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Problem of Human Trafficking in India: Historical Prospective

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Abstract

UNODC, as guardian of the United Nations Convention against Transnational Organized Crime (UNTOC) and the Protocols thereto, assists States in their efforts to implement the Protocol to Prevent, Suppress and Punish Trafficking in Persons (Trafficking in Persons Protocol). Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons 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. India is also a destination for women and girls from Nepal and Bangladesh trafficked for the purpose of commercial sexual exploitation. Nepali children are also trafficked to India for forced labour in circus shows. Indian women are trafficked to the Middle East for commercial sexual exploitation. Indian migrants who migrate willingly every year to the Middle East and Europe for work as domestic servants and low-skilled laborers may also end up part of the human trafficking industry.

Keywords: UNODC, UNTOC, Human Trafficking, Child Trafficking, Sexual Abuse, Devadasis system.

Introduction

Trafficking in persons is a serious crime and a grave violation of human rights. Every year, thousands of men, women and children fall into the hands of traffickers, in their own countries and abroad. Almost every country in the world is affected by trafficking, whether as a country of origin, transit or destination for victims. UNODC, as guardian of the United Nations Convention against Transnational Organized Crime (UNTOC) and the Protocols thereto, assists States in their efforts to implement the Protocol to Prevent, Suppress and Punish Trafficking in Persons (Trafficking in Persons Protocol). Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons defines Trafficking in Persons 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. 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.

Elements of human trafficking

On the basis of the definition given in the Trafficking in Persons Protocol, it is evident that trafficking in persons has three constituent elements;

The Act- Recruitment, transportation, transfer, harbouring or receipt of persons

The Means-Threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim.

at small euthanasia institutions. Indeed, in that same year, amid the World War II, Adolf Hitler (b.1889-d.1945), one of the founding members of the *Nationalsozialistische Deutsche Arbeiterpartei* (Nazi Party for short), rose to power to become chancellor on January 30, 1933. **The Purpose-** For the purpose of exploitation, which includes exploiting the prostitution of others, sexual exploitation, forced labour, slavery or similar practices and the removal of organs.

To ascertain whether a particular circumstance constitutes trafficking in persons, consider the definition of trafficking in the Trafficking in Persons Protocol and the constituent elements of the offense, as defined by relevant domestic legislation.

Criminalization of human trafficking

The definition contained in article 3 of the Trafficking in Persons Protocol is meant to provide consistency and consensus around the world on the phenomenon of trafficking in persons. Article 5 therefore requires that the conduct set out in article 3 be criminalized in domestic legislation. Domestic legislation does not need to follow the language of the Trafficking in Persons Protocol precisely, but should be adapted in accordance with domestic legal systems to give effect to the concepts contained in the Protocol.

In addition to the criminalization of trafficking, the Trafficking in Persons Protocol requires criminalization also of:

- Attempts to commit a trafficking offence
- Participation as an accomplice in such an offence
- Organizing or directing others to commit trafficking.

National legislation should adopt the broad definition of trafficking prescribed in the Protocol. The legislative definition should be dynamic and flexible so as to empower the legislative framework to respond effectively to trafficking which:

- Occurs both across borders and within a country (not just cross-border)
- Is for a range of exploitative purposes (not just sexual exploitation)
- Victimizes children, women and men (Not just women, or adults, but also men and children)¹

Human trafficking in India, although illegal under Indian law, remains a significant problem. People are frequently illegally trafficked through India for the purposes of commercial sexual exploitation and forced/bonded labour. Although no reliable study of forced and bonded labour has been completed, NGOs [who?] estimate this problem affects [clarification needed] 20 to 65 million Indians. Men, women and children are trafficked in India for diverse reasons. Women and girls are trafficked within the country for the purposes of commercial sexual exploitation and forced marriage, especially in those areas where the sex ratio is highly skewed in favour of men. Men and boys are trafficked for the purposes of labour, and may be sexually exploited by traffickers to serve as gigolos, massage experts, escorts, etc. A significant portion of children are subjected to forced labour as factory workers, domestic servants, beggars, and agriculture workers, and have been

used as armed combatants by some terrorist and insurgent groups.

India is also a destination for women and girls from Nepal and Bangladesh trafficked for the purpose of commercial sexual exploitation. Nepali children are also trafficked to India for forced labour in circus shows. Indian women are trafficked to the Middle East for commercial sexual exploitation. Indian migrants who migrate willingly every year to the Middle East and Europe for work as domestic servants and low-skilled laborers may also end up part of the human trafficking industry. In such cases, workers may have been 'recruited' by way of fraudulent recruitment practices that lead them directly into situations of forced labour, including debt bondage; in other cases, high debts incurred to pay recruitment fees leave them vulnerable to exploitation by unscrupulous employers in the destination countries, where some are subjected to conditions of involuntary servitude, including non-payment of wages, restrictions on movement, unlawful withholding of passports, and physical or sexual abuse.

Human Trafficking In India

Human trafficking in India results in women suffering from both mental and physical issues. Mental issues include disorders such as PTSD, depression and anxiety. The lack of control women have in trafficking increases their risk of suffering from mental disorders. Women who are forced into trafficking are at a higher risk for HIV, TB, and other STDs. Condoms are rarely used and therefore there is a higher risk for victims to suffer from an STD². Human trafficking, defined as the illegal trade of humans most commonly for the purposes of sexual slavery and forced labor, currently claims an estimated 24.9 million victims worldwide, and the Global Slavery Index estimates that 8 million trafficking victims live within India's borders. In 2016, there were 8,132 human trafficking cases reported in India, a 20 percent increase from 2015, and there were 23,117 people rescued from the human trafficking system. Of the people rescued, 60 percent were children, women and girls accounted for 55 percent, 33 percent were trafficked for sexual services, and 45 percent were trafficked for forced labor. While much of the global pervasiveness of human trafficking can be explained only by extreme poverty, political instability and war, the causes of human trafficking in India are more nuanced.

Causes of Human Trafficking in India

The causes of human trafficking in India can be explained in part by gender-based discrimination, responsible for the deaths of approximately 239,000 girls under the age of five in India each year. Gender-based discrimination is a cultural norm in India, as sons are considered more useful to the family than daughters. This heavily patriarchal society leaves girls with limited access to education, leading to gender gaps in both literacy rates and financial earning potentials.

According to the 2011 census, the literacy rate was 82 percent for men and 65 percent for women, and according to the 2013 census, men were paid 25 percent more than women. As a result of gender-based discrimination, the sex ratio in India is greatly skewed.

Because there are far more men in India than young

¹ <https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html>

² https://en.wikipedia.org/wiki/Human_trafficking_in_India

women, bride trafficking, or the illegal sale of women for the purpose of marriage, is becoming more prevalent in India. In the more rural Northern states, where the sex ratio is worse than the national average, bride trafficking has become a norm. More than 90 percent of married women in these Northern states have been sold from other states, some as many as three times, often first becoming brides as preteens. Gender-based discrimination in India has perpetuated a societal structure that strongly favors males over females to the point of self-destruction, as men are unable to find wives, thus driving demand for the human trafficking of women in India for the purpose of marriage.

Sex Trafficking

Another cause of human trafficking in India is a lack of opportunity in India's poor communities, especially for uneducated women, to provide for their families. In 2012, only 43 percent of women in India worked regular wage or salaried positions. Victims of sex trafficking in India are predominantly young, illiterate girls from impoverished families in rural states. Although poverty is decreasing in India, 28 percent of the population still lives below the poverty line.

Poor communities are especially vulnerable to human traffickers, as they often offer better job opportunities or debt relief to lure victims. With limited opportunities to make money, offers like these are hard to decline for young women. Sex trafficking victims average 10 to 14 years of age, down from its previous average of 14 to 16, because younger girls are thought to be less likely to carry sexually-transmitted diseases.

Forced Labor

The causes of male trafficking in India is primarily tied with forced or bonded labor. Bonded labor, defined as a system of forced or partly forced labor under which a debtor accepts an advance of cash for a pledge of labor, by the debtor or any member of the debtor's family, for the benefit of a creditor, is deeply entrenched in India's social structure. While bonded labor was abolished in India in 1976, many industries who rely on bonded labor schemes for their workforces have turned to the human trafficking trade for workers in their spinning mills, granite quarries and brick kilns.

Like the bride and sex trafficking trade, forced labor traffickers recruit victims from poor, rural areas of India, promising lump-sum payments at the end of their contracts. Workers are meagerly compensated for their labor, and terrible working conditions provoke illnesses that lead to wage advances and loans that keep the worker in lifelong debt to their contractors.³

India has a very high volume of child trafficking. As many as one child disappears every eight minutes, according to the National Crime Records Bureau. In some cases, children are taken from their homes to be bought and sold in the market. In other cases, children are tricked into the hands of traffickers by being presented an opportunity for a job, when in reality, upon arrival they become enslaved. In India, there are many children trafficked for various reasons such as labor, begging, and sexual exploitation. Because of the nature of this crime; it is hard to track; and

due to the poor enforcement of laws, it is difficult to prevent. Due to the nature of this crime, it is only possible to have estimates of figures regarding the issue. India is a prime area for child trafficking to occur, as many of those trafficked are from, travel through or destined to go to India. Though most of the trafficking occurs within the country, there is also a significant number of children trafficked from Nepal and Bangladesh. There are many different causes that lead to child trafficking, with the primary reasons being poverty, weak law enforcement, and a lack of good quality public education. The traffickers that take advantage of children can be from another area in India, or could even know the child personally. Children who return home after being trafficked often face shame in their communities, rather than being welcomed home.

Trafficking in Human Beings or Persons is prohibited under the Constitution of India under Article 23 (1) The Immoral Traffic (Prevention) Act, 1956 (ITPA) is the premier legislation for prevention of trafficking for commercial sexual exploitation.

Criminal Law (amendment) Act 2013 has come into force wherein Section 370 of the Indian Penal Code has been substituted with Section 370 and 370A IPC which provide 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.

Protection of Children from Sexual offences (POCSO) Act, 2012, which has come into effect from 14th November, 2012 is a 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.

There are other specific legislations enacted relating to trafficking in women and children 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, apart from specific Sections in the IPC, e.g. Sections 372 and 373 dealing with selling and buying of girls for the purpose of prostitution.

State Governments have also enacted specific legislations to deal with the issue. (E.g. the Punjab Prevention of Human Smuggling Act, 2012)

These advisories/SOP are available on MHA's Web Portal on Anti Human Trafficking at www.stophumantrafficking-mha.nic.in

Ministry of Home Affairs' scheme: 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 fund for establishment of Anti Human Trafficking Units for 270 districts of the country.

UN Convention: India has ratified the United Nations Convention on Transnational Organized Crime (UNTOC) which has as one of its Protocols Prevention, Suppression and Punishment of Trafficking in Persons, particularly Women and Children. Various actions have been taken to implement the convention and as per Protocol, Criminal Law Amendment Act, 2013⁴ has been enacted wherein

³ <https://borgenproject.org/causes-of-human-trafficking-in-india/>

human trafficking has specifically been defined⁴.

Bilateral mechanism : For dealing with cross border trafficking and to address the various issues relating to prevention of Trafficking, victim identification and repatriation and make the process speedy and victim-friendly between India and Bangladesh, a Task Force of India and Bangladesh was constituted. So far five meetings of Task force between India and Bangladesh have been held. Fifth meeting was held on 17-18 August, 2015 at Dhaka, Bangladesh.

A Memorandum of Understanding (MoU) between India and Bangladesh on Bi-lateral Cooperation for Prevention of Human Trafficking in Women and Children, Rescue, Recovery, Repatriation and Re-integration of Victims of Trafficking was signed in June, 2015.⁵

Historical Perspective

In medieval India, among the Mughals the tawaifs, a kind of courtesan dancers flourished. The term tawaif is an Arabic word meaning a band of dancing females. In usual parlance, the tawaif meant a courtesan, who excelled in dancing, etiquette, and poetry. It flourished as a profession with full royal patronage. In certain Muslim communities, females were trained in dance and music right from the childhood and once they attained maturity they were inducted into tawaifs and performed mujras for the affluent clients; these dancing females were called tawaifs (Nautch females). However, this was not limited to dance, rather the peak of pleasure essentially culminated in sexual gratification of the clients. Post-independence, with the abolition of the princely states and the zamindari system, the tawaifs lost their royal patronage and clientele and gradually the tawaif system died out. Research suggests that the descendants of these tawaifs undertook to bar dancing in metropolitan cities subsequent to the descent of the royal clientele. Devadasi, a euphemism for temple prostitution was another socially sanctioned form of prostitution in several parts of the country. Temple prostitution was more common in the southern states of the country, where its remnants are still prevalent, though in a very modest form. Some scholars suggest that the 'dancing girl' belonging to the Harappan civilization was also a representative of a temple prostitute. Under the devadasi system, children were dedicated at puberty to the goddess Yellamma in her service and henceforth were known as a devadasi, or a servant of God. As a concubine of the Gods, they performed various temple duties, including cleaning sacred items, dancing for deities in festivals, and delivering prayers and food to the Gods, all of which were sacred forms of worship. These devadasis were also referred to as Nityasumangali, females who were auspicious because of their marriage to an immortal. Being the wives of deities, devadasis never attained the socially and morally stigmatized status of widowhood⁶. Further suggests that although not explicitly engaged in sex work, yet most of

the devadasis had one or two patrons during their lifetime. Religious and political developments over several centuries (such as the abolition of the monarchy resulting in a marked decline in the temple patronage by the royals) led to the decline in the situation of devadasis, who unable to sustain themselves turned to prostitution work for livelihood. Most of these devadasis opted for commercial prostitution and lost their religious mystique and sanctity and gradually became a popular outlet for entry into the sex work in some parts of the country. Although banned by the law, it is still prevalent in certain forms in Maharashtra, Karnataka, and Andhra Pradesh. In Karnataka alone around 1,000-10,000 children from impoverished backgrounds are still initiated into the devadasi system every year in turn to be introduced into prostitution. According to the Mahajan Committee report, 16 percent of females in prostitution were inducted through the customary practices of devadasi.

Solutions

The Government of India has been making strides to address its human trafficking problem by heightening its border security, increasing its budget for aid to trafficking victims and drafting an anti-trafficking bill. In February 2018, the Union Cabinet passed the Trafficking in Persons Bill to be voted on by Parliament. If passed, the bill would criminalize aggravated forms of trafficking and establish a national anti-trafficking bureau, along with locally stationed anti-trafficking units. This bill also includes methods to rehabilitate victims, addresses physical and mental trauma and promoted education, health and skill development⁷.

Additionally, the Rescue Foundation, established in 2000, helps to investigate, rescue and rehabilitate victims of human trafficking in India. Rehabilitation programs include education, computer training, legal aid and counseling. As a result of the Rescue Foundation, more than 5,000 victims have been rescued and more than 15,000 have been rehabilitated and repatriated.

The causes of human trafficking in India include gender discrimination, a vulnerability of the impoverished population and the desperation of the impoverished to support their families. Trafficking industries in India are taking advantage of the plight of India's disadvantaged and impoverished population for the benefit of others, as trafficking victims are rarely paid as they're promised⁸.

Conclusion:

human trafficking in India seems to be endangered as the government progresses in reducing human trafficking in the nation by increasing its border security, aid for trafficking victims and passing the Trafficking in Persons Bill to Parliament. Moreover, nongovernmental organizations like the Rescue Foundation have been successful in rescuing, rehabilitating, and repatriating victims of trafficking back to their families.

Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons defines Trafficking in Persons as the recruitment, transportation,

⁴ Human Trafficking

<[http://bit.ly/money_cryptohttp://brain-
psychoneuron.blogspot.com/2014/04/
human-trafficking.html](http://bit.ly/money_cryptohttp://brain-psychoneuron.blogspot.com/2014/04/human-trafficking.html)>

⁵ <https://mea.gov.in/human-trafficking.htm>

⁶ Child Trafficking

<<https://projectworldimpact.com/cause/Child-Trafficking>>

⁷ <<https://borgenproject.org/category/forced-labor/>>

⁸ Human Trafficking

<[http://bit.ly/money_cryptohttp://brain-
psychoneuron.blogspot.com/2014/04/
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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.

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