

Sex trafficking and prostitution criminology essay



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Trafficking in its dictionary meaning, the concept of trafficking denotes a trade in something that should not be traded in. The concept of trafficking in people refers to the criminal practice of exploitation of human beings whereby humans are treated as commodities for profit, subjected to various forms of exploitation. Sex trafficking is a type of human trafficking

The definition contains three main elements that constitute trafficking:[1]

1. Acts- recruitment, transportation, transfer, harbouring or receipt of a person.
2. Means - Threat/use of force , other forms of coercion, abduction, fraud, deception or abuse of power or of a position of vulnerability.
3. Purpose- Prostitution, forced labour or services, slavery , slavery like practices: servitude, organ trade.

Trafficking involves the following:

Movement of a person, with deception or coercion and into a situation of forced labour, prostitution slavery like practices: servitude.

Trafficking can occur with or without crossing any international border.

Prostitution is the sale of sexual services for money. prostitution the word itself speaks about the plight of the women. it is not a problem which exists in India but exists throughout the world. The Prostitution continued from ancient and medieval India and has taken a more gigantic outlook in modern India. India is one of the biggest market for prostitution in Asia with Mumbai alone Accommodating 200, 000 prostitutes.

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The 1990s also witnessed a significant shift in the perception of flesh trade, by differentiating prostitution from trafficking, seeing it not merely as a moral or law enforcement problem, but as a human rights (including legal and democratic rights) violation linked to gender discrimination and disparity in development.

Difference between trafficking and prostitution- often, trafficking is confused with prostitution. These are not synonymous. Trafficking is the process/means while prostitution can be the result/end (of being trafficked).

Trafficking is therefore the overall process while prostitution is the result.

Human trafficking is the acquisition of people by improper means such as force, fraud or deception, with the aim of exploiting them.[2] Human trafficking has a history coterminous with that of society and has existed in various forms in almost all civilisations and cultures. It is a trade that exploits the vulnerability of human beings, especially women and children, in complete violation of their human rights, and makes them objects of financial transactions through the use of force and duress, whether for the purpose of sex, labour, slavery, or servitude.

The concept of trafficking denotes a trade in something that should not be traded in. Human trafficking as defined by the UN is, " 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.

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or service, slavery or practices similar to slavery, servitude or the removal of organs.”[3]

Human trafficking includes sexual exploitation, labour trafficking, etc.

Nowadays even cross-border human trafficking is prevalent. India has a huge population and because of that and our dwindling economy many people live below the poverty line. The smugglers and traffickers promise them a better life- a ray of hope, jobs as domestic servants, in the film world or in factories. They can offer them money, pleasure trip invitations or false promises of marriage. The main targets are - the poor, helpless people are the ones who are exploited the most. Social and religious practices too have been a big cause.

The recruiters are the first in the chain -procurer- they may be parents, neighbours, relatives or lovers or people who have been trafficked before.

The procurers move to the “ potential sites” for victims which mostly are the poverty-stricken areas where there has been no proper rehabilitation and then they haunt the bus stops, railway stations, streets, etc. The period they choose for trafficking depends on if that place has suffered a drought or social or political disasters recently, so that it would be easier to lure in the already suffering victims. The procurers use drugs, abduction, kidnapping, persuasion or deception to bag the targets. They hand the victims to the brothel owners, escort services, or managers of a sex establishment.

Sex Trafficking: The Concept

Women and children from developing countries, and from vulnerable parts of society in developed countries, are lured by promises of decent employment into leaving their homes and travelling to what they consider will be a better life. Victims are often provided with false travel documents and an organized network is used to transport them to the destination country, where they find themselves forced into sexual slavery and held in inhumane conditions and constant fear.

In India, public debate on the issue of trafficking of women and children for commercial sexual exploitation emerged in the 1990s.[4] Trafficking of Human being is one of the gravest and worst forms of violation of the basic human rights. Besides the physical trauma mental injuries that the victim suffers in the process are often unbearable. Victims lead a life of complete despair with no hope to emerge out of their pathetic conditions and in this state of neglect lead their lives in completely inhumane conditions. The traffickers deprive the victims of their most basic human rights. Victims of sexual abuse are subjected to physical violence and sexual abuse, and are held under duress against their will. They receive low or no wages. Hence, they have little or no savings. This combined with indebtedness to the trafficker keeps them in a situation of debt bondage and slavery. What gives impetus and fuels this business of flesh trade is a situation where a victim of sex trafficking is sold against her wishes to a brothel by her procurer and the money that the procurer gets in return for her is a debt which the victim is compelled to pay in order to earn her freedom. What adds on to this problem is that a victim is often uneducated and unaware of the debt on her and continues to work for years to come in the flesh market under the belief that

one day she would earn her freedom by repaying this entire amount. The victims are forced to work in extremely harsh and inhumane conditions, in extremely long working hours with little or no time for rest and also in a state of total physical confinement and bondage similar to imprisonment and have little or no control over their own movement. They are subjected to poor living conditions with abysmal hygiene and sanitation facilities.[5] Their extremely pitiable state is intensified when a victim contracts various diseases, unwanted pregnancies, physical injuries etc. They are on a high risk of STD, AIDS, HIV, hepatitis, tuberculosis etc. Victims have no recourse to even the basic medical needs and facilities. Social stigma and ostracism is the other problem the victims of sex trafficking made to undergo. There is no acceptance for a victim in the society during her stay and even after it if someone tries and emerges out of the clutches of a trafficker. Victims of trafficking are not accepted even by their family members thereby leaving them with no hope to even to them emerge out of it as the prospects of social rehabilitation and acceptance into the society seem not quiet alluring to a victim. They are exposed to drugs and other addictions, and sometimes forcibly made addicts in order to ensure their continued dependence on the trafficker. Once the victim falls into a trafficker's clutches, she will be exploited without any hope of redresal as long as she is capable of earning. After she becomes old or ill, or is infected with HIV/AIDS, the trafficker abandons her. He no longer arranges for her bail or pays the fine for her pleading guilty, and she is left alone to face trial and the due process of Law.

Trafficking is an offence and the trafficker is liable to punishment, irrespective of the consent of the trafficked person. Other than the fact of

being trafficked, the traffickers deprive the victims of their most basic human rights in the following manner[6]

- They are subjected to physical violence and sexual abuse, and are held under duress against their will.

- They receive low or no wages. Hence, they have little or no savings. This combined with

indebtedness to the trafficker keeps them in a situation of debt bondage and slavery.[7]

- They are forced to work extremely long hours in inhuman working conditions leaving little time for rest.

- They live in conditions of physical confinement similar to imprisonment and have little or no control over their own movement.

- They are subjected to poor living conditions with abysmal hygiene and sanitation facilities.

- The trafficker restricts their access to health or medical facilities.

- They face social stigma and social ostracism in their daily lives and as a result undergo constant humiliation.

- They are exposed to drugs and other addictions, and sometimes forcibly made addicts in order to ensure their continued dependence on the trafficker.

- They face a continuous assault on their physical, psychological, and emotional health.
- They face health risks such as physical injury, STD, HIV/AIDS, unwanted pregnancies, repeated abortions, gynaecological diseases, tuberculosis, and other disease.
- They also face harassment from the police and prosecution, and convicted by the judicial system under the ITPA.
- When they are no longer in a position to earn, they are abandoned and even the families who lived off their earnings do not support them
- Children of women in prostitution, especially daughters, are prone to being trafficked themselves. They have no access to education and basic needs of life

1. 1 Reasons for Trafficking

Trafficking occurs not only for prostitution/commercial sexual exploitation. Women and children are trafficked for several other purposes, some of include:

- Forced labour, including bonded child labour, in the carpet, garment, and other industries/factories/worksites.[8]
- Forced or bonded domestic work may be bought and sold or forced to work in inhuman and violent conditions that include sexual abuse.[9]
- Forced labour in construction sites with little or no wages.[10]

- Forced employment in the entertainment industry, including bars, massage parlours, and similar establishments. In addition to poor or no pay and bad living conditions, sexual harassment is common.
- Children are sometimes trafficked for begging.
- Organ trade such as sale of kidneys.[11]
- Fraudulent or forced marriage: this includes sham, fraudulent, and illegal marriages, entered into by the man, residing in India or abroad, with the criminal intention of sexually exploiting the woman. Mail order brides where women are purchased or lured with false promises of a marriage abroad and subsequently recruited into prostitution is also a form of trafficking.
- Camel jockeying often involves the sale of young children who are tied on a camel's back for racing. Children are often badly hurt or killed in such races.
- Purchase and sale of babies for adoption, both within the country and abroad, against established laws and procedures for adoption.

1. 2 Causes

There are several factors that lead to trafficking of women and children or cause them to become victims of trafficking. These factors can be broadly classified into two categories: supply factors and demand factors

Supply Factors

- Abject poverty sometimes forces parents to sell their children to traffickers.
 - Harmful cultural practices often make women and children extremely vulnerable. Child marriage is sometimes the route for a child to be trafficked
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for sexual purposes. The stigma attached to single, widowed, and abandoned women, or second wives through bigamous marriages, causes such women to be abandoned by society. They become easy targets for traffickers.

- Female illiteracy and lack of access to education by girls.
- Male unemployment and loss of family income puts pressure on women to earn and support the family.
- Natural calamities and poor rehabilitation of disaster victims puts pressure on women to earn and support the family.
- Dysfunctional families or families that have difficulty functioning and communicating in emotionally healthy ways; a family that has a negative environment, which contributes little to the personal development and growth of family members.[12]
- Desertion by one or the other parent, uncared for or abandoned children.
- Traditional practices give social legitimacy to trafficking. These include the Devadasi and Jogin traditions where Devadasi's are often trafficked and sexually exploited. This is equally applicable to other communities such as the Nats, Kanjars, and Bedias where traditionally girls are made to earn through prostitution.
- Porous borders. Weak law enforcement and inefficient and corrupt policing of the

borders ensure that women from neighbouring countries are brought into India and forced into prostitution in different towns.

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- Clandestine nature of the crime and weak law enforcement. The crime does not come to light very often because of its clandestine nature. Victims are unable to access justice and even when they attempt to do so, weak law enforcement enables the traffickers to escape.

- Urban opportunities. Many women are either lured by false promises of jobs in urban areas or they voluntarily migrate to urban areas on hearing about the opportunities in cities from their neighbours and friends. When a woman is pushed into prostitution due to these causes, the issue of consent of the trafficked person is not relevant. Even if a woman knows that she is being trafficked and gives her full consent, it does not absolve the trafficker of guilt. Trafficking is an offence irrespective of the woman's consent (Sections 5 and 6 of the Immoral Traffic(Prevention) Act, 1956).

Demand Factors

- Rising male migration to urban areas and demand for commercial sex.
- Growth of tourism, which sometimes indirectly encourages sex tourism.
- Scare of HIV/AIDS and prevalent myths on sexuality and STDs (Sexually Transmitted Diseases) leads to greater demand for newer and younger girls. The number of trafficked girls thus increases and their age decreases.

1.3 Concerns on Trafficking in India

In the constitution of India Trafficking is prohibited.[13]Yet India is the Destination, source and transit for human trafficking primarily for commercial sexual exploitation, forced labour and with the falling sex ratio

trafficking for marriages has become another factor for trafficking women and young girls.

Trafficking of persons across the borders of Punjab and Bangladesh is not a cumbersome process, also India's Policy of an open border with Nepal has made it difficult to identify trafficking.[14]

There are a number of factors which are responsible for influencing trafficking of women and young girls in India. Women and young girls may be trafficked in India due to cultural practices and also because of poverty.

Cultural Practices include the Devdasi System which is still prevalent in some parts of India as shown in a 2004 report by the National Human Rights Commission of the Government of India.[15] There are again many women who willingly migrate to the middle East, Europe and the United States to work as domestic labor who are defrauded by the placement agencies and sometimes trafficked. Women and Children trafficked within India are kept in conditions of involuntary servitude with characteristics such as withholding payment of wages, confiscation of travel documents non-adherence to conditions of work, inordinate profits to middle man.

India is also a destination country for persons from Bangladesh and Nepal, and a bulk of those trafficked from these countries are women and children. In both cases the initial migration legal, illegal may be voluntary and subsequently migrants may be trafficked for sexual exploitation or any other factor. The numbers are very large, though precise figures are lacking and need to be tackled urgently.

The 2010 Trafficking in persons Report[16]also points out that ninety percent of the trafficked persons belong to the most disadvantaged groups. It also carried evidence of NGO reports on duping of girls from north east India with Promises of jobs and then forcing them into prostitution as well as forced marriages.

This heinous crime needs to be addressed urgently. There are legislations which deal with criminalizing a number of offences which are not specifically dealt with in the ITPA. These include penalizing acts such as procuring, buying and selling of human beings importing or exporting human beings, buying and selling minors, coercing or forcing marriage of minors, kidnapping and abducting and using force for the purpose of trafficking, slavery and slavery like conditions and unacceptable form of labor.

A chart detailing miscellaneous legislations relevant to trafficking is given below.[17]

LEGISLATIONS

SECTION

DETAILS OF THE PROVISION

Indian Penal Code, 1860

366

Kidnapping , abducting or inducing a women to compel marriage.

366A

Procuring a minor girl

366B

Importation of a girl below 21 for sexual exploitation.

367

Kidnapping/abducting to subject person to grievous hurt, slavery.

370

Buying or disposing of a person as slave.

371

Habitual dealing in slaves.

372

Selling minor for prostitution

373

Buying minor for prostitution

374

Compelling a person to labour.

Prohibition of Child Marriage Act, 2006

12

Child marriage void if after that the minor is sold or trafficked or used for immoral purposes.

Children (Pledging of Labour) Act, 1933

4-6

Penalties for pledging labour of children(under 15 years)

Bonded Labour System(Abolition)Act, 1976

16

Compelling a person to render bonded labour or forced labour.

Juvenile Justice Act, 2000

2(vii)

A child in need of care and protection includes one who is vulnerable and likely to be trafficked.

26

Procuring juveniles for hazardous employment.

Trafficking and organised crime as defined by the law in India.- for the purpose of understanding cross border trafficking, especially in the context of organised crime, there are two definitions that need to be analysed, viz, “trafficking” and “organised crimes”. How India defines and engages with these two terms is an indicator of the legal protection given to combat trafficking as an organised crime.

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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 Act,[18] defines organized crime as any continuing unlawful activity by an individual, singly or jointly, either as a member of an organized crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or 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 insurgency. [19]

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[20], criminal conspiracy[21] and abetment. Anti-corruption laws may also be used.

India has addressed trafficking both directly and indirectly in its Constitution. There are three Articles spread over Fundamental Rights in Part III and Directive Principles of State Policy in Part IV which address trafficking related issues. The chart below summarizes the provisions.

Provisions on Trafficking in the Constitution of India[22]

Article 23

Fundamental Right prohibiting trafficking in human beings and forms of forced labor.

Article 39(e)

Directive Principle of State Policy directed at ensuring that health and strength of individuals are not abused and that no one is forced by economic necessity to do work unsuited to their age or strength..

Article 39(f)

Directive Principle of State Policy stating that childhood and youth should be protected against exploitation.

India has a written Constitution, and though the above provisions make India's mandate on trafficking clear, penalizing and tackling trafficking is dealt with by legislation. The Constitution specifically mentions trafficking in human beings as well as forced labor and also indicates the special protection to be provided to vulnerable groups in society.

The Constitution of India discusses provisions on trafficking at two levels - one, at the level of Fundamental Rights which are basic rights available to all, irrespective of caste, creed, sex, place of birth, etc., and two, at the level of Directive Principles of State Policy. Fundamental Rights are justiciable and can be directly enforced in a court of law, whereas Directive Principles of State Policy are non-justiciable and cannot be directly enforced in a Court of Law. However, Directive Principles play a major role in shaping the policy of the State and may sometimes be the basis that legislation is built on. As a Fundamental Right in Article 23, trafficking in human beings is prohibited as are all forms of forced labor. According to Directive Principles of State Policy in Articles 39(e) and (f), the health and strength of workers should not be abused. It prohibits exploitation of persons to perform work which is unsuitable for them. It also specifically protects children and youth against

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exploitation of any kind. While the provisions in the Directive Principles of State Policy do not mention trafficking, it mentions exploitation which is a key element in trafficking.

1. 4 International legislation

History of international legislation

International pressure to address trafficking in women and children became a growing part of the social Reform movement in the United States and Europe during the late 19th century. International legislation against the trafficking of women and children began with the ratification of an international convention in 1901, followed by ratification of a second convention in 1904. These conventions were ratified by 34 countries. The first formal international research into the scope of the problem was funded by American philanthropist John D. Rockefeller, through the American Bureau of Social Hygiene[23]. In 1923, a committee from the bureau was tasked with investigating trafficking in 28 countries, interviewing approximately 5,000 informants and analyzing information over two years before issuing its final report. This was the first formal report on trafficking in women and children to be issued by an official body.

The League of Nations, formed in 1919, took over as the international coordinator of legislation intended to end the trafficking of women and children. An international Conference on White Slave Traffic was held in 1921, attended by the 34 countries that ratified the 1901 and 1904 conventions. Another convention against trafficking was ratified by League members in 1922, and like the 1904 international convention, this one required ratifying countries to submit annual reports on their progress in

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tackling the problem. Compliance with this requirement was not complete, although it gradually improved: in 1924, approximately 34% of the member countries submitted reports as required, which rose to 46% in 1929, 52% in 1933, and 61% in 1934.

1921 International Convention for the Suppression of the Traffic in Women and Children (sponsored by the League of Nations)

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (United Nations General Assembly resolution, came into force in 1951)

Current international laws

Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages, entered into force in 1964

Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; and

Protocol against the Smuggling of Migrants by Land, Sea and Air.

ILO Forced Labour Convention, 1930 (No. 29)

ILO Abolition of Forced Labour Convention, 1957 (No. 105)

ILO Minimum Age Convention, 1973 (No. 138)

ILO Worst Forms of Child Labour Convention, 1999 (No. 182)

CHAPTER-II :: LEGAL FRAMEWORK AND POLICIES

2. 1 Definition of Trafficking

Article 3 of the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention Against Transnational Organized Crime, 2000, states:

“ Trafficking in Persons’ shall mean 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.[24]“

Article 1 (3), SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, signed by India on January 5, 2002, states:

“ Trafficking means the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the of the person subjected to trafficking[25].”

Article 1 (4) of the SAARC Convention defines

“ Traffickers” as:

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“ Traffickers” means persons, agencies or institutions engaged in any form of trafficking.

Article 34 of the Convention on the Rights of the

Child (CRC) states:

“ States Parties undertake to protect the Child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any lawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials.”

Further, Article 35 of the Convention on the Rights

of the Child states:

“ States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.”

The Immoral Traffic (Prevention) Act, 1956

(ITPA) does not specifically define “trafficking”. However, the ingredients of trafficking, such as sexual exploitation and abuse of persons; running of a brothel; living on the earnings of a prostitute; procuring, inducing or taking a person for the sake of prostitution; detaining a person for prostitution, etc., are contained in Sections 3, 4, 5, 6, and 8 of the Act.

In the ITPA, (amended in 1978 and 1986), even though “trafficking” is not yet defined in

accordance with the UN Protocol, To Prevent, Suppress, and Punish Trafficking in Persons,

Especially Women and Children, supplementing the UN Convention against Transnational Organized

Crime or as per the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, the essential ingr