

HUMAN TRAFFICKING TRADE IN INDIA

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INTRODUCTION

Trafficking in human beings, especially of women and children, has become a matter of grave concern in India. It is a serious human rights violation and a heinous crime affecting societies worldwide. Despite strong steps taken by the Government of India, the trafficking rackets and gangs have become more organised and expanded into newer arenas. It victimizes millions of women, men and children, including those most vulnerable amongst migrant communities, asylum-seekers, refugees and stateless persons, and is commonly associated with many other forms of exploitation, such as sexual exploitation, forced and bonded labour, forced marriages and practices like slavery. The brutality and injustice associated with trafficking in persons is immeasurable for each and every victim. The crime has expanded in such a way that today almost every state is affected with this social and criminal menace.

Trafficking takes place inside a nation state or might involve movement across boundaries. Globally after drugs and the arms trade, human trafficking is the third largest organized crime. Each year an estimate of 7,00,000 to 4 million people around the world are being trafficked for labour and sexual exploitation¹. It is a global phenomenon and has become an organized billion-dollar industry and its core investors include unscrupulous recruiters and corrupt public officials as principal participants. Fatalities of trafficking undergo a violation of fundamental human rights and are to be considered as persons in need of protection. Trafficking employs human tricks to abuse the vulnerable by depriving their dignity and self-worth.

HUMAN TRAFFICKING AS DEFINED BY THE LAW OF INDIA

For the purpose of understanding human trafficking, especially in the context of organized crime, there are two definitions that need to be analysed, viz., 'trafficking' and 'organized crime.' How India defines and engages with these two terms is an indicator of the legal protection given to combat human trafficking as an organized crime.

In order to weigh the definitions that India uses, the definitions under UN will also be studied.

Human Trafficking Definitions:

UN Convention on Transnational Organized Crime and the Protocol

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¹ Ibu Sanjeeb Garg , Human Trafficking In India, *THE SHILLONG TIMES* , <http://www.theshillongtimes.com/2017/07/12/human-trafficking-in-india>.

The definition of trafficking under Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000², covers 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. Exploitation shall include, at a minimum, the exploitation of the prostitution of others, or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs.

Domestic Law of India

Domestic law in India lacks a comprehensive definition of trafficking at the Central level. The ITPA, does not define trafficking, but it defines 'prostitution' to mean sexual exploitation or abuse of persons for commercial purposes, which has elements of trafficking. It has a number of provisions which punish forms of trafficking without actually defining trafficking³. The Act is in the process of being amended, and these amendments also include a proposed definition of trafficking as follows⁴.

Whoever recruits, transports, transfers, harbours, or receives a person for the purpose of prostitution by means of:

- Threat or use of force or coercion, abduction, fraud, deception.
- Abuse of power or a position of vulnerability.
- Giving or receiving of payments or benefits to achieve the consent of such person having control over another person, commits the offence of trafficking in persons.

Organized Crime Definitions:

UNTOC and the Protocol

Under the United Nations Convention Against Transnational Organized Crime, 2000 “Organized criminal group” has been defined as a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefits.

Domestic Law of India

There is no current central legislation in India with regard to organized crime. Some States however have legislated on the same. Maharashtra, which was the first State to have an Act⁶, defines organized crime as any continuing unlawful activity by an individual, singly or jointly, either as a member of an

² Responses to Human Trafficking in India, Bangladesh, Sri Lanka, Nepal -

UNODC https://www.unodc.org/documents/human-trafficking/2011/Responses_to_Human_Trafficking_in_Bangladesh_India_Nepal_and_Sri_Lanka.pdf

³ The Immoral Traffic (Prevention) Amendment Bill, 2006.

⁴ Vide the proposed amendment Section 5A to the Immoral Traffic Amendment Act, 1956.

⁵ Article 2(a) UNTOC

⁶ Maharashtra Control of Organized Crime Act, 1999.

organized crime syndicate or on behalf of such syndicate, by use of violence or threat of violence, intimidation or coercion or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person, or promoting insurgency⁷. In the absence of a specific law on organized crime, reliance is placed on general provisions in criminal law dealing with common intention to commit an offence, criminal conspiracy and abetment. Anti-corruption laws may also be used.

HUMAN TRAFFICKING TRADE IN INDIA

India is a source, destination, and transit country for men, women, and children subjected to forced labour and sex trafficking. Women and children are the key target as victims of trafficking. Poverty and illiteracy make children and women belonging to the poor sections of society highly vulnerable to human trafficking. Females are trafficked within the country for the purposes of forced prostitution. Religious pilgrimage centres and cities popular for tourism continue to be vulnerable to child sex tourism. Women and girls from Nepal and Bangladesh, and an increasing number of females from Uzbekistan, Ukraine, and Russia, are also subjected to sex trafficking in India. There were increasing reports of females from north-eastern states and Odisha being subjected to servile marriages in states with low female-to-male child sex ratios, including Haryana and Punjab, and there are also reports of girls subjected to transactional sexual exploitation in the Middle East under the guise of temporary marriages⁸. Establishments of sex trafficking are moving from more traditional locations – such as brothels – to areas that are harder to find, and are also shifting from urban to rural areas, where there is less detection. 2.5% of prostitutes in India are Nepalese, and 2.7% are Bangladeshi. In India, Karnataka, Andhra Pradesh, Maharashtra, and Tamil Nadu are considered "high supply zones" for women in prostitution. Bajpur, Belgaum and Kolhapur are common districts from which women migrate to the big cities, as part of an organised trafficking network⁹.

The problem of trafficking in India is complex and the human trafficking trade in India has certain "supply" and "demand" factors. Poverty, child marriage, no girl child are the "supply" factors. The "demand" factors are migration and sex tourism. Women and children living in rural areas of India or from other states are engaged as domestic helps or in small-scale establishments in urban centres. Women and children are sold into commercial sex trade market and these vulnerable groups are eventually exploited economically, physically and also sexually. People from Northeast India especially children from tribal areas are sold in faraway states of India for sexual exploitation and to work as bonded labour. There are number of women from neighbouring countries trafficked to India. It has been reported that out of 1,000 to 10,000 women found in Kolkata brothels, 70% were from

⁷ Section 2(e) Maharashtra Control of Organized Crime Act, 1999.

⁸ Trafficking in Persons Report- 2012(INDIA)- US Dept of State <https://2009-2017.state.gov/documents/organization/192595.pdf>

⁹ Menon Meena (2011) Child Trafficking in India: "The Unknown Faces" Central Welfare Board,. India Forum, <http://www.uri.edu/artsci/wms/hughes/india.ht..>

Bangladesh¹⁰. There are also 1,00,000 to 1,60,000 Nepali girls in Indian brothels, with about 5,000 to 7,000 girls being sold every year¹¹.

Porous borders have led to the rise of the traffickers to commit crime especially in India – Nepal border, India- Bangladesh border. Though India has started constructing the fence between the nations with which it shares the longest border, yet they remain unguarded at various places, be it land or riverine boundaries. Thus, the lack of proper demarcation of borders is a reason for increase in trafficking in India. Foul politics in India has led people to become the victim of sexual and labour exploitation , especially the Bangladeshi nationals who are provided with an Indian voter card illegally, so that they can cast their vote in the favour of the political party for material benefits. Once election is over those promises are easily forgotten. Bangladeshi migrants are subjected to forced labour in India and also some Nepali, Afghan and Bangladeshi women are subjected to sex trafficking in major Indian cities.

Some Indians who migrate willingly every year for work as domestic servants and low-skilled labourers find themselves as forced labourers in the Middle East and, to a certain extent in Southeast Asia, the United States, Europe, Southern Africa, the Caribbean, and other countries. In some cases, such workers are lured from their communities through fraudulent recruitment, leading them directly to situations of forced labour, including debt bondage; in other cases, high debts incurred to pay recruitment fees leave them vulnerable to labour trafficking. Nationals from Bangladesh and Nepal are trafficked through India for forced labour and commercial sexual exploitation in the Middle East¹².

Corruption on the path of security forces on International borders is another reason for rise in trafficking in India. Some corrupt law enforcement officers protect suspected traffickers and brothel owners, by taking bribes from sex trafficking establishments and sexual services from victims and tip off sex and labour traffickers to impede rescue efforts. Natural disasters render people homeless. The movement of Nepali women through India is increasingly subjected to trafficking in the Middle East and Africa. People of Bihar are forced to work as bonded labourers in embroidery factories in Nepal while others from Nepal and Bangladesh are subjected to forced labour in coal mines in the state of Meghalaya. Burmese Rohingya, Sri Lankan Tamils and other refugee populations continue to be vulnerable to forced labour in India. Brides are in high demand in the State of Haryana and other States due to the low sex ratio caused by sex selected abortions. Adopting a human rights-based response to those affected by natural disasters is a concrete way to ensure that natural disasters do not exacerbate existing or provoke new conflicts.

INDIA'S RESPONSE AND INITIATIVES ON HUMAN TRAFFICKING

- The government of India launched an anti-human trafficking web portal in February 2014 as an effective way for interested parties to share information¹³.

¹⁰ Daw Bianca (2008) Child Trafficking- Problems and Solutions

www.academia.edu/2065674/Child_Trafficking_Problems_and_Solutions

¹¹ Chowdhury Mohammad Barad Hossain (2012) Trafficking in persons in Bangladesh: 2012, Dhaka:

Bangladesh. http://www.unafei.or.jp/english/pdf/RS_No89/No89_PA_Cho_wdhury.pdf

¹² Analysis of the various kinds of Human Trafficking in India (Dr Shaikh Ahmad),

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3563138

¹³ Human Trafficking, MEA.org <https://www.mea.gov.in/human-trafficking.htm>

- India's Central Bureau of Investigation incorporated anti-trafficking training by Dr. Gilly McKenzie of the Interpol Trafficking and Organized Crime Division into its standard curriculum¹⁴.
- State governments enacted specific legislations to deal with the issue of human trafficking such as Goa Children's Act, 2003, The Punjab Prevention of Human Smuggling Act, 2012¹⁵.
- Ministry of Home Affairs under a Comprehensive Scheme strengthening law enforcement response in India against Trafficking in Persons through Training and Capacity building has released funds for establishment of Anti Human Trafficking Units for 270 districts of the country¹⁶

Trafficking Of Persons Bill (2016)

Then Women and Child Development (WCD) Minister, Maneka Gandhi released a draft of the Trafficking of Persons (Prevention Protection and Rehabilitation) Bill which is India's first ever anti-human-trafficking law. The aim of the bill is to prevent trafficking of persons and to provide protection and rehabilitation to the victims of trafficking and to create a legal economic and social environment against trafficking of persons. This draft bill increases the definition to cover labour-trafficking and not just sex-trafficking as earlier legislations like the Immoral Trafficking (Prevention) act of 1956. The bill also makes it clear that it is designed for the victims of trafficking and it differentiates between the two terms 'trafficker' and 'trafficked'¹⁷.

THE THREE P'S (PREVENTION, PROTECTION AND PROSECUTION)

Prevention: Empowering Communities to Address Human Trafficking

Prevention activities, through awareness generation and education, play a key role in protecting individuals who are potentially at risk of being trafficked. Prevention also constitutes research activities, in order to understand both the scope as well as the nature of trafficking in the affected areas. This involves the development of social and economic interventions which offer support to those potentially at risk of being trafficked. Some of the activities include job skill training programs to promote local employment opportunities; empowerment programs to develop self-confidence, especially in children and assist them in developing their careers; community enrichment programs to discourage out-migration; and crisis intervention programs to provide support for women and children in abusive homes or facing other crises that might otherwise push them to migrate¹⁸.

Protection: Rehabilitation and Support for Survivors of Human Trafficking

¹⁴ Ibi

¹⁵ Human Trafficking, MEA. org <https://www.mea.gov.in/human-trafficking.htm>

¹⁶ ibid

¹⁷ ibid

¹⁸ India: Strengthening safety nets to counter Human Trafficking, UNODC, <https://www.hurights.or.jp/archives/asia-pacific/section1/10%20UN%20Office%20on%20Drugs%20and%20Crime.pdf>

Recovery of trafficked persons is a long and complex process. A core element of UNODC's mandate under the UN Trafficking Protocol is to increase the level of protection and assistance provided to survivors of human trafficking. After a trafficked person is rescued, the man, woman or child should be protected, during their stay in shelter /vigilance homes, before reintegrating them into the society. Police and criminal justice staff need standard working procedures to guarantee the physical safety of victims, protect their privacy and make it safe for them to testify against their abusers. Protection also involves ensuring that the shelter homes are safe and meet the needs of trafficked persons - that they have access to primary health care and counselling, along with legal and other assistance, and that they are effectively protected from harm, threats or intimidation, and so on.

In India, UNODC provides livelihood and psycho-social support to survivors of trafficking in shelter homes, especially women and children. It also strives to ensure quality care and support services to victims of human trafficking, in close collaboration with state governments and NGOs.

As part of its interventions with women living in shelter homes, UNODC in collaboration with the National Institute of Mental Health and Neuro Sciences (NIMHANS)¹⁹, a premier mental health institute in India, supported trainings for over seven hundred caregivers from government-run shelter homes for women in the states of Andhra Pradesh, Kerala, Karnataka, Tamil Nadu and Uttar Pradesh, on minimum standards for care and protection and psycho-social support. The caregivers were trained on issues of self-esteem and emotional intelligence while dealing with women and children, addressing inter-personal relationships in the shelter home and even dealing with their own feelings as caregivers.

As part of its efforts to strengthen victim/witness protection, UNODC collaborated with one of its partners in the state of Andhra Pradesh, to support nearly four hundred witnesses/victims with the aim of protecting them from being coerced into withdrawing her/ his evidence, and with the following envisaged outcomes: increased conviction of traffickers, increased number of witnesses attending court, increase in charge sheets filed, reduction in instances of re-trafficking, reduced adjournments and speedy disposal of cases. In addition to that, the NGO was supported to provide training to the judiciary to ensure speedy disposal of cases, thereby reducing the chances of traffickers going free without punishment. As a result, the conviction rate of traffickers and brothel keepers in the state has increased²⁰.

Prosecution: Strengthening Law Enforcement for the Prevention of Human Trafficking

Between 2006 and 2009, UNODC, in collaboration with the Ministry of Home Affairs, Government of India implemented a project that aimed to strengthen the technical capacities of law enforcement agencies and officers in India to prevent trafficking in human beings. Over a three-year period more than 13,490 police officers and prosecutors were trained through three hundred ninety training programs in the five project states - Bihar, West Bengal, Andhra Pradesh, Maharashtra and Goa. Eight

¹⁹ India: Strengthening safety nets to counter Human Trafficking, UNODC, <https://www.hurights.or.jp/archives/asia-pacific/section1/10%20UN%20Office%20on%20Drugs%20and%20Crime.pdf>

²⁰ Analysis of the various kinds of Human Trafficking in India (Dr. Shaikh Ahmad), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3563138

Nodal Training Centres (NTCs) were established in all the project states. The NTCs started imparting training to law enforcement officials on a regular basis and have also been assisting NGOs who conduct trainings on human trafficking²¹.

A highlight of the project was the establishment of nine Anti-Human Trafficking Units (AHTUs) in the four project states of Andhra Pradesh, Bihar, Goa and West Bengal. The AHTU is a special Task Force, constituted within the Police department with the partnership of several stakeholders, including officials from the departments of prosecution, welfare and health, agencies that run shelter, protective and children's homes, as well as from civil society partners and the media. The combination of AHTUs and trained law enforcement officials has contributed to an increased awareness and knowledge of the issue, skill enhancement, inter-agency coordination, and better victim/witness protection²².

Considering the rationale and efficacy of the AHTU as the appropriate model to address human trafficking in a holistic and comprehensive manner, the Government of India issued an advisory to all the states in India to institutionalize the gains made by the project in two important areas:

- Training of trainers on anti-human trafficking and
- Setting up Anti Human Trafficking Units (AHTUs). Work to this end has already begun, with over 50 AHTUs being functional across the country to date²³.

CONCLUSION

In the words of eighth UN Secretary General Ban Ki-moon *“let us reaffirm the inherent dignity of all men, women and children. And let us redouble our efforts to build societies in which slavery truly is a term for the history books.”*

Even today in the 21st century, when we look at the issue of human trafficking, we are not in a position to place this social phenomenon in history. Human Trafficking – the trade in human lives – is a vile and heinous crime; it is the scourge of the mankind and a gross abuse of human rights²⁴. Human beings are not to be treated as commodities and they should not be offered for sale. Human trafficking reduces the significance of human life and harms the society by violation of our belief in the human ability for a change. There is a need for stringent monitoring and implementation measures to break the networks of traffickers and strict disciplinary action against people involved in such crimes. To combat the problem of trafficking it is necessary to address the poor infrastructure and economic opportunities that create vulnerability in India.

Thus, in order to tackle the problem of human trafficking in India the citizens, Government bodies, Non-Governmental Organizations, Civil societies, International bodies have a major role to play as law cannot be the only mechanism to solve all the evils related to trafficking.

²¹ Human Trafficking, MEA. Org <https://www.mea.gov.in/human-trafficking.htm>

²² Human Trafficking, (Ministry of External Affairs) <https://www.mea.gov.in/human-trafficking.htm>

²³ *ibid*

²⁴ Maggie Laidlaw Human Trafficking, BLOG(<https://bad3maggie.wordpress.com/20nn/0n/05/conclusion-of-research-paper-human-trafficking/>)