



## Trafficking of woman and children

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### Abstract:

Trafficking means the act of transporting, harbouring or receiving a thing for some illegal purpose. Generally trafficking of human beings is the process of sending the person from one place to another forcefully for some financial gain. Trafficking of woman and children for bagging or selling for sexual purpose or for any other illegal activity is the serious crime. This crime is a global issue. This crime is committed not by a single person but by an organized group. Although the person of any age is on the target of the group of criminals, yet the woman and children (male or female) are the main victims of such crimes. Crime of trafficking against women and children is committed for many illegal purposes such as sexual harassment, bagging, selling the girls for marriage etc. Various laws have been made for protecting the women and children from trafficking. Penal provision under Indian Penal Code, Immoral trafficking Act with amendments in 2006 and other laws specifically provide protection to women and children from this organized crime. Part III of The Constitution also includes protection against trafficking as Fundamental Right and therefore our judiciary is also active in protecting the persons from this crime.

Key Words: Constitution, trafficking, harbor, organized crimes.

### Introduction:

We belong to Indian society. Indian culture is old enough. In the Indian society, the status of women has gone through various up and downs. At one time, woman was considered a “Devi” and was worshiped by the people. At another time, she was abused and harassed a lot by the people and even killed for so many purposes. Various crimes were committed and in present also, she is the victim of various crimes. One of them is women trafficking. Apart from the women, the children are also the main victims of this crime. The reason or purpose for trafficking of women and children are various. These are sex based as well as non-sex based reasons. There may be the reason of money or

it may be labour or begging. So far as the crime is deep rooted, the reasons for its committing are also different and deep rooted. The reasons for trafficking of women and children are as follows:

1. Sexual or sex based reasons:

In this category of trafficking, woman and children are transported from one place to another for the purpose of prostitution, pedophilia, pornography, or other cyber sex crimes. These types of crimes are committed on some massage parlor or bars. Crime of trafficking of human being can not be done so easily by one or two persons, especially when it is related to women. This is an organized crime. Many people are involved at different stages on different level of the society. Not only man but women are also involved in this crime.

2. Prostitution:

Prostitution is a part of sex based crime; it is most committed crime in India. Women are forced to indulge in prostitution either for money or otherwise. The women who are paid for the sex need not be consented for it but they do not have any other option otherwise to involve or become a part of this crime. It is may be because of multiple reasons. Firstly, because of money. The women who are not able to get any job and earn money, they do this work for earning money for fulfilling the need of their family members. Secondly, because they are transported from another place far away from their family and are forced to do this work. As they are not able to get the help of family members or police etc. they are forcefully indulged in this work.

3. Household work:

Another cause of trafficking is the purpose of labour. Although it is not the direct commercial purpose of human trafficking, yet an important reason. In the urban areas, where servants are not available easily and on low salary, the children and women from rural areas or from village are the best substitute for them. Due to unemployment and incapacity to fulfill the need of the family, they also get ready to go far from their family and to do work for earning the money.

4. Other reasons:

There are some other reasons also for which not only children or women are being trafficking but men are also the victim of that crime. That crime is organ transplantation or selling of organs of the person. A person will never get ready for selling his organs. That is why people are trafficked deceitfully and their organs are taken away without their consent. The people are also trafficked for the purpose of donation of blood also. If the people do not consent for donation of their blood, people are detained or confined and they are compelled to donate their blood or their blood is taken away without their consent. Surrogacy is also an important reason for trafficking of the women. Women are trafficked to other place and especially to foreign countries so that they can be asked to become surrogate mother. If a woman does not consent to this she is compelled to do so. Procuring the minor children for the purpose of giving them in adoption for grabbing money from the adoptive parents is also an important part of trafficking. For

completion of this purpose, if it is not possible for the accused to procure the child with the consent of his or her child, the child is kidnapped and then transports him out of the country or to another place from where the child was kidnapped.

### **Stages/phases of crime of trafficking of women and children:**

Crime is an act against the law. Trafficking of persons is also a crime. It is not only an illegal act but an anti-social act also. As there are some stages of crime, there are also some phases after passing through which this crime is completed. A crime has four stages. These are intention, preparation, attempt and commission. In addition these stages there are three phases of the crime of trafficking. These are intention, harbouring, transportation and commission. All these phases may be discussed as under.

#### **Intention:**

Intention is always the first stage or phase of crime. Unless and until a person thinks to do an act, he can execute his plan of doing such thing. But in the crime of trafficking, intention of only one person is not sufficient. It is an organized crime and one or two persons can not commit this crime, they therefore have to share the plan with other person of the group and all persons at different level should be ready for playing their respective part in the crime.

#### **Harbouring:**

The second stage or phase is harbouring. This stage is similar to the stage of preparation of the crime. As in committing the crime, preparation is necessary, harbouring the women and children for sending them from one place to another is necessary. In this stage of crime of trafficking, women and children are procured either with their consent or under some promise of giving job etc.

#### **Transportation:**

The third stage is transportation of the women and children from one place to another. This stage is similar to the stage of attempt of the crime. In this phase of the crime of trafficking, attempt is also made by sending the people or transferring them to other destination.

#### **Commission:**

Commission is the last stage of crime. In the crime of trafficking, this stage reached when people (women and children) are transported to the destination where they are required to be sent. By the completion of the last stage, the crime is finally committed. After the completion of this stage, there are no chances of escape of the women and children from the control of the criminals.

## Protection of women and children from trafficking:

Trafficking of women and children is a serious problem. It is a crime not limited to India only. It is a worldwide crime. People harbored from India are trafficked to other countries. Therefore government has made not only penal laws but also constitutional as well as international laws for their protection.

Penal provisions for the protection of women and children:

Problem of trafficking is a very serious problem. Major attention was paid to this problem by the government and penal provisions are made and added in our criminal law under various sections. Section 366-A<sup>2</sup> provides the specific provision that if any person forcefully cases any girl who is under the age of 18 years to go from any place with the intention that she may indulge or involve in illegal sex activities, that person will be punished. Along with section 366-A, section 366-B<sup>3</sup> also inserted in Indian Penal Code. This section puts check of importing girls or woman from foreign countries or any other place which is not the part of India. This section makes the act of importing the girl under the age of 21 years from any country or other place which is not the part of India and also from the State of Jammu and Kashmir with the purpose of inducing or seducing them to have illicit relation with another person. Both the sections discussed above were inserted in Indian Penal Code in the year 1923 for the purpose of implementing the rules of convention for “Suppression of the traffic in women and children”. Apart from these sections 372<sup>4</sup> provides that is a person sells a minor person or a minor girl who has not completed the age of 18 years with the intention that such girl may be employed in prostitution, such person shall be punished with severe punishment. Section 373<sup>5</sup> is the correlative section with section 372. As section 372 makes the act of selling the minor for the purpose of prostitution, section 373 makes the act of buying the minor for that purpose. Section 373 provides that a person who buys or keep in possession the minor under 18 years of age and cause that minor to go in illicit relation, such person shall be punished.

Constitutional laws:

Part III of the Indian Constitution provides fundamental rights and judicial set up has been established to protect the fundamental rights. For protecting the people form trafficking, specific provision has been provided under article 23<sup>6</sup>. This article prohibits trafficking in human beings, beggar and forced labour. This provision has been provided to the citizens as a fundamental right. If this right of a person is violated, it becomes the primary duty of the state to protect the right through the instrumentality of law. This article protects the citizens from any type of trafficking and exploitation. This includes selling for the purpose of sexual exploitation, prostitution and for the purposes of bagging and forced labour. This provision of the Constitution provides security from all these types of exploitation. For ensuring the implementation of the provision of this article, the government passed two major acts. First is related to

<sup>2</sup> Section 366-A of Indian Penal Code” procuring of minor girl”

<sup>3</sup> Section 366-B of Indian Penal Code “importation of girl from foreign country”

<sup>4</sup> Section 372 of Indian Penal Code “selling minor for the purpose of prostitution etc.”

<sup>5</sup> Section 373 of Indian Penal Code “Buying minor for the purpose of prostitution.”

<sup>6</sup> Article 23 of the Constitution of India “prohibition of trafficking in human beings and child labour”

immoral trafficking<sup>7</sup> and second is related to bound labour<sup>8</sup>. The government is trying to eliminate the problem of trafficking by using all the weapons.

#### International Laws:

Although there are various international conventions and protocols for protecting the rights of the people and the countries are bound to implement the provisions of the conventions also, but Human Rights play very important role in all those conventions and protocols. Universal declaration was made in the year 1948 to provide rights which are just and reasonable and necessary for the life of the people. United nation apart from providing Human Rights also paid attention to the serious problem of trafficking in human beings and especially in women and children. For fighting against this problem, United Nation adopted two conventions. Trafficking suppression convention<sup>9</sup> and convention against prostitution<sup>10</sup>. These two conventions remained existed for about 50 years could not be proved effective. But a big success was achieved when all the SAARC countries came together and adopted a convention<sup>11</sup> in the year 2002 for protecting the women and children form trafficking and prostitution. In now days the latest protocol on the rules against trafficking is the protocol<sup>12</sup> to prevent, suppress and punish the person involved in the trafficking of human beings.

#### Judicial Approach:

As discussed above, protection from trafficking is the fundamental right given under article 23 of the Constitution. As it is a fundamental right, the protection of the right is also a fundamental right given under article 32 of the Constitution of India. If the fundamental right of a people if violated, he can directly approach the Supreme Court and High Court under article 32 and 226 respectively for the enforcement of his fundamental right. Supreme court and High court can suo moto take action against such type of activities for the protection of the rights of the people because Supreme court and High court works as the guardian of fundamental rights of the citizens. Various case laws are there to show the concern of the judiciary for protecting the fundamental rights and eliminate the problem of trafficking of people.

In *Laxmi Kant Pandey vs. Union of India*<sup>13</sup> Hon'ble Supreme Court issued guidelines in the matter of inter-country adoptions to check the trafficking. Supreme Court stated that in the matters of inter-country adoptions, it must always bear in mind that the primary object of giving a child in adoption is the welfare of the child. The child maybe neglected by the adoptive parents. Moreover he may be misused in the foreign country by using him in labour or sex work. The court further stated that great care has to be taken while giving a child to any person out of the country.

<sup>7</sup> "Immoral traffic (Prevention) Act 1956.

<sup>8</sup> "The bounded labour system (abolition) Act, 1976

<sup>9</sup> "Convention for the suppression of trafficking in person"

<sup>10</sup> "Convention against exploitation for prostitution"

<sup>11</sup> SAARC Convention on prevention of trafficking in women and children for prostitution"

<sup>12</sup> "Palermo Protocol of United Nation, 2000

<sup>13</sup> AIR 1984 (2) SCC, 244

The court has also laid down procedure and guidelines to monitor inter-country adoption to eliminate the problem of trafficking of adoptive children.

In *Vishal Jeet vs. Union of India*<sup>14</sup>, Hon'ble Supreme Court while deciding the matter relating to exploitation of trafficked women and children said that trafficking of young women and children for the purpose of prostitution, labour or marriage or otherwise is a serious problem. Although various laws have been enacted for stopping this problem but result is not satisfactory. Supreme court was of the view that an advisory committee should be formed in all the state at state level and at the center level also. The Supreme Court said that an objective study should be made to calculate the data relating to rehabilitation of trafficked women and children. If any lacuna find in their rehabilitation, then efforts should be made for their rehabilitation and for proper implementation of laws relating to the protection of women and children from trafficking and exploitation. The court was of the view that trafficking is not only a crime but it is a socio-economic problem also. This problem can be eliminated not only with the help of law but also with the help and support of all the persons. According to the court, the criminals live in the society with all the other persons. They are in the direct control of the people of society and they can be stopped and punished by people before the law.

In *Madhu Kishwar v. State of Bihar*<sup>15</sup> Supreme Court pointed out the importance of conventions made in favour of women and children. The court while discussing about the provisions of the CEDAW<sup>16</sup> held that the convention is the basic scheme of the fundamental rights and also the directive principles. The convention provides the provisions for the protection of women and children from all type of discrimination. The convention imposes a duty on the government to enforce and protect the fundamental rights of the people and save them from exploitation.

In *Gaurav jain vs. Union of India*<sup>17</sup> The Supreme Court stated that protection against trafficking is a fundamental right of the people. Trafficking of women and children is the violation of their fundamental right. The court was of the view that this matter should be taken in to consideration and safeguards should be provided the women and children. Supreme Court ordered to formation of a committee at the central level for doing a depth study regarding the problems of rehabilitation of trafficked women and children. On the order of the court, a permanent committee of secretaries was constituted to review and analyze the progress and improvement in the implementation of protection laws relating to women and children.

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<sup>14</sup> AIR 1990 (3) SC, 318

<sup>15</sup> AIR (1996) 5 SCC 125]

<sup>16</sup> Convention on the elimination of all forms of discrimination against women, 1979

<sup>17</sup> AIR 1997 (8) SCC

In *Prerna vs. State of Maharashtra*<sup>18</sup> the Bombay High Court while dealing with the problem of rehabilitation of a child victim of trafficking, issued guidelines and stated that in the guidelines must be followed for the protection of children as well as the women.

In *Munni vs. State of Maharashtra*<sup>19</sup> the High Court of Bombay held that the problem of trafficking is old enough. Legislature and judiciary, both are concerned regarding this problem. The menace of sexual abuse of the women and children or using them for prostitution should be now checked with utmost care and caution. The court stated that the reasons behind the problem of trafficking may be various like poverty, helplessness or illiteracy, but protection should be given to all the persons. Court said that children should be given utmost love and affection so that they can recover from their bad memories very soon.

### **Conclusion and suggestions:**

Trafficking is an old phenomenon. Women and children are abused from a long time in the society. Crimes and violence against women have not reached up to the limit. In spite of formation of various laws and implementation of international conventions, this crime is not stopped and women and children are still victimizing with this crime. The reasons are various and among all the reasons, sexual abuse of the women and children is the major and heinous crime. From the past, when the condition of women started deteriorated in the society, it could not be made good up to now. Crimes against the women and children are increasing day by day. These crimes are affecting the people directly as well as indirectly. People are forced to do various acts for which they do not consent. If they are not controlled by the criminals, they are killed also as they are not solving any purpose of the criminals. Apart from this, the people whether they are man, women, or children, when they are abused by the criminals, they may also become deviants from the society. They think that the society and the law do not care for them. They may also involve in anti-social and criminal activities. Strict steps have to be taken to eliminate the problem of trafficking and exploitation against women and children. No doubt the law is efficient for tackle the problem of trafficking but the problem of its implementation. Some special police force like special task force or other police set up should be appointed to investigate in the matters of trafficking only. Matters of organs transplantation should be dealt with very carefully. Doctors should report all the matters of organs transplantation to the police so that the doubt regarding the free consent of the donor of the organ may be inquired in to. Apart from this provision should be made that the data relating to organ transplantation and the information of hospital and the doctor should be shared online on the government site. Although protecting our life and fundamental rights is the duty of state and the government. But we ourselves have to be aware and we should help the government in their work. We should bother about the persons

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<sup>18</sup> 2003 (2) Mah.L. J. 105

<sup>19</sup> Criminal Writ Petition No. 227/2011(Bombay High Court)

who are anti-social and commit crime in spite of living between us. We should observe their activities and stop them if found illegal and doubtful with the help of public authorities. We are best protectors of our rights and we can better protect our rights through the instrumentality of law. Apart from being aware about our safety and protection, we all must always be ready to help the public authorities so that they can provide more protection in our safety.

