SUMMARY OF THE THESIS

EMERGING DIMENSIONS OF HUMAN TRAFFICKING: A CRITIQUE OF THE EFFICACY OF LEGAL FRAMEWORK

Trafficking in human beings, a modern-day slavery, is a complex and multidimensional problem that has spread worldwide. Like pollution trafficking has permeated our day to day lives. The present situation of trafficking in human beings is a clear manifestation of the lopsided economic development, lack of political will and social disintegration. The failure of the state machinery including law enforcement puts vulnerable sections of the society at the receiving end of this multi-dimensional problem.

The last few decades have seen significant development of the response in combating trafficking in human beings at the national, regional and international levels. However, critical and concrete efforts have been lacking to curb the menace of human trafficking. The transnational nature of this crime requires an integrated global action with the involvement of different stakeholders. Much work has been done in terms of research on human trafficking, but reliable data both at national and international level is lacking. There is a lot of repetition in the work. It seems that the studies undertaken are a replica of one parent research, which has created a lot of confusion about the existence and the conceptual dimensions of human trafficking. However, testimonies of various stakeholders clearly confirm its existence worldwide. Consequently, human trafficking has been put at the top of the international agenda and various efforts have been made to curb this crime. Most importantly, in this regard, the United Nations Convention against Transnational Crime has been a path breaking achievement. For more than a century human trafficking has been linked only to one form of exploitation namely, commercial sexual exploitation, but the United Nation's Trafficking Protocol defined trafficking in persons in such a way that it diluted the age old belief that human trafficking is just for the commercial sexual exploitation. The Trafficking Protocol currently forms the basis of various State human trafficking laws.

---

1 The United Nations Convention against Transnational Crime (UNCTC) is a 2000 United Nations sponsored multi-lateral treaty against transnational organised crime. This Convention was adopted by a resolution of the United Nations General Assembly on 15 Nov, 2000.

2 The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (also referred as the Trafficking Protocol or UNITIP Protocol) is a Protocol to the Convention against Transnational Organised Crime. It is one of the Palermo Protocols, the others being the Protocol against the Smuggling of Migration by Land, Sea and Air and the Protocol against the Illicit Manufacturing and Trafficking in Firearms.
Trafficking in persons is both a human rights as well as a criminal justice issue. More importantly, the issue of commercial sex work is highly controversial and sensitive.\(^3\) The UN Protocol was proceeded by the Convention for the Suppression of the Traffic in Persons, 1949, but this Convention got a mixed reaction. It was not widely signed and ratified by the States. This, clearly reveals that the international community is divided on this issue. However, the UN Trafficking Protocol subsequently expanded the definition of trafficking in persons without dealing with the issue of states regulating internal prostitution. It is due to this liberal approach that within a few years the Protocol has obtained more ratifications than the Convention for the Suppression of the Traffic in Persons. The main focus of the Protocol is on three main elements which can eradicate various forms of exploitation. The Trafficking Protocol also proposes the three P’s approach namely, measures to prevent trafficking in human beings, prosecution of the traffickers, and protection of the trafficked victims. However, it must be considered that the Human Trafficking Protocol is mainly a criminal law instrument, focussing more on the prosecution of traffickers rather than the protection of victims of offence. Therefore, in this regard, states must follow and rely on other recommendations laid down in various soft law instruments like the UNHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking and the UNICEF Declaration for the Protection of the Rights of the Child and Victims of Human trafficking.\(^4\)

Most importantly, as regards the children, the Convention on the Rights of the Child\(^5\) can to a large extent provide impetus to protection of the rights of children and prevention of child trafficking. There are other numerous international instruments which if consistently implemented, reduce if not eliminate any form of exploitation including trafficking in human beings.

There has been an improvement in this area on account of the establishment of the mandate of the Special Rapporteur on Trafficking in Human Beings. The work assigned to this new establishment is the annual submission of reports on human trafficking to the Human Rights Council. It also conducts State visits and receives information about the menace of human trafficking from different stakeholders. This Rapporteur along with other Rapporteurs (Violence against Women, Migrant Workers and Sale of Children) to a great

---


extent fills in the loopholes which exist in the monitoring mechanism of the Human Trafficking Protocol.\textsuperscript{6}

At the regional level, the SAARC nations have drafted a well formulated Convention namely, the Convention on Preventing and Combating the Trafficking in Women and Children for Prostitution in 2002.\textsuperscript{7} The main objective of this Convention is to promote cooperation amongst the member countries to deal effectively with the various aspects of prevention, interdiction and suppression of trafficking in women and children, the repatriation and rehabilitation of victims of trafficking, of the use of women and children in international prostitution networks, particularly if the SAARC member countries (Bhutan, Bangladesh, India, Maldives, Nepal, Sri Lanka, and Pakistan) are countries of origin, transit and destination. This legal instrument is legally binding on its signatory parties and is the first regional anti-trafficking treaty to emerge from Asia. As of March 2004, the Convention was ratified by all member countries of the SAARC except Nepal and Sri Lanka.

Trafficking in human beings is undoubtedly a criminal justice issue. However, it affects the territorial integrity of the nations as well. As in many cases trafficking in human beings involves facilitations of illegal crossing of borders in clear violation of national immigration laws and policies. It also to a large extent threatens the rule of the law of the nations, because traffickers and violators most often resort to violence, corruption and complicity in order to advance their guilty plans.

Thus, in order to check this growing phenomenon at the national level many steps have been taken. First and foremost, the Constitution of India expressly prohibits trafficking in human beings.\textsuperscript{8} To carry forward the mandate of the Constitutional provisions and responsibility of International agreements, the Immoral Traffic (Prevention) Act, 1956 has been enacted to tackle the problem of immoral trafficking of human beings. However, this legislation only focuses on trafficking for commercial sexual exploitation. There is no mention of other forms of human trafficking like forced labour, bonded labour, organ trade, begging etc in this legislation. Although the Act has been amended twice till now,\textsuperscript{9} there is no


\textsuperscript{7} Ninth SAARC Summit (May, 1997) that the feasibility of a regional Convention to combat the grave crime of trafficking in women and children for prostitution should be explored.

\textsuperscript{8} Constitution of India, 1950, Article 23. Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

\textsuperscript{9} Amended in 1978 and 1986.
visible reduction in trafficking. This is largely due to the reason that no efforts have been made to consider other forms of trafficking in human beings and the lack of effective implementation.

Apart from the Immoral Traffic (Prevention) Act there are a number of provisions in the Indian Penal Code, which in one way or another help in the prevention of crimes like human trafficking. Recently, after the Delhi Nirbhaya gang rape there has been a widening of focus on the gender related issues which in turn paved the way for the appointment of the Justice Verma Committee. The Verma Committee submitted its reports within a short time of one month. Following the Verma Committee recommendations, the President of India passed an Ordinance which was followed by the enactment of Criminal Law (Amendment) Act. 2013. By this amendment section 370 of the Indian Penal Code was substituted by sections 370 and 370(A). These provisions provide for stringent punishment for offences like human trafficking.

Other relevant legislations which address the issue of human trafficking in India are; the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006; Andhra Pradesh Devdasi (Prohibiting Dedication) Act, 1989; the Karnataka Devdasi (Prohibition of Dedication) Act, 1982; the Child Labour (Prohibition and Regulation) Act, 1986; Information Technology Act, 2000; and the Goa Children’s Act, 2003. Beside these, there are other collateral laws which are relevant to trafficking in human beings. These are the Indian Evidence Act, 1872; Young Persons (Harmful Publications) Act, 1956; Bonded Labour System (Abolition) Act, 1976; Child Marriage Restraint Act, 1929; Probation of Offenders Act, 1958; Criminal Procedure Code, 1973; Indecent Representation of Women (Prohibition) Act, 1986; and the Transplantation of Human Organs Act, 1994.

Anti-trafficking legislations are problematic to enforce because victims of human trafficking are hesitant to identify traffickers for fear of violent consequences at the hands of traffickers. Furthermore, trafficking in human beings is a crime that crosses borders and jurisdictions. Applying international law to a person who resides in another State is a costly affair and a complex endeavour and is not amenable to an easy solution. Additionally, human trafficking usually violates several laws at one time, and is not a single shot event. Building a case against violators and traffickers can take a great deal of time, resources and energy. In countries like India, where the resources are limited, these complexities can hinder

---

10 The Verma Committee submitted its reports within a short time of one month.
enforcement of anti-trafficking laws. One more dilemma of enforcing anti-trafficking legislations is the lack of training of the local enforcement officers or special police officers as referred under the ITP Act within the state. Moreover, even if the State has implemented such laws, it is not likely that the local police officers and other enforcement constituents are well-versed in the international or domestic laws with regard to human trafficking. Victims of human trafficking are mostly treated like criminals or illegal immigrants, and are either arrested or deported. Additionally, since trafficking victims are usually not located in their country of origin, there is often a language barrier between enforcement officers and the victims, making information-gathering problematic. On analysing the role of law enforcement, it becomes evident that human trafficking is an epidemic and the existing international and national laws do not have the teeth to curb this growing menace.

As far as the vibrant judicial organ of the country is concerned, we find that there is clear inaction on the issue of human trafficking. Though the Indian judiciary has played an active role in many areas, but this area of human rights jurisprudence remains neglected. The judiciary alone cannot be held responsible for this neglect. There are many reasons; firstly, human trafficking cases rarely come before the courts because of the under reporting of such cases. Secondly, the existing law is such that it gives much time and space to offenders to escape punishment. Thirdly, police inaction in collecting relevant evidence and information and proving offenders guilty is shocking.

The Supreme Court of India in two important landmark judgements touched the issue of human trafficking. First one is Vishal Jeet v. Union of India and second one is Guarav Jain v. Union of India. The Bombay High Court in the case of Prerana v. State of Maharashtra stated that cases relating to trafficking in women and children should be disposed off expeditiously. Trial Courts ought to record the victim’s statement within one month and complete the trial within six months of the charge sheet being filed.

During the research period many NGO's were visited by the researcher. NGO's are the first players in highlighting and addressing the problem of human beings. They play a vibrant role by making the masses aware about the menace of human trafficking. However it was

12 AIR 1990 SC 1412.
13 AIR 1998 SC 2848.
14 [(2003) 2 BOMLR 562].
found that their work is highly affected by a series of problems such as lack of funds and lack of effective co-operation from government departments mostly police and other sectors.

Undoubtedly, many active steps have been taken over the past few years at the international, regional and national levels for the protection of the vulnerable sections of society and for the eradication of trafficking in human beings. Nonetheless much work still remains to be done to reach the final goal where by this menace of human trafficking will be eradicated forever from this planet. Therefore, in this regard, some specific suggestions and recommendations have been formulated which may contribute to a large extent in the eradication and abolition of this unacceptable modern day slavery of trafficking in human beings. These suggestions and recommendations are based on my field research by way of structured and unstructured questionnaires and discussions with eminent personalities working in the area of human trafficking and gender related issues.
SUMMARY OF THE THESIS

EMERGING DIMENSIONS OF HUMAN TRAFFICKING: A CRITIQUE OF THE EFFICACY OF LEGAL FRAMEWORK

Trafficking in human beings, a modern-day slavery, is a complex and multidimensional problem that has spread worldwide. Like pollution trafficking has permeated our day to day lives. The present situation of trafficking in human beings is a clear manifestation of the lopsided economic development, lack of political will and social disintegration. The failure of the state machinery including law enforcement puts vulnerable sections of the society at the receiving end of this multi-dimensional problem.

The last few decades have seen significant development of the response in combating trafficking in human beings at the national, regional and international levels. However, critical and concrete efforts have been lacking to curb the menace of human trafficking. The transnational nature of this crime requires an integrated global action with the involvement of different stakeholders. Much work has been done in terms of research on human trafficking, but reliable data both at national and international level is lacking. There is a lot of repetition in the work. It seems that the studies undertaken are a replica of one parent research, which has created a lot of confusion about the existence and the conceptual dimensions of human trafficking. However, testimonies of various stakeholders clearly confirm its existence worldwide. Consequently, human trafficking has been put at the top of the international agenda and various efforts have been made to curb this crime. Most importantly, in this regard, the United Nations Convention against Transnational Crime\(^1\) has been a path breaking achievement. For more than a century human trafficking has been linked only to one form of exploitation namely, commercial sexual exploitation, but the United Nations's Trafficking Protocol\(^2\) defined trafficking in persons in such a way that it diluted the age old belief that human trafficking is just for the commercial sexual exploitation. The Trafficking Protocol, currently forms the basis of various State human trafficking laws.

\(^1\) The United Nations Convention against Transnational Crime (UNCTC) is a 2000 United Nations sponsored multi-lateral treaty against transnational organised crime. This Convention was adopted by a resolution of the United Nations General Assembly on 15 Nov. 2000.

\(^2\) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (also referred as the Trafficking Protocol or UNITIP Protocol) is a Protocol to the Convention against Transnational Organised Crime. It is one of the Palermo Protocols, the others beings the Protocol against the Smuggling of Migration by Land, Sea and Air and the Protocol against the Illicit Manufacturing and Trafficking in Firearms.
Trafficking in persons is both a human rights as well as a criminal justice issue. More importantly, the issue of commercial sex work is highly controversial and sensitive.\textsuperscript{3} The UN Protocol was proceeded by the Convention for the Suppression of the Traffic in Persons, 1949, but this Convention got a mixed reaction. It was not widely signed and ratified by the States. This, clearly reveals that the international community is divided on this issue. However, the UN Trafficking Protocol subsequently expanded the definition of trafficking in persons without dealing with the issue of states regulating internal prostitution. It is due to this liberal approach that within a few years the Protocol has obtained more ratifications than the Convention for the Suppression of the Traffic in Persons. The main focus of the Protocol is on three main elements which can eradicate various forms of exploitation. The Trafficking Protocol also proposes the three P’s approach namely, measures to prevent trafficking in human beings, prosecution of the traffickers, and protection of the trafficked victims. However, it must be considered that the Human Trafficking Protocol is mainly a criminal law instrument, focussing more on the prosecution of traffickers rather than the protection of victims of offence. Therefore, in this regard, states must follow and rely on other recommendations laid down in various soft law instruments like the UNHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking and the UNICEF Declaration for the Protection of the Rights of the Child and Victims of Human trafficking.\textsuperscript{4}

Most importantly, as regards the children, the Convention on the Rights of the Child\textsuperscript{5} can to a large extent provide impetus to protection of the rights of children and prevention of child trafficking. There are other numerous international instruments which if consistently implemented, reduce if not eliminate any form of exploitation including trafficking in human beings.

There has been an improvement in this area on account of the establishment of the mandate of the Special Rapporteur on Trafficking in Human Beings. The work assigned to this new establishment is the annual submission of reports on human trafficking to the Human Rights Council. It also conducts State visits and receives information about the menace of human trafficking from different stakeholders. This Rapporteur along with other Rapporteurs (Violence against Women, Migrant Workers and Sale of Children) to a great

\textsuperscript{4} Ibid.
\textsuperscript{5} The Convention on the Rights of the Child was adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 and into force 2\textsuperscript{nd} September 1990.
extent fills in the loopholes which exist in the monitoring mechanism of the Human Trafficking Protocol.\(^6\)

At the regional level, the SAARC nations have drafted a well formulated Convention namely, the Convention on Preventing and Combating the Trafficking in Women and Children for Prostitution in 2002.\(^7\) The main objective of this Convention is to promote cooperation amongst the member countries to deal effectively with the various aspects of prevention, interdiction and suppression of trafficking in women and children, the repatriation and rehabilitation of victims of trafficking, of the use of women and children in international prostitution networks, particularly if the SAARC member countries (Bhutan, Bangladesh, India, Maldives, Nepal, Sri Lanka, and Pakistan) are countries of origin, transit and destination. This legal instrument is legally binding on its signatory parties and is the first regional anti-trafficking treaty to emerge from Asia. As of March 2004, the Convention was ratified by all member countries of the SAARC except Nepal and Sri Lanka.

Trafficking in human beings is undoubtedly a criminal justice issue. However, it affects the territorial integrity of the nations as well. As in many cases trafficking in human beings involves facilitations of illegal crossing of borders in clear violation of national immigration laws and policies. It also to a large extent threatens the rule of the law of the nations, because traffickers and violators most often resort to violence, corruption and complicity in order to advance their guilty plans.

Thus, in order to check this growing phenomenon at the national level many steps have been taken. First and foremost, the Constitution of India expressly prohibits trafficking in human beings.\(^8\) To carry forward the mandate of the Constitutional provisions and responsibility of International agreements, the Immoral Traffic (Prevention) Act, 1956 has been enacted to tackle the problem of immoral trafficking of human beings. However, this legislation only focuses on trafficking for commercial sexual exploitation. There is no mention of other forms of human trafficking like forced labour, bonded labour, organ trade, begging etc in this legislation. Although the Act has been amended twice till now,\(^9\) there is no

---


\(^7\)Ninth SAARC Summit (May, 1997) that the feasibility of a regional Convention to combat the grave crime of trafficking in women and children for prostitution should be explored.

\(^8\)Constitution of India, 1950, Article 23, Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

visible reduction in trafficking. This is largely due to the reason that no efforts have been made to consider other forms of trafficking in human beings and the lack of effective implementation.

Apart from the Immoral Traffic (Prevention) Act there are a number of provisions in the Indian Penal Code, which in one way or another help in the prevention of crimes like human trafficking. Recently, after the Delhi Nirbhaya gang rape there has been a widening of focus on the gender related issues which in turn paved the way for the appointment of the Justice Verma Committee. The Verma Committee submitted its reports within a short time of one month.\textsuperscript{10} Following the Verma Committee recommendations, the President of India passed an Ordinance which was followed by the enactment of Criminal Law (Amendment) Act. 2013. By this amendment section 370 of the Indian Penal Code was substituted by sections 370 and 370(A). These provisions provide for stringent punishment for offences like human trafficking.

Other relevant legislations which address the issue of human trafficking in India are; the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006; Andhra Pradesh Devdasi (Prohibiting Dedication) Act, 1989; the Karnataka Devdasi (Prohibition of Dedication) Act, 1982; the Child Labour (Prohibition and Regulation) Act, 1986; Information Technology Act, 2000; and the Goa Children’s Act, 2003. Beside these, there are other collateral laws which are relevant to trafficking in human beings. These are the Indian Evidence Act, 1872; Young Persons (Harmful Publications) Act, 1956; Bonded Labour System (Abolition) Act, 1976; Child Marriage Restraint Act, 1929; Probation of Offenders Act, 1958; Criminal Procedure Code, 1973; Indecent Representation of Women (Prohibition) Act, 1986; and the Transplantation of Human Organs Act, 1994.

Anti-trafficking legislations are problematic to enforce because victims of human trafficking are hesitant to identify traffickers for fear of violent consequences at the hands of traffickers. Furthermore, trafficking in human beings is a crime that crosses borders and jurisdictions. Applying international law to a person who resides in another State is a costly affair and a complex endeavour and is not amenable to an easy solution. Additionally, human trafficking usually violates several laws at one time, and is not a single shot event. Building a case against violators and traffickers can take a great deal of time, resources and energy. In countries like India, where the resources are limited, these complexities can hinder

\textsuperscript{10} The Verma Committee submitted its reports within a short time of one month.
enforcement of anti-trafficking laws. One more dilemma of enforcing anti-trafficking legislations is the lack of training of the local enforcement officers or special police officers as referred under the ITP Act within the state. Moreover, even if the State has implemented such laws, it is not likely that the local police officers and other enforcement constituents are well-versed in the international or domestic laws with regard to human trafficking. Victims of human trafficking are mostly treated like criminals or illegal immigrants, and are either arrested or deported. Additionally, since trafficking victims are usually not located in their country of origin, there is often a language barrier between enforcement officers and the victims, making information-gathering problematic. On analysing the role of law enforcement, it becomes evident that human trafficking is an epidemic and the existing international and national laws do not have the teeth to curb this growing menace.

As far as the vibrant judicial organ of the country is concerned, we find that there is clear inaction on the issue of human trafficking. Though the Indian judiciary has played an active role in many areas, but this area of human rights jurisprudence remains neglected. The judiciary alone cannot be held responsible for this neglect. There are many reasons; firstly, human trafficking cases rarely come before the courts because of the under reporting of such cases. Secondly, the existing law is such that it gives much time and space to offenders to escape punishment. Thirdly, police inaction in collecting relevant evidence and information and proving offenders guilty is shocking.

The Supreme Court of India in two important landmark judgements touched the issue of human trafficking. First one is Vishal Jeet v. Union of India and second one is Guarav Jain v. Union of India. The Bombay High Court in the case of Prerana v. State of Maharashtra stated that cases relating to trafficking in women and children should be disposed off expeditiously. Trial Courts ought to record the victim’s statement within one month and complete the trial within six months of the charge sheet being filed.

During the research period many NGO's were visited by the researcher. NGO's are the first players in highlighting and addressing the problem of human beings. They play a vibrant role by making the masses aware about the menace of human trafficking. However it was

---

12 AIR 1990 SC 1412.
13 AIR 1998 SC 2848.
14 [(2003) 2 BOMLR 562].
found that their work is highly affected by a series of problems such as lack of funds and lack of effective co-operation from government departments mostly police and other sectors.

Undoubtedly, many active steps have been taken over the past few years at the international, regional and national levels for the protection of the vulnerable sections of society and for the eradication of trafficking in human beings. Nonetheless much work still remains to be done to reach the final goal where by this menace of human trafficking will be eradicated forever from this planet. Therefore, in this regard, some specific suggestions and recommendations have been formulated which may contribute to a large extent in the eradication and abolition of this unacceptable modern day slavery of trafficking in human beings. These suggestions and recommendations are based on my field research by way of structured and unstructured questionnaires and discussions with eminent personalities working in the area of human trafficking and gender related issues.