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Women's Crime and Law

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Perspectives and Issue of Girls Trafficking in India

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ABSTRACT

India Trafficking has been considered as one of the serious issue in the present scenario and trafficking in women is considered as one of the most contemptible form of human rights violations. It has been evident from the history that human trafficking is not new or same kind of unique issue in India. It is often compared with prostitution. Among the organized crimes, it is considered as third largest category in terms of profit after drugs and smuggling of arms. Further it would not be wrong to say that it is a complex issue which is considered as the focal point of the crime in India and also a form of exploitation which violates the very basic rights of the trafficked victims. In this connection the paper tries to highlight the present situation and the various dimensions of human trafficking. The paper briefly explains the various causes and contributory factors for human trafficking. Further, the paper also shed some light on the role of judiciary and the nongovernmental organizations in combating trafficking of women in India.

Keywords: Trafficking, human rights, crime, prostitution, women and judiciary, etc.

Introduction:

It is an admissible fact that, women in India are very

vulnerable and susceptible to violence such as sexual abuse, domestic violence and human trafficking, etc. In India, human trafficking is a result of and hindrance to, socio-economic development, which threatens the domestic and international security, specifically in relation to individual security. It has been estimated that more than 200,000 girls and women are trafficked annually for commercial sexual exploitation in South Asia (India, Bangladesh and Nepal). The focus on trafficking, either as an issue of illegal migration or prostitution, still dominates the discourse of trafficking in these countries, which prioritizes state security over human security and does not adequately address its root causes as well as the insecurity of trafficked individuals. Vulnerability factors, such as structural inequality, culturally sanctioned practices, poverty or economic insecurity, organ trade, bonded labour, gender violence, which fuels human trafficking and threatens the human security.

(1) It is generally understood that whenever the term Trafficking comes it understands in the parameter of prostitution only, but it does not mean prostitution. It would not be wrong to say that it should be delinked from prostitution. (2) As per the domestic law, that is, the Immoral Traffic (Prevention) Act, 1956, prostitution becomes an offence when there is commercial exploitation of a person. Trafficking is the process of recruiting, contracting, procuring or hiring a person for Commercial Sexual Exploitation (CSE). Therefore trafficking is a process and the CSE is the result. The demand in CSE generates, promotes and perpetuates trafficking. This is a vicious cycle. (3)

The term trafficking in persons is not defined in our laws, but it has been however defined in the United Nations Palermo Protocol (4) as “the recruitment, transportation, transfer, harboring or receipt of persons, by means of threat or use of force or other forms of coercion of abduction, of fraud, of deception, of the abuse of the power or of a position of vulnerability or of the giving or of receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.(5)

According to Oxford dictionary, ‘Trafficking’ means deal in something especially illegally. It also offers new terms like drugs trafficking, arms trafficking and human trafficking. The conceptual mean-

ing of human trafficking refers to “to the criminal practice of exploitation of human beings where they are treated as commodities for profit and after being trafficked, are subject to long term exploitation”. (6) Human trafficking (HT) has become one of the three most lucrative types of organized crimes, there are drugs and arms. This organized crime of human trafficking has reached ‘a scary magnitude’ because the extent of violations of human right is unbelievable and unimaginable. The sad part is that there is very little awareness of this crime among the masses. It is also because of its highly secret and clandestine nature. It has become such mind-boggling problem that it has become difficult to arrive at any consensual data as different agencies project different numbers. It has been termed as modern day slavery. (7)

Prominently, there are three phases of human trafficking namely, origin, transit and destination point. Origin is the place from where the victims are recruited and transit denotes transportation and transfer, sometimes harboring also. Destination is the final point where the victims are received and maintained for exploitation. Even the victims may be exploited in origin and transit phase but it is for a short period. At destination, negotiation takes place for maximum profits. (8)



Reasons for Trafficking of Girls:

The root cause for human trafficking in India can be better explained in part by gender- based discrimination, which in turn responsible for the deaths of thousands of girls under the age of five years in each year. It would not be wrong to mention here that, this gender based discrimination is a kind of cultural norm in India, because sons are always given more preference and considered as most useful for the family as the girl child. One more very important fact is that because of this gender based discrimination in India a social

structure favors more males over females. (9)

Further, to understand the causes, it is necessary to check the nature and scope of the trafficking in human beings. The trafficking in women takes place for various reasons; with the development of globalization, trafficking in women has summed a new dimension. This problem has penetrated into various economic sectors demanding cheap labour of women and children as also in the sex industry and other sectors. Trafficking is not confined only to sexual exploitation but also branched as various forms. (10) The hereunder are the reasons for increasing for women and young girl trafficking in India:

Forced Marriage:

It is well known fact that there is gradual decrease in sex ratio in different part of the country for instance states like Haryana, Rajasthan, Punjab and others which have given rise to unusual problem of trafficking of women. Further, it may be seen that, trafficking in case the poor girls marrying to wealthy persons in the name of temporary marriages. It is also evident from the ages to till today that, women should bear only a male child and sometimes the girls who does not agree to such things will get murdered. It is rightly to be noted here that, girls and women are not only trafficked for prostitution but also bought and sold like commodity in many regions, where female ration is less as compared to male due to female infanticide later they are forced to marry. (11)

Begging:

Forced begging is also a kind of human trafficking in India. Children and women are also constrained to beg in public places. Many traffickers use disabled persons to earn wealth. (12)

Bonded Labour:

According to the ILO, there are more than eleven million people working as a forced labor in the Asia-Pacific region. People running out of cash generally sell their kids as debt labor in exchange for cash. Both boys and girls are sold for this purpose and generally not paid for years. Victims of human trafficking have great chances of suffering from issues like mental disorders, depression and anxiety. Women forced into sexual trafficking have at higher risk of getting affected from HIV and other STDs. (13) Further, when this issue is

looked by the angle of supply and demand factors, the growth of the trafficking can identify some of the causes of trafficking. Such causes are categorized into different aspects of life such as socio-cultural, economic and political: (14)

Poverty:

It is one of the major factors in the trafficking of human industry. The helpless condition of the victims provides an ample scope towards traffickers to trap the victims.

Political Environment:

It includes- political industry, militarism and violence increase in the ill-treatment and abuse via trafficking and forced labour.

War Factor:

A large number of people who have lost their respective families in war are more induced to trafficking. Even the armed conflict leads to gross shifting of people.

Social and Cultural Practices:

Most of the women and girls are generally exploited and abused due to social and cultural practices and are forced to live in risky condition. They are more vulnerable to human trafficking as they get little opportunity of upward mobility. In our society a single mother, divorced woman, widowed and sexually abused woman and young girls are easy prey to the traffickers because of the social stigma.

Migration:

Migration means the movement by people from one place to another with an objective mind. When people take irregular means for migration, they are easily victimized by human traffickers which pose a great danger to children and young woman in particular. Migrants from Bangladesh are sometimes trafficked and sold into prostitution or forced labor.

There are some other causes also which are crucial:

Economic Causes:

Under this economic cause we will find economic inequality, Land Reform-Large scale agriculture, resource grabbing, food security, mechanization of agriculture, Wage and labour repression- unemployment, decent job or job without dignity, labour binding agreements, Climate change and environmental degradation:

Rising sea level, drought, flood, deforestation, commercial over fishing, mining, commoditization of nature and Expenses of providing required benefits to regularly employed workers, etc.,

Social Exclusion and Gender Discrimination Causes:

Gender inequality-Gender based wage gaps, violence against women and girls, armed conflict, crises of instability, denial of women's rights to education, health, participation, credit, skill, poverty and productive assets. Multiple form of discrimination-Caste system, racism, weakness of social protection, passage and enforcement of protective legislation, meaningful punishment of perpetrators, education/information for awareness, willingness to report criminal action, training of law enforcement, lack of skill and income opportunities for women in rural areas, pressure to collect money for dowry which leads to sending daughter to distance place for work, lack of education and health care, lack of respect for person are some causes. Moreover, undocumented status of immigrants, city- life dream, dysfunctional families, Devdasi Tradition, violent behaviour in the home and on TV, drug and alcohol addiction, disintegration of social protection network and a culture that accepts treating people, especially women and children as object, easily availability of pornography etc. are some of the gender discrimination causes.

Political and legal causes:

With regard to political and legal, following are the causes, Corruption- Organized crime, border controls, increasingly militarization-Arm conflicts, resource curse in extractives, refugees, Legal-Access to justice, rule of law, statelessness, lack of anti- trafficking legislation.

Legal Framework to tackle Trafficking in India:

The Constitution of India guarantees wide range of rights for the protection and proper upbringing of women. These rights represent the values cherished by the people and are meant to safeguard the dignity of the individual and also helps in creating conditions in which human beings can develop their personality to the fullest extent. In Yusuf v. State of Bombay (15) it was held that, Article 14 of the Constitution states that **“The state shall not deny to any person equality before the law or the equal protection of the**

law within the territory of India”. Even though this article guarantees equality but it does not prevent the state from introducing a reform towards betterment. Hence any law making special provisions for women under the Article 15(3) cannot be challenged on the ground of contravention of Article 14.

Trafficking of human beings or persons is prohibited and guarantees right against exploitation and forced labour and practices of which is punishable in accordance with the law as per Article 23 of the Constitution of India. Again in Article 24 clearly states that, children below the fourteen years of age are prohibited for employment in factories or some other hazardous employment.

Apart from the constitution, In Indian Penal Code, we will find provisions in relation to women trafficking among them important provisions are; Section 366 (A) and (B) which speaks about Procurement of a minor girl below the age of eighteen years from any place and importation of girl below the age of twenty one years are punishable respectively. Further, Section 372, 373 and 374 speaks about selling, buying and punishment for compelling any person to labour against his will respectively.

Some of the major Acts to prohibit trafficking in India are; the Immoral Traffic (Prevention) Act, 1956 (IIPA) is the legislation which is for prevention of trafficking for commercial sexual exploitation. Recently, the Criminal Law (amendment) Act 2013 came into force wherein Section 370 of the Indian Penal Code has been substituted with Section 370 and 370A which provides for comprehensive measures to counter the menace of human trafficking including trafficking of children for exploitation in any form including physical exploitation or any form of sexual exploitation, slavery, servitude, or the forced removal of organs. In the year 2012, Protection of Children from Sexual offences (POCSO) Act, 2012, came into force, which is one of the special law to protect children from sexual abuse and exploitation. It provides precise definitions for different forms of sexual abuse, including penetrative and non-penetrative sexual assault, sexual harassment. Apart from all these, there are some other specific enactments which are enacted for the purpose of prohibition of trafficking are Prohibition of Child Marriage Act, 2006, Bonded Labour

System (Abolition) Act, 1976, Child Labour (Prohibition and Regulation) Act, 1986, Transplantation of Human Organs Act, 1994 etc. (16)

The Role of Judiciary on Human Trafficking:

It is a known fact that, the issue of trafficking is a sensitive one; the judiciary in India has given few important judgments which are significant. Usually in most of the judicial pronouncement or decisions or to milestone cases on trafficking were made by Supreme Court of India and to one of the High Courts'. Again it is general understanding that the bulk of cases on Trafficking are dealt with by lower courts and are not reported unlike those of Supreme Court and High Courts. The apex Court and the High Court's laid down some principles, which have its positive impact on the approach of the judiciary to cases of human trafficking and which can be broadly categorized with three main concerns like, victim's rights, giving appropriate directions to government and lastly, special protection to child. (17)

Victim's Rights:

In *Prajwala v. Union of India* (18), it was held that the implementation of victim protocol was demanded and there have been cases where compensation has been ordered to be paid by a perpetrator of crimes to victims of the crime as in *Bodhisattwa Gautam v Subhra Chakraborty*. (19) In the case of *The Chairman, Railway Board v Chandrima Das* (20) where a person had promised marriage to a woman and even went through with a wedding ceremony which turned out to be false. This has been applied to foreign nationals as well. In cases of trafficking too, this principle has been used, as seen in *PUCL v Union of India* (21), where compensation was ordered to be paid where children were trafficked/ bonded for labour.

Directions to State functionaries to tackle the problem of trafficking:

In a very interesting case, *Vishal Jeet v Union of India and Others* (22) the Supreme Court of India pointed out that the appropriate governments should ensure care, protection, development, treatment and required rehabilitative measures for the victims of commercial sexual exploitation and directed the governments to

appoint trained personnel in rehabilitation homes. For instance, the following directions were issued by the Supreme Court to the State and Central Government:

- a) State and Central Governments must direct their law enforcing authorities to take strict action against the child prostitution and eradicate at the earliest.
- b) A separate advisory committee should be constituted at different zones comprising of the Secretary, Law department, sociologists, and criminologists, members from women commission, from women organizations and from voluntary social organizations to eradicate child prostitution. The committee should also take care of these victims; ensure care, protection, treatment, rehabilitation of the young children rescued either from brothel or from the sex exploitation. The court also directed to provide good doctors to ensure the health and rehabilitation to the victims of child prostitution.

Further, the Supreme Court took it upon itself to give directions for the protection and rehabilitation of those who had been dedicated as devadasis by their families or communities for cultural reasons and were currently in prostitution whereas devadasis and jogins are from different States in India. (23)

In *Gaurav Jain v Union of India* (24) the Court observed that, such children should not be kept separately in the interest of children and the society at large. They should be allowed to mingle with the others and become a part of the society so that they should feel that they are also treated equally in the society. Further, it was affirmed that the State had a duty to rescue, rehabilitate and enable women to lead a life of dignity. The Court has also at times taken serious note of what it referred to as the indifferent and callous attitude of the State Administration in identifying, releasing and rehabilitating bonded labourers in the country.

Special Protection to Children:

In *Prerana v. State of Maharashtra* (25), the court held that, there are two categories of children, one with children who have been trafficked themselves and second one is children who are in need and protection i.e., the one vulnerable to being trafficked. Further, it was clearly held that children who have been trafficked themselves should

also be considered as children in need of care and protection and not as children in conflict with the law. Gaurav Jain case (26) The Court held that they should not be allowed to live in their homes as their surroundings were undesirable. Yet another case was Lakshmikant Pandey v Union of India (27) which examined the vulnerability of children being trafficked in adoption rackets due to the lack of an effective protection mechanism. The court went on to create an appropriate mechanism to fill the gap, especially in the context of inter country adoptions. (28)

Conclusion:

It is evident from the above analysis that the issue relating to girls trafficking is not a fresh one or anew; in fact, it is as ancient as the annals of societies in India. The problem of girls trafficking was emerged as a serious problem after the advent of the concept globalization. It has been intervened in almost all sectors enormously. As the concept trafficking is confined maximum to children and specifically to girls as they are vulnerable section of society to exploitation. Eventually, the world witness, a gradual increases in commercial sex-workers. Even though, there are various legislative measures to prevent and eradicate the challenging issue of girls trafficking, but unfortunately, it is still found as an organized crime in the society. It is observed from the above analysis that there are many gaps in the current legislations, and to sincerely fill these gaps, strict awareness and action taken programmes should be conducted. It is impertinent to mention that literacy level and employment possibility should be increased. Moreover, the state should provide innovative packages for rehabilitation to the victims on the one hand, and the NHRC should take in cognizance of the rescued victims' problems faced at various stations and thereafter, arrangements should be made properly and permanently.

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