

ANALYSIS OF ANTI HUMAN TRAFFICKING LAWS AND REGULATIONS IN INDIA

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ABSTRACT

This research paper is about one of the most worst abuse that is Human Trafficking among the Human Rights. It includes child abduction, homicide, sexual assault, kidnapping, prostitution, child labour, bonded labour etc. and it is complicated to estimate the scale of phenomenon. This research paper aims to glorify the requirement of multidimensional approach to human trafficking and analyse the nature,causes,scope of various laws of human trafficking and India is failing to comply with definite International standards and norms. It is also analyzed that there is a little inadequacy of laws for human trafficking and the framework is not so protective to punish the offenders and. The existing legal framework has so many weaknesses and strengths. This paper is written to provide a clear view on the concept clearly specific to victims of human trafficking. This research also provides the recommendation and dynamics of cause and effect and how the gaps in enforcement of law can be filled in the field of human trafficking. Also, there are some push and pull factors to make the victims vulnerable and enticing the victims respectively.Sometimes human trafficking is also denoted by modern-day slavery and human smuggling.

INTRODUCTION

According to United Nations organization “Trafficking of person is a serious crime and a grievous misdemeanor of human rights. Every year many Indians get involved into this traffickers hands and suffers”¹It is a horrifying wrongdoing that can happen inside a nation as well as outside the nation. smuggling of people is viewed as one of the quickest developing wrongdoings of trans-national criminal organization.Human Trafficking for the most part incorporates ladies and kid dealing. As indicated by the International Labor Organization (ILO), it is assessed that smuggling of almost \$150 billion is earned from work per annum according to 2014 records. Human rights which are provided by the Indian Constitution are rights inherent to all human beings, regardless of any discriminatory aspect of race, sex, nationality, ethnicity,

¹ *What is Human Trafficking?* (n.d.). United Nations : Office on Drugs and Crime. Retrieved July 28, 2020, from <https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html>

language, religion, or any other status². It is a crime which includes infringement of human rights by methods for misuse and intimidation. Nowadays, India is one of a destination for human trafficking of ladies and young girls from neighboring nations. Indian women are likewise smuggled to the Middle East for a similar reason. Indian migrants who travel to the Middle East and Europe for fill in as local workers and low-talented workers may likewise end up in the nation's human smuggling industry. As information given by Thomson Reuters Foundation in 2019 India was termed as “most dangerous and unsafe country for women” and later on there was a severe critic of this information data. National commission of women outraged and didn't accepted the report. This is illicit under Indian law, human dealing stays a huge issue in this nation – and women and children pays the highest price. Trafficking in individuals may requires an all encompassing, multi-sectoral way to deal with address the perplexing component of the issue. It is a difficult that disregards the rights and poise of the people in question and in this way requires basically a youngster rights point of view, while chipping away at its annihilation. In the battle against trafficking, administrative associations, non-legislative associations, common society, pressure gatherings and global bodies, all need to assume a significant job and work in show. Law can't be the main instrument to address complex social issues.

Elements of trafficking-:

- Act (what is to be done?)

Hiring, transportation, engaging of persons.

- Means (How to be done?)

Control the victim through the illegal means of crime, use of force, fraud, abuse, deception etc.

- Purpose (The reason why it has been done?)

Main purpose is making use and taking advantage out of the person through his exploitation and unfair treatment.

CONSTITUTIONAL PROVISIONS

- ***The Constitution Of India 1949***

² *What Are Human Rights?* (n.d) United Nations : Office on peace, dignity and equality on a healthy planet Retrieved July 28, 2020, from <https://www.un.org/en/sections/issues-depth/human-rights/>

Article 23(1)

RIGHT AGAINST EXPLOITATION- “Smuggling in human beings and other related types of involuntary labour acts are forbidden and any contradiction of this provision will be a crime punishable in conformity to law. This article also protects the citizens from the private citizens and also from the state.”³

Article 24

“Defends children below the age of 14 from employed in factories, mines or other dangerous employment.”⁴

LEGISLATIVE PROVISIONS

- *Indian Penal code, 1860*

Section 366A-Procurator of minor girl.

“Any person who kidnaps or abducts another woman with intent of she may be compelled, or knowing it to be likely that she will be compelled, to marry any person without her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment and fine.

Section 366B-Importation of girl from foreign country

Whoever brings into India from any nation outside India or from the State of Jammu and Kashmir any woman or younger than twenty-one years with aim that she might be, or realizing that it will generally be likely that she will be, constrained or enticed to unlawful intercourse with someone else, will be culpable with detainment which may stretch out to ten years, and will likewise be subject to fine.

Section 377-Illicit compulsory labour

Whoever unlawfully propels any individual to work against the desire of that individual, will be punished with detainment of either depiction for a term which may stretch out to one year, or with fine, or with both.⁵

- *The Immoral Traffic (Prevention) Act, 1956 (ITPA)*

³ A. (2020, January 29). *Right Against Exploitation (Articles 23 & 24) - Indian Polity*. BYJUS. <https://byjus.com/free-ias-prep/right-against-exploitation-articles-23-24/>

⁴ M. (2019, April 22). *Law against Human Trafficking in India*. Ipleaders. <https://blog.ipleaders.in/human-trafficking/>

⁵ *IPC Section 374 - Unlawful compulsory labour*. (n.d.). A Lawyers Reference. Retrieved July 29, 2020, from <https://devgan.in/pc/section/374/>

This act was amended and renamed in 1986. In compatibility of the International Convention marked by India in 1950 relating to the Prevention of Immoral Trafficking, a far reaching Act called Immoral Traffic (Prevention) Act was introduced to anti trafficking regime. It makes the sexual misuse of male and female a cognizable offense.

- ***Protection of Children from Sexual offences (POCSO) Act, 2012***

The Protection of Children from Sexual Offences (POCSO) Act, 2012 arrangements with sexual offenses against people under 18 years old, who are considered as children. The Act just because, characterizes "penetrative rape", "rape" and "lewd behavior". The offense is viewed as graver in the event that it is submitted by a cop, local official, any individual from the staff at a remand home, assurance or perception home, prison, medical clinic or instructive organization, or by an individual from the equipped or security powers.

- ***Child Labour (Prohibition and Regulation) Act, 1986***

The Child Labour (Prohibition & Regulation) Act, 1986 goals at prohibiting engagement of youngsters elderly under 14 in positive dangerous Occupations and Processes in addition to regulating the situations of offerings of such youngsters engaged in non-dangerous Occupations and Processes.

- ***Bonded labour system (Abolition) Act, 1976***

Under Article 23 of The Constitution of India, Prohibition is imposed at the exercise of Traffic in Human Being and of Forced Labor. It additionally gives that contravention of stated prohibition is an offense below law. It becomes customary in twentieth century Indian society. Under this method while an elder of an Indian own circle of relatives took a mortgage (normally and agricultural mortgage) and fails to pay off the same, his or her descendants or dependents need to pay for the creditor deducted from their wages till the mortgage is repaid. Interest systems have been normally usurious and could frequently handed powerful wages earned. This system is usually referred to as Bandhua Mazdoori.

- ***Juvenile Justice Act, 2000***

There is a act known as Juvenile Justice (Care and Protection of Children) Act, 2000 which constitutes main part in the regime. The demonstration accommodates an exceptional methodology towards the treatment of adolescent misconduct and gives a structure to the insurance, treatment and restoration of kids in the domain

of the equality framework. This law, acquired consistence of the 1989 UN Convention on the Rights of the Child (UNCRC), canceled the prior Juvenile Justice Act of 1986 after India marked and confirmed the UNCRC in 1992. This Act has been additionally changed in 2006 and 2010.

- ***Goa Children Act, 2002***

Goa Children's Act, 2000 was the only specific piece of child abuse legislation before the 2012 Act. Child sexual abuse was prosecuted under the following sections of [Indian Penal Code](#):⁶

- ***Prohibition of Child Marriage Act, 2006***

The objective of the Act is to limit solemnization of infant marriage and linked and incidental matters. To make sure that child marriage is eliminated from in the society, the Government of India enacted Prevention of Child marriage Act 2006 with the aid of using changing the sooner regulation of Child Marriage Restraint Act 1929.

- ***The Criminal Law (Amendment) Act 2013***

This act also famed as the Nirbhaya Act has come into power wherein Section 370 of the Indian Penal Code has been replacement with 370A (IPC) which provides for extensive measures to counter the danger of human trafficking including smuggling of children for exploitation in any form adding physical exploitation or any form of sexual victimization, slavery, servitude or the forced separation of organs.

GOVERNMENT RESPONSES AND REGULATIONS

- **Projects**

Strengthening the law enforcement response in India against trafficking in persons through training and capacity building”

- **IGNOU Certificate Course:**

To develop a comprehensive and functional understanding on anti human trafficking and coordination between learners about various stakeholders/agencies associated with the process of human trafficking.

⁶ Wikipedia contributors. (2020, July 28). *Child sexual abuse laws in India*. Wikipedia. https://en.wikipedia.org/wiki/Child_sexual_abuse_laws_in_India

- **Anti Trafficking Cell:**

Due to the increasing crime rate the Ministry of Home Affairs had earlier set up a Nodal Cell for handling of such matters relating to trafficking in human beings. Since 'Police' is a State subject, registration, investigation and prevention of human trafficking is primarily the responsibility of State Governments.

- **Anti –Human Trafficking Units (AHTUs):**

Anti–Human Trafficking Units (AHTUs): As stated earlier, the MHA's project on "Strengthening of law enforcement regime as a response against trafficking in persons through Training and Capacity Building programming", approved a proposal to establish 332 Anti-Human Trafficking Units (AHTUs) in various districts across the country.

- **Ujjawala Scheme:**

The Ministry of Women and Child Development is implementing "Ujjawala" –a Comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation, Re-integration and Repatriation of Victims of Trafficking for Commercial Sexual Exploitation.

- **Integrated Child Protection Scheme (ICPS):**

The Ministry of Women and Child Improvement is executing the Integrated Child Protection Scheme (ICPS) for creation and the executives of foundation and HR important for building up a protected and secure condition for youngsters, particularly for kids in troublesome conditions.

- **Bilateral and Multilateral Mechanisms:**

India has marked Bilateral Memoranda of Understanding with Bangladesh and UAE for avoidance of human dealing. India has been drawing in with a few nations and has reacted decidedly to the recommendations for going into MOUs on human dealing with intrigued nations to control the threat.

RELEVANT JUDGEMENTS

- **Bodhisattwa Gautam v. Subhra Chakraborty⁷**

⁷ Bodhisattwa Gautam v. Subhra Chakraborty(1996),AIR 922, SCC (1) 490

In this case there was a person who promised to marry a girl and also their wedding ceremony held but later it was found that it was false and court order the perpetrator of the crime to pay the compensation.

- **PUCL v. Union of India**⁸

In this case children were trafficked and were held hostage to work as labors later court held that compensation has to be paid.

- **Vishal Jeet v. Union of India and others**⁹

This a very important case in which it was held that protection and rehabilitation is to be provided to the victims. Facts of this case were that certain families kept their children to work as prostitutes.

ANALYSIS

The legal framework, government regulation and responses does not covers the full extent of Human trafficking. Two new provisions were added by Criminal Law Amendment Act 2013. The abuse of smuggling for benefit using power, extortion or intimidation remains the common problem of this wrongdoing and the dealing of individuals keeps on advancing into new and increasingly multifaceted types of misuse, exploitation obligation contracts and different intends to force individuals with the end goal of getting gain. Human smuggling is a socio-legal issue that includes the abuse of people for money or advantage. As a modern form of human dealing abuse of human rights, presents a worldwide general well being concern, and is predominant in both devastated countries. Casualties ranges from local specialists, (for example, maids and caretakers), to workers (adding plant, development, mining, business fishing, food administration and farming), sex laborers, poor people and kids. The media are all over and again covering dealing, anti-smuggling activism has risen, and most nations have made new approaches, laws and authorization instruments to address the issue. In spite of this acknowledgment, there is a deficiency of specialized arrangements that in this field. Youngsters are seen as the most exploitable and subsequently regarded to be the most vulnerable to human trafficking. The information gave by NCRB uncovers that there is a colossal increment in the dealing with cases in the nation. In contrast with the 2015 Data Report, there is an expansion of 15% in the 2016 Report. Most of the dealing cases were not announced at all and, we can't absolutely depend on the information gave by the administration organizations. The main cause of human trafficking is poverty, caste

⁸ PUCL v. Union of India (2003) SC 2363

⁹ Vishal Jeet v. Union of India and others (1990) AIR 1412, SCR (2) 861

discrimination, natural calamities etc. India, which is viewed as the center point of dealing with South Asia, consistently experienced instances of dealing inside India as well as, cross-border instances of dealing also, particularly from, Bangladesh and Nepal. One of the most significant components that lead to smuggling is the financial state of the individuals dealt and adding the numerous different variables like, social frailty, calamities likewise drives an individual towards smuggling. Since India and other nations all are not the fully developed nations and nations with an extraordinary number of unfair treatment and other issues, the issue of dealing is common in every one of these nations. Human dealing has quickly multiplied as of recent figures and is presently viewed as the second most worthwhile crime on the planet, with sex dealing representing roughly 80 percent of this industry. For the most part, ladies and youngsters are the casualties of smuggling and have been dealt for sexual misuse, household bondage and numerous different things. Dismantling the trafficking network will play the most important role in all this. The decent finding and investigation of trafficking cause that make up the trafficking in persons are between the additive situations experienced in the prosecution of human trafficking cases. Also slavery is not considered as a crime in almost half of the countries in the world. Unfortunately, found that around 87 percent of sex smuggling casualties had looked for care during their crises in emergency departments. Trafficking contacts all networks regardless of age, sexual orientation, or ethnicity—however ladies, and kids are excessively focused on. Targets frequently remain quiet out of dread, so the genuine size of this scourge is hard to know. The Government of India punishes smuggling for business sexual abuse through the Immoral Trafficking Prevention Act (ITPA), with endorsed punishment of seven years' to life detainment. Human dealing is a mind boggling issue, making battling it particularly challenging, yet no less important.