex decent, place of birth, residence or any of them, be ineligible for, or discriminate against in respect of, any employment of office under the state.

iv. Article 23: Prohibition of Traffic in Human Beings and Forced Labour.

Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

Directive Principles of State Policy

It also contains important provision regarding women empowerment and it is the duty of the government to apply these principles while making laws or formulating any policy. Though these are not justifiable in the court but these are essential for governance nonetheless. Some of them are:

- i. Article 39: Certain principles of Policy to be followed by the state.
The state shall, in particular direct its policy towards securing.
- ii. Article 39 (a): That the citizens, men, and women equally have the right to an adequate means of livelihood.
- iii. Article 39 (b): That there is an equal pay for equal work for both men and women.
- iv. Article 39 (c): That the health and strength of workers, men and women and the tender age children are not abused and the tender citizens are not forced by economic necessity to enter a vocation unsuited to their age or strength.
- v. Article 39 (d): That childhood, youth are protected against exploitation and against moral and material abandonment.
- vi. Article 42: Provision for just and human condition of work and maternity relief.¹⁴

Child Marriage Restraint Act, 1929

Section 2:

- (a) "Child" means a person who, if a male, has not completed twenty one years of age, and if a female, has not completed eighteen years of age.
- (b) "Child Marriage" means a marriage to which either of the contracting parties is a child.
- (c) "Contracting party" to a marriage means either of the parties whose marriage is (or is about to be) thereby solemnised and
- (d) "Minor" means a person of either sex who is under eighteen years of age.

Section 3: Punishment for male above eighteen years of age and below twenty one, contracts a child marriage and shall be punishable with simple imprisonment which may extend to fifteen days, or with fine which may extend to one thousand rupees, or both.

Section 4: Punishment for male adult above twenty one years of age marrying a child –

Whoever being a male child marriage shall be punishable with simple imprisonment which may extend to three months and shall also be liable to fine.

Section 5: Punishable for solemnising a child marriage –

Whoever performs, conducts or directs any child marriage shall be punishable with simple imprisonment which may extend to three months and shall also be liable to fine unless he proves that he had reason to believe that the marriage was not a child – marriage.

Section 6: Punishment for parent or guardian concerned in a child marriage –

- (i) Where a minor contracts a child marriage, any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits to be solemnised, or negligently fails to prevent it from being solemnised, shall be punishable with simple imprisonment which may extend to three months and shall also be liable to fine.
- (ii) For the purpose of this section, it shall be presumed unless and until the contrary is proved, that where a minor has contracted a child marriage, the person having charge of such minor has negligently failed to prevent marriage from being solemnised.¹⁵

Immoral Traffic Prevention Act (ITPA), 1956(Renamed as such after amending the suppression of Immoral Traffic in Women and Girls Act 1956)

This special legislation deals with trafficking. The Act defines the terms "Child" "Prostitution", "Brothel", "Corrective institutions", "Protective home", "Public place", "Special Police Officer", and "Trafficking Officer". The objective of the Act for the purpose of prostitution as an organised means of living, offences specified under this Act are:

Section 3: Punishment for keeping a brothel or allowing the premises to be used as brothel.

Section 4: Punishment for living on the earnings of prostitution.

Section 5: Procuring, inducing or taking persons for the sake of prostitution.

Section 6: Detaining a person in premises where prostitution is carried on

Section 7: Prostitution in or the vicinity of public places.

Section 8: Seducing or soliciting for the purpose of prostitution.

Section 9: Seduction of a person in custody.¹⁶

The Karnataka Devadasi (Prohibition of Dedication) Act, 1982

An act to prevent dedication of women as Devadasis in the state of Karnataka. Whereas the practice of dedicating women as Devadasis to deities, idols, objects of worship, temples and other religious institutions or places of worship exist in certain parts of the state of Karnataka. And now whereas such practice leads women so dedicated to a life of prostitution.

"Dedication" means the performance of any act or ceremony, by whatever name called, by which a woman is dedicated to the service of any deity, idol, object of worship. "Devadasi" means a woman so dedicated. "Temple" means a place by whatever designation known dedicated to, or used as a place of religious worship. "Woman" means a female of any age.

(a) Dedication to devadasi to be unlawful

Notwithstanding any custom or law to the contrary, the dedication of a woman as a devadasi, whether before or after the commencement of this Act and whether she has consented to such dedication or not, is hereby declared unlawful, void and to be no effect and any woman so dedicated shall not thereby be deemed to have become incapable of entering into a valid marriage.

(b) Marriage of devadasi

Notwithstanding any custom or rule of any law to the contrary, no marriage contracted by a woman shall be invalid and no issue of such marriage shall be considered as illegitimate by reasons only of such woman being devadasi.

(c) Penalty

Any person who, after the commencement of this Act, performs, permits, takes part in or abets the performance of, any ceremony or out for dedicating a woman as devadasi or any ceremony or act connected therewith shall on conviction be punishable with imprisonment of either description for a term which may extend to three years and with fine which may extend to two thousand rupees.¹⁷

Child Labour Prohibition and Regulation Act, 1986

The Central legislature of India had promulgated a legislation Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 to regulate the child labour practices in India. The central legislature has made substantial changes in the provision of the Child Labour Act in the year 2016 and the said amendments have been made effective from July 30th 2016. Pursuant to the said amendment the name of the Child Labour Act has been changed to 'Child and Adolescent Labour (Prohibition and Regulation) Act 1986.

A complete prohibition has been imposed on employment of child labour (i.e a person below the age of 14 years) in any establishment whether hazardous or not. A child is permitted to work only to help family, in family enterprise or as child artist after school hours or during vacations. The amendment has introduced the concept of adolescent labour for the first time. And adolescent has been defined as a person between the ages of 14-18 years. The amendment permits employment of adolescent labour except in hazardous processes or occupation. The number of hazardous occupations and processes has been reduced from 83 to 3.

The offences under the Act have now been made compoundable and cognizable notwithstanding the provisions of the criminal procedure code. The Child Labour Act provides for rehabilitation of children and adolescent who have been victims under the provisions of the Child Labour Act. It provides for setting up of the Child and Adolescent Labour Rehabilitation Fund in which all the amounts of penalty have to be realised. Liability has been affixed upon the parents and guardian of the affected child/children separately from the employers.

The Act provides for increased penalty and imprisonment which shall not be less than 6 months and may extend up to 2 years and fine which may vary between Rs.20,000 to Rs.50,000. Previously the violations under the Child Labour Act were punishable with imprisonment of not less than three and with fine of ten thousand rupees which could extend to twenty thousand rupees.

While the new amendments appear to be progressive in nature but they have down side also like the new amendments put a complete prohibition on employment of children, but at the same time it allows them to be employed in family enterprises / business. Considering that majority of child labour activities happen in economically weaker section of the society which is highly unregulated, no proper mechanism has been provided to keep the same in check with the new amendments. Further, the list of hazardous industries has been drastically decreased, this may allow the employers in industries like chemical mixing units, cotton farms, battery recycling units and brick kilns etc. (which are actually hazardous) to employ adolescent labour, which may even get at a much cheaper price.

It is therefore more important now for the government to keep a check on the working conditions for adolescent labour as well as the working conditions for children in family run business. This would require more personnel deployment which is in shortage. The government, in order to effectively monitor the ground realities involve and empower the non – governmental organisations and individuals who are actively involved and are working for the said cause.¹⁸

The Andhra Pradesh Devadasi (Prohibition of Dedication) Act, 1988

An act to prohibit the dedication of women as Devadasi in the state of Andhra Pradesh.

Whereas the practice of dedication of women as Devadasis to Hindu deities, idols, objects of worship, temples and other religious institutions or places of worship exist in certain parts of the state of Andhra Pradesh.

Whereas such practice, however ancient and pure in its origin leads many of the women so dedicated to degradation and to evils like prostitution.

Any person who performs, promotes, takes part or abets the performance of any ceremony or act for dedicating a woman as Devadasi or any ceremony or act connected therewith shall on conviction be punishable

with imprisonment of either description for a term which may extend to three years but which shall not be less than two years or with fine which may extend to rupees three thousand but which shall not be less than two years and or with fine which may extend to rupees three thousand but which shall not be less than rupees two thousand.

Provided that where the person referred to in this section is a parent or guardian or relative of a woman so dedicate, he shall on conviction but punishable with imprisonment of either description for a term which may extend to five thousand but which shall not be less than rupees three thousand, provided further that the woman who is dedicated in such ceremony or act or in respect of whom such ceremony or act is performed shall not be punishable.

Whoever propagates the practice of dedication of woman as Devadasis shall on conviction be punishable with imprisonment of either description for a term which may extend to three years but which shall not be less than one year and with fine which may extend to rupees five thousand but which shall not be less than rupees two thousand.¹⁹

The Transplantation of Human Organs Act, 1994.

The transplantation of Human Organs Act, 1994 was enacted by the Parliament during 1994 and came into force on 4th February, 1995 in the States of Goa, Himachal Pradesh and Maharashtra and all the Union Territories. There after it was adopted by all states except the states of Jammu & Kashmir and Andhra Pradesh, which have their own legislations to regulate transplantation of Human Organs. The main purpose of the Act is to regulate the removal, storage and transplantation of human organs for therapeutic purposes and to prevent commercial dealings in human organs. The

Act contains detailed provisions relating to the authority for removal of human organs, preservation of human organs, regulation of hospitals conducting the removal, storage or transplantation of human organs, functions of appropriate authority, registration of hospitals and punishment/ penalties for offences relating to aforesaid matters.

Despite having put into place a regulatory mechanism for transplantation of human organ, there have been a spot of reports in the print and electronic media about a thriving human organ trade in India and the consequential exploitation of the economically weaker sections of the society. There has, therefore, been an increasing perception in civil society that while the Act has not been effective in curbing commercial transactions in organ transplant, it has thwarted genuine cases due to the complicated and long drawn process involving organ donation.

In order to make the organ transplantation more transparent and patient friendly, cabinet has approved the proposals of the Ministry of Health & Family Welfare to amend the provisions of the Act and also for imposing stringent penalties on persons / hospitals violating the provisions of the Act.²⁰

Conclusion

Trafficking of women and children has become one of the fastest illegal businesses run by the criminal syndicate throughout India. The most vulnerable groups, like young girls, and women were targets of such atrocities. While examining the problem of trafficking from a gender perspective, it is seen that a similar pattern of prominence of the under privileged and marginalised gender (women) are major victims of trafficking. There are various factors, due to which girls and women fall as prey in the hands of traffickers. Due to their socio-economic conditions, they become target of the traffickers. Various forms of trafficking were used to collect these vulnerable groups. They were trafficked for labour and sex purpose. But today our society is facing a major issue that is the trafficking of women and girls for sex work. Sex trafficking, the use of women in prostitution, sex tourism and pornography networks is becoming a major focus of India as an organised crime. Due to trafficking,

millions of citizens are at an increased risk of further violence, as well as unwanted pregnancy, sexually transmitted diseases like HIV/AIDS, etc. In general, it is found that trafficking is often linked with sexual exploitation of the victims.

To combat women trafficking in India the enforcement of law had been put into force. Good legal-framework with many effective and efficient laws is important for controlling and preventing the menace. Different kinds of acts were introduced to prohibit the issue of women trafficking. Various penalties/ punishments were introduced for the offenders who were involved in trafficking, So finally it is concluded that, to tackle the problem of women trafficking it is very important to find out the root cause of this issue.

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