HUMAN TRAFFICKING: A CROSS BORDER PHENOMENON

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1.1 Introduction

Who does not wish for life of freedom; freedom from lack of resources, freedom from starvation, freedom from exploitation etc.? We all do. However, for some people it is not merely a plea to escape from the complexities of life, but a genuine cry for help from the daily life of exploitation both physical and emotional. These people are often victims of human trafficking: a crime so heinous that it treats people (especially women and children) as mere commodities, to be sold and purchased, often repeatedly. Human Trafficking is the face of modern day slavery. It is the reflection of the most inhuman face of the society which prides itself in shielding its women and children from prying eyes, yet so casually turns a blind eye to the suffering of these helpless victims. Trafficking in human beings could be for a variety of reasons: prostitution, marriage, beggary, bonded labour, forced organ donations, adoptions etc. However, the predominant factors are usually sexual and economic reasons. Hence, it has been observed that in most of the cases it is the women and the minor children (of both genders) who are the victims of human trafficking.

2.1 Meaning and Concept

Human trafficking is a difficult term to define for the sole reason that its area has continuously expanded. Earlier the laws of trafficking focussed more on trafficking for the purpose of sexual exploitation, but now it has come to incorporate offences apart from those of sexual nature, like begging, slavery etc. in its ambit of human trafficking. Different organizations and countries have different criteria for judging whether a particular act is an act of human trafficking or not. Not every country has a law against human trafficking. In such countries cases of this nature are mostly prosecuted under abduction or rape. Human Trafficking shares a close relation with the trend of migration. Migration is more frequently done for economic reasons and less for geographical or political reasons.

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Often the process of trafficking is projected as migration by the people interested in it. Since poor and vulnerable people (women and children) are more likely to migrate, they are the ones who are most easily trafficked.

The United Nations General Assembly in its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children adopted in 2000¹, defines human trafficking as, 'The recruitment, transportation, transfer, harbouring 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.' According to this Protocol, the consent of the trafficked person does not hold any relevance if the means used to transport them includes fraud, deception, abduction and the like. It defines child as any person below the age of 18 years. The countries who are signatories to this protocol are required to establish methods to investigate and prevent trafficking and to cooperate with the law enforcement agencies of other signatories to identify traffickers and their victims. The Government of India signed the Trafficking Protocol on 12 December 2002.

The Convention on Preventing and Combating Trafficking in Women and Children for Prostitution devised by the South Asian Association for Regional Cooperation (SAARC) in 2002, has also defined the term 'trafficking' as 'the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking'. The Government of India has ratified this Convention along with other members of SAARC.⁴

¹ Kathryn Cullen-DuPont, *Human Trafficking*, p. 9.

² UN. Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations convention against transnational organized crime. General Assembly Res. 55/25. New York, NY, United Nations General Assembly, 2000. available at, http://www.castla.org/templates/files/who-vaw-ht-eng.pdf (last accessed on 27 January 2014).

³ Supra Note 1, p.10.

⁴ Draft National Integrated Plan of Action to Prevent and Combat Human Trafficking with Special Focus on Children and Women, Ministry of Women and Child Development, p.7, available at, http://www.protectionproject.org/wp-content/uploads/2010/11/NAP-Draft-India_2006.pdf (last accessed on 9 February 2014).

3.1 Legal Framework in India vis a vis International Legal Framework

3.1.1 National Framework

Though India is now hailed as a growing power, it is sad to note that this power and its privileges are restricted to a small number of people. Factors like poverty, economic migration and skewed sex ratio have made India a thriving point for human trafficking, both as a starting point and as a final destination. As a start up point, victims of human trafficking are often sent to countries of Middle East on the pretext of good employment. As a destination, it serves as a market for human trafficking from the small towns and villages; and internationally from countries like Nepal and Bangladesh. The country also works as a transit point for the victims of human trafficking from neighbouring countries to other countries.

As a consequence the country's legal system incorporates a wide variety of laws to combat this evil. However, it is disappointing to note that even with such a large number of legislations dealing directly or indirectly with the crime of human trafficking the phenomenon has only increased instead of decreasing. The important laws which deal with human trafficking are:

• The Constitution of India

The Constitution of India is based on the notion that each individual has a right to live his or her life with dignity and in the manner specified by the laws of the country. Though the term human trafficking does not find any mention but various Articles provide for life free from exploitation. Articles 23⁵ and 24⁶ provide for freedom from economic exploitation. Article 14 focuses on equality before law. Article 21 provides for protection of life and personal liberty. These rights are assisted by the Directive Principles of State Policy.

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⁵ Prohibition of traffic in human beings and forced labour

⁽¹⁾ 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

⁽²⁾ Nothing in this article shall prevent the State from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them. *at*, http://indiankanoon.org/doc/1071750/ (last accessed on 9 February 2014).

⁶ Prohibition of employment of children in factories, etc.. No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. *at*, http://www.lawzonline.com/bareacts/Indian-Constitution/Article24-Constitution-of-India.html (last accessed on 9 February 2014).

• The Immoral Traffic (Prevention) Act, 1956

The Immoral Traffic (Prevention) Act, 1956 (ITPA), which was initially known as the 'Suppression of Immoral Traffic in Women and Girls Act', 1956, is the main legislative tool for preventing and combating trafficking in human beings in India. However, till date, its prime objective has been confined to the sexual exploitation angle, whereby it is designed to inhibit or abolish traffic in women and girls for the purpose of prostitution as an organized means of living.⁷ The Act criminalizes the people involved in procurement, trafficking and reaping profit from the trade but in no way does it define 'trafficking' per se in human beings.⁸

• Indian Penal Code, 1860

Under the IPC, there are approximately 20 provisions dealing with human trafficking relevant to trafficking and impose criminal penalties for offences like kidnapping, abduction, buying or selling a person for slavery or labour, buying or selling a minor for prostitution, importing or procuring a minor girl, rape, unnatural offences etc. whether directly or indirectly.⁹

Apart from this The Criminal Law (Amendment) Act, 2013, which primarily deals with amendments related to rape and other sexual offences, also includes trafficking in its scope. We now specifically have the new Section 370 which defines the offence of trafficking thus replacing the earlier existing Section 370, which previously dealt with the buying or disposing of any person as a slave. ¹⁰ The new Section 370 makes it a criminal offence against anyone who recruits, transports, harbours, transfers or receives a person using certain means, which shall include either or combination of threats, force, coercion, fraud, deception, abduction, abuse of power, or inducement for purposes of exploitation. ¹¹ The term exploitation is not properly defined but includes all forms of sexual and economic exploitation including forcible removal of organs. Punishment now varies between 7 to 10 years' rigorous imprisonment with fine. It is further enhanced and graded depending on whether the victim is an adult or

⁷ Supra Note 4, p.8.

⁸ Supra Note 4, p.8.

⁹ Supra Note 4, pp. 7-8.

¹⁰ Prabha Kotiswaran, *A Battle Half-Won: India's New Anti-Trafficking Law*, Interdisciplinary Project on Human Trafficking, *available at*, http://traffickingroundtable.org/2013/04/a-battle-half-won-indiasnew-anti-trafficking-law/ (last accessed on 9 February 2014).

¹¹ Ibid.

minor or whether more than one person is trafficked or a minor is trafficked, or whether the trafficker is a repeat offender and whether the trafficker is a police officer or public servant. Section 370A further criminalises anyone who engages a trafficked minor or adult for sexual exploitation.¹²

Besides these laws, the country also offers The Bonded Labour (Abolition) Act, 1976, The Child Labour (Prohibition and Regulation) Act, 1986, The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, The Juvenile Justice Act, 2000, The Transplantation of Human Organs Act, 1994, The Immigration (Carrier's Liability) Act, 2000 and The Prohibition of Child Marriage Act, 2006.¹³

Instead of making it easier so many legislations, with different treatment of the offence of human trafficking has made the application of law concerning it even more confusing. What India requires is a comprehensive legislation with strict application and not a plethora of laws with fragmented versions of each other.

3.1.1.1 *International Framework*

Apart from the national laws, India is also influenced by the development in the scope of human trafficking. Internationally we have a number of declarations, conventions and protocols dealing with the crime of human trafficking whether directly or indirectly. However, it is important to note that not all the countries of the world are signatories to these instruments and the issues of sovereignty and territorial jurisdiction plays an important role sometimes to the detriment of the victims of human trafficking. Nevertheless some of the important international instruments designed to prevent and punish human trafficking are:¹⁴

• International Convention for the Suppression of Trafficking of the Women and Children, 1921.

This Treaty prohibits the enticing, or leading away of a female to another country for immoral purposes.

¹² Supra Note 10.

¹³ Sadika Hameed, Sandile Hlatshwayo, et al, *Background Information on Human Trafficking in India*, A supplement to the Human Trafficking in India: Dynamics, Current Efforts, and Intervention Opportunities For The Asia Foundation Report (2010), p. 9, *available at*, http://asiafoundation.org/resources/pdfs/StanfordHumanTraffickingIndiaBackground.pdf (last accessed on 9 February 2014).

¹⁴ Sankar Sen and Jayashree Ahuja, *Trafficking in Women and Children: Myths and Realities*, pp.57-60

• Slavery Convention, 1926.

The State parties are required to discourage all forms of forced labour in the nature or form of slavery for the purpose of exploitation.

• Universal Declaration of Human Rights, 1948.

The Declaration lists out the various rights and liberties which everyone human being is entitled to by the virtue of being born. It specifically prohibits slavery in every form and condemns exploitation of every kind.

• Convention for the Suppression of Trafficking in Persons for Exploitation, Prostitution and others, 1949.

As per this Convention procurement, enticement etc., for the purposes of prostitution is a punishable offence irrespective of the age of the person involved and his or her consent to the same. It has been ratified by India.

• International Covenant on Civil and Political Rights, 1966.

It abolishes forced labour and slavery and protects the rights of women and children.

• Convention on the Elimination of all forms of Discrimination Against Women, 1979.

Article 6 of the Convention requires the State Parties to take all appropriate measures, including legislation to suppress all forms of trafficking in women. This Convention has been ratified by India.

• Tourism Bill of rights and the Tourist Code, 1985.

Adopted by the World Trade Organization, the Code requires the State parties to preclude any possibility of the use of tourism to exploit others for the purpose of prostitution.

• Convention on the Rights of Child, 1989.

It requires the State parties to take measures to combat illicit transfer of the children to foreign countries and to protect them from sexual abuse, abduction, sale or trafficking. India has ratified two Optional Protocols to this Convention. They are Optional

Protocol on the Involvement of Children in Armed Conflicts and Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. ¹⁵

• United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000.

This Protocol for the first time gives a well meaning definition of the term human trafficking. It does not limit human trafficking to only sexual offences but also includes economic offences within its scope. It requires the State Parties to provide support measures in the form of counselling, housing, medical, psychological and educational help.

4.1 Human Trafficking: An International Problem

Human Trafficking has spread its roots in every nook and corner of the country. However, it does not stop there. The porous borders that the country shares with its neighbours, particularly Nepal and Bangladesh have made it easier to traffick people across borders. The demand and supply pattern for the victims of human trafficking is not limited to the cities and villages of India. It continues even across the borders of the country, with Nepal and Bangladesh being the main sourcing areas outside India and Middle East being the preferred destination of the victims of human trafficking.

The victims both minor children and adults who mostly consist of women are routinely trafficked across the border normally end up as bonded labour or sexual slaves and the men who are trafficked across the border are often lured with false promises of a better source of income and in many cases end donating their organs without their consent. This problem is further aggravated by uncoordinated efforts between the law enforcement authorities of the countries concerned and lack of knowledge and verification against agencies involved in such a heinous crime. The modus operandi adopted by such touts normally fall within two categories, i.e. deception and coercion. In matters of deception they use fraudulent means to trap their victims. Most of the victims in this category belong to the lower strata of the society. Whereas when coercion is used, kidnapping, abduction, rape etc. are used to traffick the victim. The victims in this stratum may belong to both the upper and lower levels of the society.

¹⁵ Supra Note 4, pp.6-7.

4.1.1 Policies and Programmes Dealing with Cross Border Human Trafficking

A key anti-trafficking intervention is the UJJAWALA scheme for trafficked women and children. It was launched by the Ministry of Women and Child Development in December 2007.¹⁶ The main components of UJJAWALA Scheme are: Prevention, Rescue, Rehabilitation, Re-integration and Repatriation of the trafficked women and children.¹⁷ The scheme which focuses on females trafficked for the purpose of commercial sexual exploitation is concerned with the following:¹⁸

- Prevention, which includes the formation of community vigilance groups or adolescent groups, as well as awareness generation. It also sensitises the police, community leaders and other relevant actors involved.
- Focuses on rescue and safe withdrawal of victims.
- Rehabilitation, including the provision of safe shelter, food, clothing, counseling, medical care, legal aid, vocational training and income generation activities.
- Reintegration, involving the restoration of victims into families/communities
 (where they so desire) and payment of accompanying costs.
- Repatriation, including the provision of support to cross-border victims for their safe returns to their countries of origin.

Internationally India relies on support from 'The United Nations Office on Drugs and Crime, through its Regional Office for South Asia', commonly referred to as UNODC, which has undertaken several Anti-Human Trafficking initiatives to prevent and combat trafficking in South Asia. ¹⁹ The government has also floated a project on 'Building the capacity and expanding Anti-Human Trafficking Networks for improved support to victims of trafficking'. This project in collaboration and

Rebecca Everly, *Preventing and Combating the Trafficking of Girls in India Using Legal Empowerment Strategies*, International Development Law Organization (2011), p. 15, *available at*, http://www.idlo.int/Publications/FinalReportGirlsProject.pdf (last accessed on 9 February 2014).

¹⁷ Ujjawala: A Comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation and Re-integration of Victims of Trafficking for Commercial Sexual Exploitation, Government of India Ministry of Women and Child Development (2007), p.3. available at, http://wcd.nic.in/SchemeUjjawala/ujjawala.pdf (last accessed on 9 February 2014).

¹⁸ Supra Note 15.

¹⁹ India Country Report To Prevent and Combat Trafficking and Commercial Sexual Exploitation of Children and Women, World Congress III Against Sexual Exploitation of Children and Adolescents (Rio de Janeiro, Brazil, November 2008), United Nations Office on Drugs and Crime, p.37, available at, http://www.ungift.org/docs/ungift/pdf/stories/India-country-report.pdf (last accessed on 13 February 2014).

coordination with the regional NGO networks such as the Alliance against Trafficking and Sexual Exploitation of Children (ATSEC) aims to provide greater assistance to victims of trafficking. ATSEC is a network of over 500 NGOs operating mainly in India but also enjoying presence in Pakistan, Bangladesh, Nepal and Sri Lanka.²⁰

The UNODC has in collaboration with Ministry of Women and Child Development (MWCD) of the Government of India has also brought about a Protocol on Inter State Rescue and Post Rescue Activities Relating to Persons Trafficked for Commercial Sexual Exploitation. Since the existing national laws focus more on rights and protection to the victims of human trafficking, this Protocol lays down the procedure to be followed in cases of rescue and post rescue of such victims.²¹ An ill equipped post rescue procedure may put the whole rescue operation at risk and send the victims back to the hell from where they were rescued.

The Protocol stresses upon the need to have a Nodal Officer, one from the police department and another from the Women and Child or Labour Department of the State. Efforts should be made to publicize their names and telephone numbers in the area so as to make them more accessible. Apart from this, the Protocol emphasises on treatment of the rescued persons as 'victims' and not accused. They should be made aware of their status in the eyes of law, be provided with the legal aid and equal treatment should be meted out to cross border victims as the victims of the host country. Inter-State rescue operations should be conducted jointly. The victims at all times should be segregated from the traffickers. After they are rescued the rescued persons should be given proper counselling and medical aid. They may be further shifted to shelter homes. The host country in consultation with the victim's country of nationality ought to arrange for their repatriation to his/her country.

Hence, after an understanding of various laws and policies following are the steps that can be adopted by the law enforcement agencies along with the assistance of

²⁰ Ibid, p.38.

²¹ Protocol on Inter State Rescue and Post Rescue Activities Relating to Persons Trafficked for Commercial Sexual Exploitation, United Nations Office on Drugs and Crime and Government of India (2007), p. 5, available at,

http://www.unodc.org/documents/southasia/Trainingmanuals/Protocol_on_Inter_State_Rescue_and_Post_Rescue_Activities.pdf (last accessed on 13 February 2014).

²² Ibid, p.7.

²³ Ibid, pp.8-9.

²⁴ Ibid, p.11.

²⁵ Ibid, p.17.

registered NGOs to prevent cross border human trafficking and to protect the victims are:²⁶

- Bilateral agreements should be adopted with the neighbouring countries in order to prevent trafficking and to protect the rights and dignity of trafficked persons and to promote their welfare.
- Developing of cooperative arrangements to facilitate the rapid identification of trafficked victims which should also include the sharing and exchange of information in relation to their nationality and residence.
- To ensure judicial cooperation between countries in investigations and judicial processes relating to trafficking and related offences. This cooperation should extend to: identifying and interviewing witnesses with due regard for their safety; identifying, obtaining and preserving evidence; producing and serving the legal documents necessary to secure evidence and witnesses; and the enforcement of judgments of a nation which they are not national of.
- To ensure that requests for extradition for offences related to trafficking are dealt with by the authorities of the requested countries without undue delay.
- To encourage and facilitate cooperation between non-governmental organizations and other civil society organizations in countries of origin, transit and destination. This is particularly important to ensure support and assistance to trafficked victims who are repatriated.

Conclusion and Suggestions

Cross Border Human trafficking poses series of complexities for the simple reason that it is still not openly acknowledged (even by the government agencies), since it would raise a question mark on their competency. A crime which is brushed aside, dealt with but more so for the purpose of greasing your palm is very difficult to control. Human trafficking is one such area, talked and worked upon more by the Non Government Organizations (NGOs) and less by the government. Under such circumstances it is really difficult to identify the victims and the perpetrators of this heinous crime. Hence, the researcher wishes to suggest some measures. They are:

²⁶ Supra Note 4, pp.40-41.

- 1. Coordination between the police nationally and the border security forces on the line with all the neighbouring countries is very important.
- 2. This coordination should also extend to NGOs.
- 3. Victims of cross border human trafficking should be identified and their families should be informed about their status. However, it is important that sensitivity should be adopted and till the time they are not sent back, their medical examination should be conducted and they should be provided with proper counselling and shelter.
- 4. Data collection should be done so that repeat offenders can be catalogued and sensitive areas can be tracked.
- 5. Proper manning of the border areas is very important. There should be qualitative data to differentiate genuine migration from human trafficking.
- 6. Reporting of every minor bride who leaves or enters the country should be done.
- 7. The records of various agencies promising better employment should be open for inspection as and when required. They should be able to provide the details of all the persons whom they have provided employment along with the details of their employers.
- 8. Lastly, strict implementation of all the existing laws would be the most important step in securing the future of millions of victims of human trafficking and at the same time punishing the people behind it.

A crime of this proportion cannot be erased from our society in a few years time, but that gives us no reason as society, as policy makers and as law enforcers to not try. It is hoped that together, we as a community of human beings, who are entitled to a dignified existence first and nation afterwards can work towards creating a world free from such heinous crimes which attacks at the very soul of our existence.

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