

Increasing Problem of Human Trafficking in India (Human Rights Perspective)

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Abstract - The Third Section of our Constitution is titled "Fundamental Rights," and it explains the basic rights that every person has, regardless of their religion, sex, nationality, or place of birth. On the other hand, the most severe type of human trafficking precludes many individuals from enjoying these fundamental liberties. This is true for a large number of people. Human trafficking may be described in a variety of ways, some of which include sexual slavery, forced labour, and sex trafficking. Other types of human trafficking, such as trafficking in minors, can also be considered to be kinds of human trafficking. Those who are granted asylum and refugees, together with migrants and those seeking asylum, are some of the most vulnerable people affected. As a consequence of this pervasive problem, victims experience not only physical but also mental and emotional harm, in addition to a diminished capacity for independent living. The money and the availability of cheap labour have had an effect not just on the victims, but also on the traffickers. Despite the existence of several laws and international accords that make it illegal, human trafficking continues to be an issue. This article takes a look at human trafficking as well as the human trafficking trade in India, violations of the Indian Constitution, legislation against human trafficking, international treaties, and international trafficking across borders. In addition to investigating whether or not these legal safeguards are effective, this article will investigate many other solutions to the issue as well.

Keywords - Human trafficking, Human rights, Constitution of India, 1950, Indian Penal Code, 1860

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INTRODUCTION

India has always been a democratic nation, and as such, it has always respected the rights of its many inhabitants. The Constitution of the nation is the highest and most authoritative legislation, and it protects a wide variety of basic civil freedoms. The *Magna Carta* ensured that people may continue to enjoy these rights. The *Magna Carta* is the first written text that specifically addresses fundamental human rights. When it comes to the interpretation of basic rights that have been bolstered by the Indian Constitution, the primary emphasis that we place is on human rights. There are a few rights that are explicitly stated in "Text 21" of the Indian Constitution. These rights include the "right to livelihood," the "right to live with respect for human dignity," and the "right to freedom from bonded labour." However, there are many more rights that can be deduced from the article itself.

The "Universal Declaration of Human Rights" (UDHR) was one of the first international documents to be signed by India. A pivotal juncture in the evolution of human rights occurred in 1948 when the United Nations General Assembly approved the "United Declaration of Human Rights" (UDHR). This

proclamation was drafted by the vast majority of the country's delegates, all of whom came from a range of different backgrounds. On December 10, 1898, the Declaration of Independence was approved by the General Assembly of the United Nations. The people as a whole have their human rights recognized by the declaration.

The Human Rights Commission is comprised of eighteen individuals, each of which hails from a unique background and professional background. The former first lady and wife of the United States President served as the organization's head. Mrs. Roosevelt was instrumental in ensuring that the Declaration of Independence was approved by Congress. Hansa Mehta, the representative for India on the Commission, made substantial contributions to many of the articles of the Universal Declaration of Human Rights (UDHR). Because of Hansa Mehta's position inside the organization, she was in an excellent position to be of assistance with this.

As a result of India's participation in the United Nations Human Rights Council, almost all of the country's basic rights and laws have been couched in terms of universally recognized human rights. In line with the provisions of Article 21, "no one shall be deprived of his life or personal liberty unless as

provided for the law." Article 21 of the Indian Constitution specifies two rights, namely "the right to life" and "the right to personal liberty." Both of these rights are guaranteed by the Constitution. According to the Universal Declaration of Human Rights' Article 3, "the right to live with dignity is the most essential characteristic of the right to life," everyone have the right to live their lives in a dignified manner (UDHR). The victims of human trafficking are deemed to have had their right to live a decent life infringed, as stated in article twenty-one of the Constitution. When a person is bought and sold like a commodity, their inherent human rights are rendered null and worthless. As a result of the Covid situation, a significant number of individuals are now living below the federal poverty threshold, which leaves them open to the possibility of undue advantage. Individuals are eager to accept any job that comes their way, and they are only willing to work in locations where they would be exploited because of this circumstance. As a result, people are ready to take any job that comes their way. The fact that certain members of our society are driven only by the desire to amass financial gain regardless of the means necessary has contributed to the rise in prevalence of human trafficking. As a direct result of this, the trade in human beings has reached an all-time high.

Before any inquiry can get underway, the term "human trafficking" has to be defined:

According to the Oxford Learner's Dictionary, human trafficking is defined as a kind of organized crime in which individuals are moved from one geographical area to another and coerced into doing labour for which they were not trained. The United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons defines human trafficking as the use of threats or force, fraud or abuse of power, exploiting a vulnerable position, or providing or obtaining rewards or incentives in order to gain the cooperation of the person who is in control of the other person. The purpose of the protocol is to prevent, suppress, and punish trafficking in persons.

According to the United States Department of Justice, "human trafficking is fundamentally a crime in which a person is basically a scrupulous object in return for a person to operate as labour and perform any services for any fraudulent employment." In other words, "a person is basically a scrupulous object in return for a person to perform any services for any fraudulent employment."

The definition of human trafficking offered by the Human Trafficking Foundation encompasses all forms of exploitation of people, forced labour, the harvesting of organs, slavery, and other forms of human trafficking. According to Section 370 of the Indian Penal Code, it is illegal for "any person who sends or receives a person for fraudulent employment by using any threat or any form of illegal practices, or by acquiring the approval of another person by promising

him some benefits that have some command over the other" to do so. This definition applies to "any person who sends or receives a person for fraudulent employment by using any threat or any form of illegal practices."

As an example, the crime of human trafficking was defined as "the sale or purchase of human beings for a dishonest purpose"

When all of these factors are considered, it is clear that the trafficking of people is not only illegal but also a violation of the rights of the individuals involved. People who had been trafficked were relocated and transferred using a variety of exploitative methods, including forced labour and sexual exploitation. These methods were carried out on the people who had been trafficked.

LEGISLATIVE MEASURES IN INDIA

Our nation is wracked by a problem known as human trafficking, and India has a number of laws that penalize those who engage in this activity. Finding out whatever laws in our country address this matter is the first step in comprehending the gravity of the human rights violation that is human trafficking.

Constitution of India

The Constitution of India, which is the country's highest legal instrument, makes it illegal to engage in human trafficking. Article 23 of the Constitution of India makes it illegal to engage in human trafficking as well as forced labour. On December 3, 1948, a few alterations were made before the piece was finally accepted for publication. In the first paragraph of this article, human trafficking, forced labour, and any other offence that is connected to this are categorically forbidden, and any violation of this prohibition shall result in disciplinary action. Under the provisions of this article, none of these offences are subject to punishment since it serves to protect the person.

In the case of **Raj Bahadur** According to Article 23, the trafficking of humans, especially the trafficking of women and children, is to be considered a particularly banned activity.

In **People Union for Democratic Rights v. Union of India** Article 23 has been interpreted by the Supreme Court. The Bhagwati J:

Under Article 23, the presence of a beggar is not the sole activity that is prohibited. In addition, the practice of forced labour has been pointed out as a flagrant violation of fundamental human rights. This is something that has been brought out as a problem. Any kind of forced labour is a violation of the law, regardless of whether or not the person being forced gets paid for their time. No one will be

coerced into working for anybody else or receiving services of any kind. When we speak about "force," we're referring to a wide range of different things, from the way it manifests itself physically to the way it manifests itself economically, as well as everything in between. Assistance was also provided to the government in order to aid in the punishment of individuals who violate the basic rights of people.

Indian Penal Code, 1860

As a consequence of the incorporation of Section 370, an offence came into existence. Since that time, it was included into the Criminal Code of California during the third week of February of this year. Human trafficking is prohibited under the Indian Penal Code's Section 370, which was substantially modelled after the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (2000). In order to make changes, the following conversations were held on Section 370:

The nationwide network of people who work in the sex industry has called for an end to sexual assault and non-consensual behaviour in the industry. In addition to this, they have requested that the agency in charge of legislation take appropriate action against those individuals who participate in these practices. The national network of people who work in the sex industry has filed an official complaint in reaction to the violence that they were forced to undergo. The investigation into the allegations of abuse against women has been started by the commission. During the debate, a representative from the network made a statement in front of the commission to highlight the differences between human trafficking and consensual sex work. The person also addressed the difficulties the network had in locating the victims of their crimes.

According to the conclusions of the Verma committee, in order to put a stop to the practice of human trafficking, section 370 of the Immigration and Nationality Act should be revised. Everything that pertains to the prosecution and topics relating to the prosecution is still an open question in this domain.

The network approached the committee and asked them to simplify the process so that law enforcement could publicly humiliate sex workers. The committee responded to the concern raised by the network by explaining that the objective of altering section 370 was to protect women and children from the effects of the problem. According to the conclusions of the committee, placement services will not be provided to sexual service providers that operate independently. This amendment should not be interpreted in a way that allows law enforcement to harass or otherwise make the lives of prostitutes or the customers of prostitutes who are forced to participate in sexual activities. This would be unacceptable.

It is clear from this that the sanctions are quite variable depending on the circumstances. As an example, the penalty for trafficking a single individual is between

seven and ten years in prison in addition to a fine of five thousand dollars. If more than one person is involved in the trafficking, the sentence may range from ten years to life in prison. If a minor is involved in the trafficking, the sentence can range from ten years to life in prison, in addition to a fine. In addition to a possible monetary punishment, the possible sentence for a juvenile offender ranges from ten years to life in prison, depending on the severity of the crime. Anyone found guilty of trafficking more than one kid faces a minimum term of fourteen years in prison and a maximum sentence of life in prison, in addition to monetary penalties. If a government official or law enforcement officer is found to be involved in the trafficking of children, they face the possibility of life in prison as well as a monetary fine.

Immoral Traffic Prevention Act

The Immoral Traffic Prevention Act was passed by Congress on December 30, 1956, and its provisions apply to the whole of the United States. On May 9, 1950, in New York, India became the first country in the world to ratify an international convention against the trafficking of women and children. At the same time, legislation was adopted to address the scourge of human trafficking. This Act became law on May 1, 1958, the day it was officially put into effect. The purpose of the Act to Prevent Immoral Traffic is only to impose penalties, rather than to address a whole spectrum of trafficking acts.

As a consequence of the efforts of this act to fight human trafficking, a number of different institutions have earned the name "Protective Houses and Corrective Institutions." They are mentioned in Section 21 of the enacting Act. The term "protective home" refers to an establishment that offers care and safety to those who are deemed to be vulnerable. People who have done wrong and need to be disciplined and reformed may be detained in corrective institutions such as correctional facilities. Under Section 21 of the act, the state government is not bound by any restrictions on the number of Protective Homes and Corrective Institutions that it may construct.

The Immoral Traffic Prevention Act outlines a number of different punishments for lawbreakers. According to Section 3 of the statute, anybody who knowingly enables their property to be used for prostitution is subject to a sentence of life in prison. A first conviction may result in a prison term of one to three years and a fine of up to Rs. 2,000. A second conviction can result in a prison sentence of two to five years and a fine of up to Rs. 2,000. Owners and tenants (also known as landlords and tenants) face up to two years in prison and a fine of Rs. 2,000 on their first offence, but the penalty may be increased to five years in prison and a fine of Rs. 2,000 on subsequent convictions. The maximum sentence is two years in prison and a fine of Rs. 2,000.

People who, as defined by Section 4 of this legislation, base their whole existence on the profits from prostitution risk receiving a prison term of two years or a fine of one thousand rupees, or both, depending on which option they choose. If the money was created in significant part via the coercion of children, then the maximum punishment might be increased to 10 years in prison.

A court has the authority under Section 6 of the Immoral Traffic Prevention Act to impose a sentence of seven to ten years in prison in addition to a fine on a person who is captured at a site associated with prostitution. If the defendant is given a sentence that is less than seven years, the court is required to provide a comprehensive explanation of the circumstances behind the penalty.

In the case of **Sahyog Mahila Mandalvs State of Gujarat and Others** Anyone who has been given an order by a magistrate to leave a brothel in accordance with that section and who has been found to be engaging in prostitution or is otherwise involved in the business of prostitution must be brought before the court in accordance with Section 16(1) of the aforementioned act (2). In order to advance therapy and rehabilitation, it is necessary to address Section 17 and the subparagraphs that it contains.

JUDICIAL PERSPECTIVE

MadhuKishwar v. State of Bihar

The highest court in our nation examined the provisions of the agreement, which is formally referred to as the "Convention on the Elimination of All Forms of Discrimination Against Women," to determine whether or not they constitute an essential component of human rights or merely a recommendation for public policy. Under the provisions of Article 2e of the treaty, state parties are obligated to ensure that no person is subjected to discrimination and to eliminate all forms of prejudice against women permanently. If we read article 2 (f) of the convention in conjunction with articles 13, 14, and 15 of the convention, we might draw the conclusion that concurrent rights are an essential component of our Constitutional framework. The National Commission for Human Rights is tasked with the responsibility of ensuring that all laws are adhered to in an appropriate manner and that the rights and liberties of all citizens are protected. This responsibility was given to the National Commission for Human Rights by the Human Rights Act.

Vishal Jeet v. Union of India

In this particular instance, the Supreme Court came to the conclusion that prosecution has a variety of negative repercussions for both people and society as a whole, and that it is appalling to witness children from low-income families being coerced into working in the flesh trade at a young age. Indecent language should not be accepted at any level of government

anymore, whether the municipal, the state, or the federal level.

In this particular instance, the Supreme Court has decided as follows: Every state, regardless of whether or not it is included in the union territories of our country, is required to educate their judicial systems on how to eliminate the practice of prosecuting children under the laws of our country. It is time for the different governments to establish their very own advisory panels, which should be comprised of subject matter experts from their respective fields. Children and young women who have been rescued from involvement in illegal activity may be able to benefit from the social welfare programmes that have been recommended by this committee. The primary goal of these programmes would be to eliminate the prosecution of children. It is obligatory of all governments, whether they are federal or state, to take certain actions and provide specialized rehabilitation homes with psychiatrists and doctors. These requirements apply regardless of the level of government. In addition, it is the responsibility of the federal government to assess the situation and establish a committee, the major mission of which should be to improve the effectiveness of all existing national child welfare programmes. In addition, the administration of the union should examine the possibility of altering existing legislation or enacting brand new laws if the circumstances warrant it.

In order for the multiple recommendations made by various organizations to be carried out in an appropriate manner, there must be a structure in place that all administrations—whether they be state, federal, or union territory—are able to utilize. This structure ought to be in place. The committee that is making the suggestions is required to conduct an investigation of the conventional method in addition to delivering their best opinion to the government.

Bandhua Mukti Morcha v. Union of India and Others

When it can be shown that someone was forced to work as forced labourers, we may get to the conclusion that the worker is obligated and entitled to all legal benefits. This is the case even if the worker was just compelled to work for the purpose of earning money. For the purpose of effectively carrying out the laws that have been passed, all of the state governments and district judges would solicit the assistance of any and all non-political organizations and agencies, and the governments would carry out the activities that are required of them in an informal fashion. In addition, the government should make it a priority to guarantee that workers get paid their pay without the involvement of any third parties or intermediaries.

Laxmi Kant Pandey v. Union of India

The Supreme Court of the United States issued a judgment in which it acknowledged international adoption and said that the health and happiness of the child is the first factor to be considered in any adoption. It should also be mentioned that once a number of checks and safeguards have been taken, the only person who should be offered for adoption to parents from a nation other than our own is the kid. While the family is away from home, it's conceivable that the child's parents won't be able to care for the child's basic needs. There is also the possibility that the child is being neglected. In addition, the child may be forced to work or mistreated, all of which would make his predicament a great deal more difficult. In order to ensure that the child is not harmed in the process of international adoption, the court has enacted a number of laws and regulations, as well as specific safeguards.

DRAWBACK OF LEGISLATIONS

Despite the various laws that are now on the books, the problem of human trafficking has not been resolved. In the next paragraphs, we'll go through some of the issues with the legislation:

The Immoral Traffic and Prevention Act fails to emphasize the necessity of paying victims, there are no facilities for connecting rescued sexual workers to health care, and there are no procedures for investigating trafficking offences. Moreover, there are no facilities for connecting rescued sexual workers to health care.

As a direct consequence of this, the Immoral Traffic and Prevention Act does not provide any assistance to victims of human trafficking. This includes young people who are trafficked for their organs, persons who are forced into marriages against their will, and domestic slaves.

It would seem that the Act has no provision for allowing victims to conceal their identity or for safeguarding their right to personal privacy.

The International Trafficking in Persons Act does not apply to workers who go to other cities in search of employment but who end up being underpaid, transported for prosecution, or sold as slaves. Despite the fact that the "Criminal Law (Amendment) Bill" was passed in 2013, Section 370 does not mention whether or not coercion was used when a kid was exchanged. This is the case even though the section was intended to address this issue.

In order to address the concerns that are brought up by Section 13 of the Immoral Traffic Act, the only person who is authorized to do so is a police officer who has been chosen by the State Government and who is assigned to a particular region. They have taken advantage of the confidence placed in them in order to benefit them, despite the fact that their job is to look out for the interests of society and ensure that justice is served.

SUGGESTIONS

If our government is ever going to succeed in eradicating the problem of human trafficking in India, which is well-known to be a severe problem, particularly for the country's women and children, it will need to concentrate on a select few crucial areas. The following is a list of potential solutions that the government might implement to remedy this problem:

1. People living in isolated areas and those without enough resources should be educated about the risks associated with human trafficking via specific government programmes and marketing initiatives, just as the general community.
2. Individuals who are currently without work should be given a greater number of opportunities to obtain employment, and the government should do more to assist them in doing so.
3. Equal pay and employment opportunities should be provided by the government using appropriate measures to ban discrimination against women in the workplace. This should be founded on the principle of gender equality.
4. Education of both men and women on how to conduct themselves in a way that is respectful and equitable is essential to the prevention of violence against women.
5. The prevention of human trafficking may be accomplished by the enforcement of laws designed to combat human trafficking, as well as through the implementation of social and educational programmes. It is crucial to have legislation that provides women with a well-rounded strategy for the management of their economic and financial resources. The government should assist in the prevention of and response to situations involving human trafficking by providing support in the form of technical assistance and capacity building.

Aiming to raise awareness of human trafficking among law enforcement and other public health professionals and ensuring that specialized training is provided in identifying instances of trafficking, preventing trafficking, and defending victims' rights in order to ensure that trafficking cases are identified, combatted, and victims' rights are protected.

CONCLUSION

Human trafficking is something that has always been a problem, and it is something that is still a problem in our society today. This ever-worsening problem has consistently been used to strip people of their human rights, particularly the rights that are codified in our legal system. As a result of this, a variety of declarations, agreements, and pieces of legislation have been drafted in an effort to solve the situation. India is a signatory to a number of important

conventions, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; the United Nations Conventions Against Transnational Organized Crime; and the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution. The illegal trade in people is being fought very effectively in India. The Indian Constitution, Indian Penal Code Section 370, and the Immoral Traffic Prevention Act all make it clear that human trafficking is a crime that cannot be tolerated in any form. It is the goal of all of these laws to put an end to the practice of human trafficking in our country and to make it illegal to buy or sell another person in order to keep them as a slave. In addition to that, other significant rulings against human trafficking that have been handed down by the Supreme Court of the United States have been taken into consideration. There are always two sides to a tale, just as there are two sides to every coin. Let's take a look at the other side of the story given that our nation has a number of laws that specifically handle this issue or problem. Because of this, the Immoral Traffic and Prevention Act disregards the need of compensating victims and minimizes the significance of other types of human trafficking, including as the trade in human organs, forced marriage, and domestic slavery. There is no indication under Section 370 of the Indian Penal Code as to whether or not a coercive approach was used in the transaction with a minor. We can all work together to stop the situation from becoming worse, and there are a number of different things we can do to accomplish this goal. Two of these things include raising public knowledge of the problem and encouraging people to report it. At some time in the future, a solution will be found to this problem that affects the whole nation.

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