



## MEASURES AGAINST HUMAN TRAFFICKING: AN OVERVIEW OF THE EXISTING LEGAL FRAMEWORK IN INDIA

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### ABSTRACT

Victims of human trafficking could be anyone - regardless of age, gender, identity, citizenship, race, colour, nationality, religion, socio-economic status etc. The crime of trafficking for decades has posed a serious challenge to law enforcement agencies around the world, in particular India. While international legal regime against trafficking has gained further impetus in recent years with adoption of various international treaties by countries, Indian domestic response to trafficking issues still requires a lot of concerted efforts at all the levels of governance. In the light of this background, the present paper attempts to explore the human trafficking or the modern-day slavery by taking an overview of the existing legal framework on human trafficking. To this end, it endeavours to ascertain the various measures adopted at the international level and in India towards curbing, management, control of the trafficking issues.

### I. INTRODUCTION

“All States have an obligation to exercise due diligence to prevent, investigate and punish perpetrators of trafficking in persons and to rescue victims, as well as to provide for their protection, and that not doing so violates and impairs or nullifies the enjoyment of the human rights and fundamental freedoms of the victims.”<sup>1</sup>

Human Trafficking, also referred as ‘modern-day slavery’, has become a major challenge and serious issue across the globe. Though illegal, it is now widely believed to be one of the most lucrative global trades having multiple dimensions and repercussions. It affects developed and developing nations alike however the poor nations are found to be major victim of this unethical and illicit practice. Over the years, member states of the United Nations have legislated and disseminated anti-trafficking laws and invested financial and human resources in their attempt to eradicate the menace of human trafficking in their respective jurisdiction.

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<sup>1</sup>Excerpt from the UN General Assembly Resolution 68/192, adopted on February 14, 2014.

“Trafficking in Persons” under international law is defined 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.”<sup>2</sup>In simpler terms, the essential characteristics of human trafficking rest on, first, the transportation of a person; second, force, fraud, or coercion so used against such vulnerable person; and third, exploitation of the defenceless persons.<sup>3</sup>Therefore, the human trafficking is a heinous act of forced and coercive transporting of humankind without their consent for profit making and exploitation of the person. In this context, every nation becomes either source, transit or destination, sometimes even combination of the three so far as trafficking is concerned. Trafficking could be intra-national or international. According to the United Nations Office on Drugs and Crime (UNODC), in 2018 about 50,000 human trafficking victims were detected and reported by 148 countries.<sup>4</sup> However, given the hidden nature of this crime, the actual number of victims trafficked is far higher. The report shows traffickers particularly target the most vulnerable, such as migrants and people without jobs. UNODC, talking about the child trafficking, mentions that the number of children among detected trafficking victims has tripled in the past 15 years, while the share of boys has increased five times. Girls are mainly trafficked for sexual exploitation, while boys are used for forced labour.<sup>5</sup>

Human trafficking includes labour and sexual exploitation, and its victims can be men and women, adults and children. However, women and children have been found to be more vulnerable who can be easily trapped into human trafficking. South Asian and African youths are transported as bondage labours, Eastern European women trafficked into sex work and Chinese women trafficked into textiles industries. New directions in

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<sup>2</sup> The United Nations “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, General Assembly Resolution 55/25, adopted on November 15, 2000 (also known as the ‘Palermo Protocol’), Article 3(a).

<sup>3</sup>Rhacel Salazar Parrenaset *al.*, “What is Human Trafficking: A Review Essay”, 37(4) *Journal of Women in Culture and Society* 1015 (2012)

<sup>4</sup>UNODC, *Global Report on Trafficking in Persons*, 2018, p. 7-8, available

at [https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP\\_2018\\_BOOK\\_web\\_small.pdf](https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP_2018_BOOK_web_small.pdf)(last visited on June 25, 2022)

<sup>5</sup>*Id.* p. 25-26

human trafficking suggest that it ranges from very coercive and exploitative interactions between migrants and their facilitators to cooperative, consensual, and mutually beneficial relationships, with more intricate grey zones in between. Some brokers are family friends, or associates who recruit workers and facilitate migration—individuals who have a totally different relationship with migrants than those who mistreat migrants through force or fraud.<sup>6</sup>

Under the dark terrain of trafficking world, two broad categories commonly stand out, namely, (A) Sex Trafficking and (B) Labour Trafficking. These two broad divisions are further grouped into different sub-categories-

1. Sex trafficking & child sex trafficking
2. Forced labour
3. Debt bondage
4. Forced child labour
5. Involuntary domestic servitude
6. Unlawful recruitment & use of child soldiers

The contemporary global academic discourse on human trafficking demonstrates three broad areas or themes, namely, the examination of the international laws and protocols and its function in the effort to end human trafficking<sup>7</sup>, the extent of human trafficking in the contemporary period<sup>8</sup>, and the reframing of human trafficking as a labour concern<sup>9</sup>.

## II. HUMAN TRAFFICKING AND HUMAN RIGHTS

Human trafficking is intrinsically connected with human rights. Human rights ensure that no human being can be barred from enjoying or exercising fundamental natural

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<sup>6</sup> Ronald Weitzer, “New Directions on Research in Human Trafficking”, 653 *The Annals of the American Academy* 20-21 (2014) available at <https://humantraffickingsearch.org/wp-content/uploads/2022/03/New-Directions-in-Research-on-Human-Trafficking.pdf> (last visited on June 25, 2022)

<sup>7</sup> For the examination of trafficking through the lens of international law, *see generally*, Silvia Scarpa, *Trafficking in Human Beings: Modern Slavery*, 84 (OUP, 2008); *See also*, Stephanie A. Limoncelli, *The Politics of Trafficking: The First International Movement to Combat the Sexual Exploitation of Women* (Stanford University Press, 2010)

<sup>8</sup> For the extent of human trafficking in the contemporary world, *see generally*, Kevin Bales, *Ending Slavery: How We Free Today's Slaves* (University of California Press, 2007); *See also*, Siddharth Kara, *Sex Trafficking: Inside the Business of Modern Slavery* (Columbia University Press, 2009)

<sup>9</sup> For the reframing of trafficking as a labour concern, *see generally*, K. Kempadoo, Jyoti Sanghera, Bandana Pattanaik (Eds.), *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights* (Paradigm Publishers, 2005)

rights, and therefore, discrimination on the ground of sex, caste, religion, race etc. is prohibited under the international human rights regime. These basic rights also ensure that every natural person must be endowed with right to a dignified life, right to freedom of speech, right to liberty and security etc. As it stands obvious, human trafficking essentially prohibits all the natural and human rights of the bondage persons and compel them to do slavery, forced labour, and other activities without their consent. It is pertinent to mention that UN Office of the High Commissioner of Human Rights (OHCHR), regards “slavery, servitude, child sexual exploitation, forced marriage, servile forms of marriage, child marriage, enforced prostitution and the exploitation of prostitutes as trafficking-related practices, which are proscribed under international human rights law.”<sup>10</sup> It is now an established fact that human rights are violated and impaired by the human trafficking. To this end, repeated calls for action against this global menace have been often made by the global bodies, such as, UN General Assembly and the UN Human Rights Council (UNHRC), and in national jurisdictions, by the central nodal agency, such as, the National Human Rights Commission (NHRC) in India.

### III. INTERNATIONAL RESPONSE TO HUMAN TRAFFICKING

In the post war global order as reflected in the UN-based international system, several attempts have been made to address, curb, and control the menace of trafficking in persons. International law in general has constituted a global legal regime on human trafficking and its associated ills. In this regard, the main treaties and other related international instruments are enumerated below:<sup>11</sup>

- Slavery Convention, 1926
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women, and children, supplementing the United Nations Convention against Transnational Organized Crime, 2000 (Trafficking Protocol)

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<sup>10</sup>*Supra* n. 2

<sup>11</sup> The list of the international instruments is extracted from the UN Report of 2014 titled *Human Rights and Human Trafficking*, prepared by the Office of the High Commissioner for Human Rights, p. 10-11, available at [https://www.ohchr.org/sites/default/files/Documents/Publications/FS36\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/FS36_en.pdf) (last visited on June 27, 2022)

- ILO Forced Labour Convention, 1930
- Convention on the Elimination of All forms of Discrimination against Women, 1979
- Convention on the Rights of the Child, 1989
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography, 2000
- United Nations Convention against Transnational Organized crimes, 2000
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990
- International Covenant on Civil and Political Rights, 1966
- International Covenant on Economic, Social and Cultural Rights, 1966
- Council of Europe, Convention on Action against Trafficking in Human Beings, 2005 (European Trafficking Convention)
- Charter of Fundamental Rights in the European Union, 2000, Article 5, And Directive 2011/36/EU of the European Parliament and Council on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, 2011
- South Asian Association for Regional Cooperation, Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002

As per the Global Slavery Index (GSI)<sup>12</sup> of 2018, Netherlands is found to be the best nation which has effectively curbed and controlled human trafficking issues within its borders. GSI has reported that Netherlands' legislative and implementing mechanism in this area is widely regarded as complying with the global human rights norms. The Index has covered 167 nations and analysed the anti-human trafficking mechanisms and laws of each nation. It has been reported that "an estimated 40.03 million men, women, and children were victims of modern slavery on any given day in 2016. Out of these, 24.9 million people were in forced labour and 15.4 million people were living in a forced marriage. Women and girls are vastly over-represented, making up 71 percent of

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<sup>12</sup> In 2017 Walk Free Foundation in collaboration with International Labour Organization (ILO) and International Organization for Migration (IOM) conducted survey on human trafficking and developed the Global Estimates of Modern Slavery leading to publication of Global Slavery Index. More details about the Index are available at <https://www.globallslaveryindex.org/2018/findings/global-findings/> (last visited on June 27, 2022)

victims. It is further reported that modern slavery is most prevalent in Africa, followed by the Asia and the Pacific region.”<sup>13</sup>

Netherlands, which has currently the best mechanism in the world to deal with trafficking issues, has published its national action plan for an integrated approach to human trafficking. The programme titled, ‘Together against Human Trafficking’, is billed as a successful model to be adopted by other countries where trafficking issues remain poorly addressed. The said programme contains ‘Five Lines of Actions’<sup>14</sup> as hereunder:

1. Further development of the basic approach to combating Trafficking of Human Being (TBH)
2. Further development of the approach to combating labour exploitation
3. The prevention of victimhood and perpetrator
4. Strengthening the municipal approach to combating THB
5. Sharing knowledge and information

Dutch Government does not only focus to combat and frustrate the perpetrators, both through criminal and administrative law, as well as through alternative interventions, but also aim to equip more professionals with the necessary knowledge to be able to identify/report human trafficking and provide them necessary support and refuge. In view of the success of the anti-trafficking mechanism developed by the Netherland Government, it is co-opted by European Crime Prevention Network to apply in other EU countries that are notorious for human trafficking.

#### IV. HUMAN TRAFFICKING IN INDIA

Trafficking in human beings, especially in women and children, has become a matter of serious concern in India.<sup>15</sup> India, to some extent, has attempted to synchronise her anti-trafficking legislations and policies with international norms. The relevant Constitutional provisions and legislatives norms, along with governmental reforms in this area, are ideally harmonised with the international legal framework, yet the implementation of these domestic legislations is still a major challenge. India has ratified the United Nations Convention on Transnational Organised Crime (UNTOC)

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<sup>13</sup>*Id.*

<sup>14</sup>European Crime Prevention Network, Crime Prevention Policy, 2019, available at <https://eucpn.org/sites/default/files/document/files/NL.pdf> (last visited on June 27, 2022)

<sup>15</sup>Siddhartha Sarkar, “Rethinking Human Trafficking in India: Nature, Extent and Identification of Survivors”, 103 (5) *The Round Table: The Commonwealth Journal of International Affairs* 483 (2014).

of 2000, and its Protocol on Prevention, Suppression and Punishment of Trafficking in Persons, particularly Women and Children (2000)<sup>16</sup>.

Current policies regarding the human trafficking carries the colonial legacies and defined by the parameters marked by the British rulers.<sup>17</sup> Various actions have been taken to implement the global legal framework on human trafficking. In particular, giving a place to the mandate of the Protocol, Parliament of India in 2013 passed the Criminal Law Amendment Act, 2013, wherein ‘trafficking in person’ has been defined specifically for the first time.<sup>18</sup> At the regional level, India has signed the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution in 2002. In order to implement political commitments and legal obligations, a Regional Task Force was constituted to implement the mandate of the SAARC Convention. For dealing with cross border trafficking and to address the various issues relating to prevention of trafficking, victim identification and repatriation, and thereby make the process speedy and victim-friendly, a Special Task Force of India and Bangladesh was constituted. In this context, 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 also signed in June, 2015.<sup>19</sup> But, in view of lack of peace between India and Pakistan, not much progress have been achieved in confronting the menace of trafficking in the SAARC region.

According to the National Crime Records Bureau of India, as per its data released for 2019, it has been found that State of Maharashtra has the highest number of human trafficking cases, followed by Andhra Pradesh and Assam. It is seen that trafficking cases across several states have grown in number, although the measures undertaken to combat the trafficking have yielded results in terms of busting and apprehending the syndicate behind inter-state trafficking.

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<sup>16</sup>India ratified both Convention and its Protocol on May 5, 2011.

<sup>17</sup>See generally, Prabha Kotiswaran, “Beyond Sexual Humanitarianism: A Postcolonial Approach to Anti-Trafficking Law”, 4 *U.C. Irvine L. Rev.* 352-405 (2014).

<sup>18</sup>The Indian Penal Code, 1860, Section 370

<sup>19</sup> Text of the abovementioned India-Bangladesh MoU signed in 2015 is *available at* <https://www.mea.gov.in/Portal/LegalTreatiesDoc/BG15B2411.pdf> (last visited on June 27, 2022)

Trafficking in Human Beings or Persons is prohibited under the Constitution of India under Article 23 (1).<sup>20</sup> Further, in order to tighten the noose around traffickers, the Government of India brought several legislative and administrative measures, which are discussed below:

### **Legislative Measures**

- The Immoral Traffic (Prevention) Act, 1956 (ITPA) is the main legislation on trafficking for commercial sexual exploitation. This Act does not abolish prostitution but aims to punish the commercial sexual exploitation and abuse of women and children.
- Criminal Law (Amendment) Act 2013 has introduced major amendment in the IPC insofar as trafficking is concerned. Now the amended provisions under Section 370 (trafficking of person) and 370A (exploitation of a trafficked person), along with other relevant provisions under 371 (habitual dealing in slaves), 372 (selling minor for purposes of prostitutions etc.), 373 (buying minor for purposes of prostitutions etc.), and 374 (unlawful compulsory labour) provide for comprehensive penal framework 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.

In particular, Section 370 of the Indian Penal Code, has now defined ‘trafficking’ in line with global norms. It lays down that, whoever, for the purpose of exploitation (a) recruits, (b) transports, (c) harbours, (d) transfer or (e) receives, a person or persons, by -(i) using threat, or (ii) using force, or any other form of coercion, or, (iii) by abduction, or, (iv) by practicing fraud, or deception or (v) - by abuse of power, or (vi)- by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, received, commits the offence of trafficking.<sup>21</sup>

- 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.

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<sup>20</sup>Constitution of India, 1950, Article 23: Prohibition of Traffic in Human Beings: (1) Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

<sup>21</sup>*Supra* n. 18



- There are other specific legislations enacted relating to trafficking in women and children, for instance, Bonded Labour System (Abolition) Act, 1976, Child Labour (Prohibition and Regulation) Act, 1986, Transplantation of Human Organs Act, 1994, Prohibition of Child Marriage Act, 2006, apart from specific Sections in the IPC, e.g. Sections 372 and 373 dealing respectively 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).
- The Union Ministry of Women and Child Development (WCD) has recently submitted the draft titled, Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021. The Bill comes with major objective ‘to prevent counter-trafficking in persons, especially women and children, to provide for care, protection, and rehabilitation to the victims, while respecting their rights, and creating a supportive legal, economic and social environment for them. It also deals with the trafficking cases in and outside India. It has made NIA its nodal agency. Further, it has expanded the definition of victim, by including transgenders, along with women and children.<sup>22</sup>

### **Administrative Measures**

Several administrative measures have been taken to combat the problems of trafficking. In this regard, a dedicated Anti-Trafficking Cell (ATC) and Anti-Trafficking Nodal Cell were set up in the Ministry of Home Affairs (MHA).<sup>23</sup> The Cell is mandated to act as a focal point for communicating to law enforcement agencies, including those of the States, about the various decisions taken at the highest ministerial level, and to follow up on action taken by the State Governments to combat the crime of human trafficking. In this regard, Ministry of Home Affairs periodically conducts coordination meetings

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<sup>22</sup>See for general discussion on the Bill, Shiv Sanjay Singh, “Survivor-Leaders to Press for Passage for Trafficking of Persons Bill”, The Hindu, June 11, 2022, available at <https://www.thehindu.com/news/cities/kolkata/survivor-leaders-to-press-for-passage-of-trafficking-of-persons-bill/article65517864.ece> (last visited on June 28, 2022)

<sup>23</sup>See, UNODC & Government of India, *Compendium on Best Practices on Anti-Human Trafficking by Law Enforcement Agencies*, 2007, p. 5, available at <https://www.mha.gov.in/sites/default/files/CBP-Trefficking.pdf> (last visited on June 28, 2022)

with the Nodal Officers of Anti Human Trafficking Units nominated in all States/UTs periodically.<sup>24</sup>

Also, Ministry of Home Affairs, periodically, releases advisories for controlling potential incidents surrounding human trafficking in India. To this end, MHA has brought up a Scheme to strengthen law enforcement agencies, and their expected responses in India against trafficking incidents.<sup>25</sup> The Scheme aims to impart Training and Capacity Building to the law enforcement agencies. Further, under the Scheme, a dedicated fund has been established for supporting the Anti Human Trafficking Units as set up in 270 districts of the country.<sup>26</sup>

In addition, acting under the broad mandate of UNODC, Judiciary in India has been periodically holding Judicial Colloquium on human trafficking issues, and the ways and means of curbing the menace. These Colloquiums are held at the respective State's High Court, and they are organised to impart training to the trial courts(judicial officers)about human trafficking issues. The aim is to sensitize the judges and magistrates about the various raging issues concerning human trafficking, and to ensure speedy court process in such cases.

## V. CONCLUSION

Human trafficking is a form of organised crime that thrives on human misery. Despite the government of India's tough measures, trafficking rackets and syndicates have become more organised, sophisticated and evolved into new forms of trafficking. The crime of human trafficking has proliferated to the point where practically every State in India is now afflicted with this menace. In particular, child trafficking for commercial sexual exploitation has till date remained a major concern for Indian law enforcement agencies. To add further woes, in recent, years, the country has registered a steady increase in child migration and trafficking for forced labour, bondage, and slavery. Moreover, attempts to modify the legal definition of human trafficking have not yet shown constructive outcomes, rather the law enforcement and prosecutorial agencies

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<sup>24</sup> Detail information about the mandate and functioning of the Anti-Trafficking Cell of Ministry of Home Affairs, Government of India is available at [https://www.mha.gov.in/division\\_of\\_mha/anti-trafficking-cell](https://www.mha.gov.in/division_of_mha/anti-trafficking-cell) (last visited on June 28, 2022)

<sup>25</sup> See, in this regard, the official communication issued by the Ministry of Home Affairs, Government of India, *Comprehensive Scheme for Establishment of integrated Anti Human Trafficking Units (AHTUs)*, available at <https://www.mha.gov.in/sites/default/files/Scheme-AHTU-SS-271011.pdf> (last visited on June 29, 2022)

<sup>26</sup> *Id.*

have shown tendencies for high-handedness and indifference while purportedly taking actions under the various provisions of anti-trafficking laws. Still there is a widely and strongly felt need for sensitizing the various State agencies including the Judiciary to handle the trafficking cases with judicious caution and sensitivity. While India has taken several measures to curb the human trafficking, nevertheless there is a large gap between professed goals and implementation of the anti-trafficking laws and policies on the ground. It is hoped that recently introduced “Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021” would go a long way in effective curbing, controlling and better management of growing cases of trafficking within and around India’s borders.