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## HUMAN TRAFFICKING AND ITS NATIONAL PERSPECTIVE IN A NUT SHELL

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### ABSTRACT :

**H**uman trafficking can be described as forcing of a person into any kind of exploitation, sexual or labor or both. It is the exploitation of men, women and children for the financial gain of others and has been delineated as a fundamental human rights violation. Generally, those who are most susceptible to falling prey to this illegal activity are women, children and adolescents.

**KEYWORDS :** Education of women , status of women , economic, psychological .

### INTRODUCTION

Human trafficking is the fastest increasing criminal industry in today's world, coming at third, after arms and drug trafficking.<sup>1</sup> Increasing human trafficking has placed India as the world's fourth dangerous place for women, as per a survey conducted by Thomson Renter's Trustlaw Women, a hub of legal information and legal support for women's rights. It is indeed very shameful that in today's 21st century, on one hand we are talking about the rights of animals and on the other hand we are treating the

human beings as animals.

### DEFINITION :

Article 3 paragraph (a) of the Protocol to Prevent, Suppress and punish Trafficking in Persons, Especially Women and Children, supplementing the Hailed Nations Convention Against Transnational Organized Crime<sup>9</sup> defines trafficking in persons as "the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

### Human Trafficking and Human smuggling:

Often the definition of human trafficking is confused with human smuggling. Human smuggling entails moving people across national borders with their complete consent into a country of which the person is not a national or a permanent resident. While human trafficking involves planned exploitation at the intended destination, and this process is undertaken without valid consent. Although a trafficked person or the guardian of a trafficked child may consent to the movement or to a place of employment promised, their consent is nullified if they end up being exploited at the end of the process. However the distinction between the two may be especially difficult when individuals involved are children or when the persons involved are moved across the borders to communities where they do not speak the language that the local police or law officials speak.<sup>10</sup>

### FORMS OF HUMAN TRAFFICKING

Human trafficking is an organized crime involving within itself a basket of crimes. This basket of crimes comprises various offences that are part of the

process of human trafficking and are independent crimes punishable under the law such as abduction, kidnapping, illegal detention, illegal confinement, criminal intimidation, etc.

### **Most common forms of human trafficking are as follows :**

#### **1) Trafficking for Sexual Exploitation -**

This prevalent form of trafficking affects every region in the world, either as source, transit or destination country. Approximately 75-80% of human trafficking is for sex.

Budhadev Karmaskar -Vs- State of West Bengal and others<sup>12</sup>, The Supreme Court in its order has clarified that its endeavor to provide right to life and access to government Schemes should not be construed as an encouragement to prostitution. The clarification has come from a bench of Justices Altamas Kabir and Gyan Sudha Mishra.

#### **2) Trafficking for Forced Labour-**

Generally, victims of this come from developing countries. They are recruited and trafficked using deception and coercion and find themselves held in conditions of slaves in a variety of jobs. Men, women and children are engaged in agriculture and construction work, domestic servitude and other labour-intensive jobs.

With increase in labour trafficking across the country, the judgment in People's Union for Democratic Rights -Vs- Union of India<sup>13</sup> is very relevant in which the Supreme Court clearly defines 'Forced Labour' by stating that-

"When a person provides labour or service to the State or to any other person and is paid less than the minimum wage for it, then it may be legitimately presumed that he is acting under the force of some compulsion which drives him to work though he is paid less than what he is entitled under law to receive."

#### **3) Trafficking in Organs-**

Trafficking in organs for the purpose of using their organs, in particular kidneys, is a rapidly growing field of criminal activity. In many countries, waiting lists for transplants are very long, and criminals have seized this opportunity to exploit the desperation of patients and potential donors. The health of victims, even their lives, is at risk as operations may be carried out in clandestine conditions with no medical follow-up. An ageing population and increased incidence of diabetes in many developed countries is likely to increase the requirement for organ transplants and make this crime even more lucrative.

It is pertinent to note that close to 80% of human trafficking is done for sexual exploitation and the rest is for bonded labour. India is considered as the 'hub' of this crime in Asia and Delhi is the 'hub' of this crime in India. It is the hotspot for illegal trade of young girls for domestic labour, forced marriage and prostitution. It is also the transit point for human trafficking.

As per the statistics of the government, in every eight minutes a child goes missing in our country. Over 3.25 lakhs children went missing between 2011 and 2014 (till June) at an average of nearly one lakh every year and maximum out of these were from West Bengal. Further, it is assumed that only 30% of the total cases are reported, so the actual number is pretty high.

### **Existing Legal Framework For The Prevention Of Human i Trafficking:**

#### **CONSTITUTION OF INDIA:**

This basic law of the land has number of provisions dealing, directly or indirectly, with human trafficking. They are as follows-

- Article 23 specifically prohibits "traffic in human beings and beggar and other similar forms of forced labour".
- Article 24 further prohibits employment of children below 14 years of age in factories, mines or other hazardous employment.
- Article 14 relating to Equality before Law.
- Article 15 dealing with prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

- Article 19 which provides that all citizens shall have the right to practice any profession, or to carry on any trade, occupation or business.
- Article 21 pertaining to protection of life and personal liberty.
- Article 22 concerning protection from arrest and detention except under certain conditions.

**The Directive Principles of State Policy articulated in the Constitution are also significant, particularly-**

- Article 39 states that men and women should have the right to an adequate means of livelihood and equal pay for equal work; that men, women and children should not be forced by economic necessity to enter unsuitable avocations; and that children and youth should be protected against exploitation and against moral and material abandonment.
- Article 39A directs that the legal system should ensure that opportunities for securing justice are not denied to any citizen because of economic or other disabilities.
- Article 43 states that all workers should have a living wage and there should be appropriate conditions of work so as to ensure a decent standard of life.
- Article 47 states that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.

The commitment to address the problem of trafficking in human beings is also reflected in various legislations and policy documents of the Government of India as follows-

THE INDIAN PENAL CODE, 1860 contains more than 20 provisions that are relevant to trafficking and impose criminal penalties for offences like –

- + Kidnapping (Sec 363);
- + Abduction (Sec 362);
- + Procreation of minor girls (Sec 366A);
- + Importation of girls from foreign country (Sec. 366B);
- + Habitual dealing in slaves (Sec 371);
- + Selling of girls for prostitution (Sec 372);
- + Buying of girls for prostitution (Sec 373);
- + Unlawful Compulsory Labour (Sec 374);
- + Rape (Sec 376); etc.

The Criminal Law (Amendment) Act, 2013 - adds Section 370A to IPC which criminalizes human trafficking. The definition provided under the new section is not restricted to prostitution but also includes other forms of trafficking. This is evident from the use of word "exploitation" instead of "prostitution" in the section. Thus, the scope of the section has been broadened. Stricter punishment has been given under the amendment. The amendment further excludes consent of victim obtained by inducement, etc. as a factor to absolve the trafficker of liability under the new section.

The Immoral Traffic (Prevention) Act, 1956, initially enacted as the 'Suppression of Immoral Traffic in Women and Girls Act, 1956', is the main legislative tool for preventing and combating human trafficking in India for the purpose of prostitution. It was enacted in pursuance of the International Convention signed at New York on 9th day of May, 1950. The Act criminalizes the procurers, traffickers and profiteers of the trade but in no way does it define the term 'human trafficking'.

In the case of *Prerana -Vs- State of Maharashtra*<sup>14</sup>, the Bombay High Court stated that cases relating to sex trafficking should be disposed off expeditiously. Trial Courts ought to take victim's consent within one month and complete the trial within six months of the charge sheet being filed.

**Other Relevant Acts which address the issue of human trafficking in India are-**

- + Indian Evidence Act, 1872
- + Young Persons (Harmful Publications) Act, 1956
- + Probation of Offenders Act, 1958
- + Criminal Procedure Code, 1973
- + Bonded Labour System (Abolition) Act, 1976
- + Child Labor (Prohibition and Regulation) Act, 1986
- + Indecent Representation of Women (Prohibition) Act, 1986
- + Transplantation of Human Organs Act, 1994
- + Information Technology Act, 2000
- + Juvenile Justice (Care and Protection of Children) Act, 2000
- + Prohibition of Child Marriage Act, 2006

However most of these legislations have best served symbolic purpose and produced minimum results. So the problem of trafficking is rising day by day.

In 2014 the Government of India launched a web-portal on Anii Human Trafficking Portal. The web portal is expected to serve as a vital IT tool for sharing of information across all stakeholders, States/UTs and civil society organizations for effective implementation of Anti Human Trafficking measures.<sup>5</sup>

- 1) The trade of human trafficking is considered as the largest human rights violation in the world and is on rise. It has become a present day threat to human dignity, human rights and liberty. Legal response in dealing with human trafficking, identifying the deficiencies in law and problems faced in dealing with human trafficking is a priority and needs to be addressed immediately.
- 2) The severity of human trafficking has been so much that it is spreading like a disease all over the world. Trying to eliminate trafficking in women and children is like trying to eliminate smuggling of narcotic drugs when the market is available.
- 3) Human trafficking is one of the fastest growing criminal enterprises because it holds relatively low risk with high profit potential.
- 4) The scale of the phenomenon is difficult to judge. It is very difficult to collect data on trafficking because of the clandestine nature of the operations.
- 5) Human trafficking is the only area of transnational crime in which women are significantly represented- as victims, as perpetrators and as activists fighting this crime.
- 6) Human trafficking is a global phenomenon that is fueled by poverty and gender discrimination.
- 7) Fear of defamation and honor of family prevents the lodging of complaints.
- 8) Lack of proper machinery of investigation against human trafficking.

Inspite of the existence of several protective instruments at the national and International level humans continue to be the victims of violence, exploitation, torture and discrimination. If we are not very much cautious about the problem and take grave steps to control the situation, it will become extremely crucial.

**CONCLUSION :**

It is really a bad situation which India is facing. Inspite of various laws, in almost every city there are certain parts filled with brothels. But the 'trade is secretive, the women are silenced, the traffickers are dangerous and not many agencies are counting'. There have been many deficiencies in these laws which have augmented this problem and eventually helped the organized groups to flourish in this trade. Thus, the existing legal framework in India does not work effectively to deal with the present problem of human trafficking. So it is necessary to analyze these legal provisions and to identify the flaws and deficiencies which are acting as hindrances in getting rid of this problem and also ascertain whether the laws in India are in conformity with the standards laid down by International Human Rights Instruments to which India is signatory.

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