



HUMAN TRAFFICKING AS NATIONAL SECURITY THREAT IN INDIA

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Human trafficking is prominent crime against humanity even in the twenty first century. It affects territorial integrity of states through violations of various criminal and immigrations laws, and it resorts to violence and corruption. Many people resort to human trafficking as it is a highly profitable enterprise and therefore, it remains as the third largest crime in the world after drugs and weapons trafficking. Over the period, human trafficking has grown to the level of the largest growing crime industry in the world. Many people are being transported annually across national borders which is an immense threat to national and international security. Similarly, threats like spread of HIV/AIDS and other STDs across communities and nationals have the potential to harm the human resource of any nation-state. And most significantly, it can prove a major threat to national and international security as world's sex traffickers are connected to organized crime syndicates including terrorists groups and mafia groups.

Human trafficking has threatened the security and dignity of trafficked victim around the world and it is one of the major problems in India. India is a source, destination, and transit country for men, women and children for the purpose of different types of trafficking be it labour trafficking (bonded and forced labour), child trafficking and sex trafficking. Labour trafficking is one of the crucial problems in India, where poverty, social discrimination or exclusion and inadequate implementation of legislations are the root causes behind it.

Similarly, child trafficking is another type of trafficking that exists in India. Children are subjected to forced labour as domestic workers, factory workers, beggars, agriculture workers, carpet weavers and so on.

Sex trafficking is the third form of trafficking in India where women and girl child are traded, bought and sold for the sole purpose of sexual exploitation. The major factors that fuels sex trafficking are poverty, gender inequality, false marriage proposal, promise of a good job in another country etc. Reports provided by different concerned institutions estimate that millions of women and children are victims of sex trafficking in India. Women and children are most vulnerable to this menace mainly due to ignorance, harmful traditional and cultural practices, greed, poverty and discrimination. The Ministry of Women and Child Development estimates that among the 3 million women have been trafficked in India, 40% are minors and 60% of the trafficked for sex work in the country, they are adolescent girls between ages 12 to 16 (NCRB, 2021).

This paper discusses the different measures to address the problem of Human Trafficking in India more efficiently that include establishment of new institutions and legal mechanism and/or reform of the existing bilateral, multilateral, regional and international agreements. Issues of responses, cooperation, and coordination of law enforcement officials to address Human Trafficking are also included in this paper. Prevention, protection and prosecution measures such as rehabilitation programmes, better data, strategy and reporting to enhance anti-trafficking efforts, strengthen the capacity of officials in the law enforcement agencies, immigration, education, social welfare, labour and other relevant departments to prevent child trafficking are also discussed in detailed in this paper.



Definitions of trafficking have varied according to countries and laws. However, the definition provided by the United Nation Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children is generally accepted internationally.

It states that;

“Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of 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” (UN Trafficking Protocol, 2000: 2).

This is the first internationally accepted definition on trafficking and the Protocol came into force on 25 December 2003. The most important characteristics of this is, it provides protections to victims of trafficking from prosecution for the acts they are forced into, and talks explicitly over preventive measures, victim compensation, repatriation, etc. (Ghosh, 2009).

The provisions or legislative tools that directly and indirectly deals with the relevant matters of human trafficking in India has been included in the Indian Penal Code 1860, the Indian Constitution of 1950, the Immoral Traffic Prevention Act 1956, the Bonded Labour System (Abolition) Act 1976, the Child Labour (Prohibition and Regulation) Act 1986, Juvenile Justice Act, 2000, the Transplantation of Human Organs Act of 1994, Immigration (Carrier’s Liability) Act of 2000, and the Protection of Child Marriage Act, 2006, The Juvenile Justice (Care and Protection of Children) Act, 2015, Protection of Children from Sexual Offences (POCSO) Act, 2012, etc.

The Ministry of Home Affairs (MHA), Ministry of Women and Child Development (MWCD), National Human Right Commission (NHRM) of India, National Commission for Women (NCW), Anti-Human Trafficking Units (AHTU) etc. are some of the Institutional frameworks collaborated with International Organizations and NGOs that addresses the issue of human trafficking. Despite of various efforts made by them; the protection, prevention and prosecution of trafficking victims are still minimal in India. According to US Department of State, the Government of India does not fully act in accordance with the minimum standards for the elimination of trafficking, though it is making significant efforts to do so (US Department of State, 2021).

India is a signatories/ratifying state of many national and international commitments for combating Trafficking in Persons and protection of Human Rights of Victims such as *The Universal Declaration of Human Rights (UDHR)*, *Convention of Elimination of All Forms of Discrimination against Women (CEDAW)*, *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, *United Nations Convention on Transnational Organized Crime (UNTOC)*, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime 2000 (Palermo Protocol)*, *SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution* which are key international and regional legal instruments for combating trafficking.

India have taken significant steps towards bringing effective anti-trafficking laws by creating several laws, formulating policies and procedures and by signing and ratifying international law obligations. With the political encouragement and through practical assistance from projects, India have experienced a range of improvements including the enactment of new anti-trafficking laws,



specialization of law enforcement, awareness raising for officials, specialist trafficking investigation training, improvement in cross border cooperation and development or coordination between states to have an effective criminal justice system to ensure justice for the victims of trafficking (Pretious, 2008). However, the facts show that these provisions or policies have proved to be insufficient/inadequate to combat trafficking. Hence, greater political commitment and much harder and more practical approach is needed within law enforcement agencies to bring down the magnitude of human trafficking.

Various studies point out that, to a large extent, the existing legal frameworks of India have failed to address such issues like prevention of human trafficking, witness protection, repatriation of victims, immigration and border control measures, compensation fund for victims, etc¹(US Department of State, 2021). To address these gaps, at the foremost, the Government of India should rapidly implement the *UN Trafficking Protocol*, which provides a comprehensive definition covering various forms, means and objectives of trafficking.

Measures/Ways to address human trafficking in India

1. Re-define the term 'Trafficking'

While there are a number of international instruments dealing with human trafficking, the primary tool used by the Governments of South Asian nations to combat human trafficking is their own domestic laws. However, those existing domestic laws of South Asian nations focus only on the portion of trafficking that is for the purpose of prostitution. None of the existing trafficking laws in these countries address trafficking in a holistic manner. By emphasizing the endpoint, the violence and abuse of human rights that occur during the process of trafficking (and for any purpose other than prostitution) are not addressed. Domestic laws of all the nations lack collective understanding of trafficking. For e.g. India has specific law on trafficking ITPA, that does not define trafficking as a whole, but defines trafficking as sexual exploitation (UNODC, 2011).

The existing laws have not been properly defined and there are several loopholes² in them and due to which the perpetrators of trafficking escape from being effectively punished. The UN Trafficking Protocol is an international legal framework to fight transnational organized crime with a detailed agreement on tackling trafficking in persons

The end purposes of trafficking are not limited to sexual exploitation but are as varied as the potential for profit where women, men, and children are trafficked for the purpose of forced labour, child labour, forced marriage, illegal recruitment, debt bondage, exploitation of labour, involvement in organized crime, organ transplant etc.

The legal definition of trafficking of each states of South Asia should also be improved according to the definition provided by *UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, 2000*, as it has provided a detail guidance and provisions for punishment to the various purposes of

¹The UN Protocol states that State Parties should ensure the safety of trafficking victims after rescue as well as consider instituting measures to assist victim recovery and integration into society (*UN Trafficking Protocol, Art 6(3)*).

²The existing laws only emphasis on sexual exploitation as one form of trafficking, lack of implementation of those existing laws that are only in paper not in practice, the existing laws did not incorporate the procedure of rehabilitation or reintegration of trafficking victims etc.



human trafficking in large and child trafficking in particular³. Re-examining of current laws of all the States based on international standard's definition may cover all aspects of human trafficking/child trafficking and controls the action of such business. An effective provision for additional penalties should apply to persons found guilty of trafficking including perpetrators to crime committed public officials.

2. Reform Criminal Justice System and Procedures

Corruption is prevalent in the criminal justice system in India. As a result, traffickers use corruption to extend their operations to avoid persecution. At times, the law enforcement agencies are also partners and parties in the crime of trafficking. The police, border control authorities, immigration services, security/armed forces, public officials, private sector actors such as travel agencies, transportation sectors, financial institutions, etc. are among the partners or corrupt actors in the crime. However, lack of knowledge and commitment at this level can be equally serious leading to poor prosecutorial systems, failure to adequately utilize and protect witnesses, failure to apply trial prosecutorial briefs, failure to adequately utilize and protect witnesses, failure to apply trial procedures properly, and inappropriate sentencing (Gallagher, 2008). Due to all these, the present legal framework to combat human trafficking results in re-victimisation of the victims of exploitation while the exploiters mostly unpunished. Corrupt practices within legal frameworks and judicial weaknesses have great impact to the victims of trafficking who have suffered a lot. Their cases are lost or badly dealt in most of the situations.

To combat human trafficking in India, the governments should give priority to investigate and take legal action against corruption within officials. There should be a life time imprisonment if the perpetrator of the crime is a law enforcement official. The UN Convention against Transnational Organized Crime states to take effective action in the prevention, detection, and punishment of corruption of public officials (UN Convention against Transnational Organized Crime, 2000)⁴.

For the developments in law enforcement, all the states should establish a centralized group of specialist prosecutors to handle issue of corruption in trafficking cases and to provide other post-rescue supports to the victims. This group should jointly address issue of corruption in trafficking by sharing information and resources that may help to speed-up investigation process. Specific anti-trafficking training needs to be delivered to the committed prosecutors who may contribute to tackle with human trafficking issue and eliminate practice of corruption within law enforcement agencies and

³ "As per this definition human trafficking is an exploitation 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" (*UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, 2000*).

⁴ UN, General Assembly Resolution 55/25 of 15 November 2000, United Nations Convention against Transnational Organized Crime and the Protocols Thereto, 2004, Article 8: 1: "Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally: (a) The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties; (b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties. Article 9 (2): Each State Party shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of the corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions".



encourage them to perform effectively. It will help to strengthen cross-border legal cooperation between the states.

3. More Effective Investigation Process by Law Enforcement Agencies

There is a lack of commitment when it comes to the investigation of human trafficking. In India, law enforcement officials receive poor basic training or poor basic investigation skills. There are also no clear training and development plans designed and exercised to develop the knowledge and skills of these officials. In South Asia, the external sources like INGOs/NGOs provide training and development opportunities to law enforcement agencies to prepare them for their task as trafficking investigators (UNDOC, 2007). Thus, an effective and efficient measure is possible for law enforcement agencies if states work in collaboration with such organisations. More so, efforts by such organisation to raise public awareness will help in interception of child trafficking victims in the border areas.

An effective investigation response is possible when there is an equal participation of all levels of society, from law enforcement prosecutors/officials to NGOs to immigration officials to local communities. Human trafficking is a sensitive crime, so investigation process requires careful treatment of victims and their witnesses.

4. Effective Border Control

Due to open and porous border specially between India and Nepal, trafficking in women and children has become one of the easiest and less risky crimes compared to drugs and arms trafficking from Nepal to India. A number of women and children are trafficked to Indian brothels because of open and unregulated national border between Nepal and India. There is absence of proper law enforcement mechanism between Nepal and India for border control personals to protect and prevent individual from trafficking, especially women and children.

Therefore, there should be strict action on regulating the movement of population on either side of Nepal and India. Both the States should look into the measures that provide employment opportunities to their citizens in their respective territories to avoid illegal immigration. Along with this, an intensive research, joint reviews or initiatives, successful exchange of ideas on the diverse aspects of open border between India and Nepal would check and regulate illegal activities like human trafficking or child trafficking occurs in the border.

There is a need of cross-border cooperation between India and Nepal, especially between law enforcement system to investigate and prosecute the recruiters and the transporters of trafficking in persons cases. There are very few genuine investigations have been made between India and Nepal to track traffickers and all these are initiated by civil society organisation with the help of concerned department⁵. Cross border cooperation has been significantly contributed to breaking down various criminal networks like transnational trafficking of persons or other transnational crimes like drugs and arms trafficking. There should be a strengthening of India- Nepal border controls to fight trafficking, to criminalize all forms of trafficking and to prosecute and punish traffickers. Cross border collaboration and coordination between countries should aim to ensure that there are no safe havens

⁵ For e.g. NGOs like Kanchenjunga Uddhar Kendra (India) and Maiti Nepal (Nepal) has been generously working with this border issue. They are making efforts to safeguard individual from railway station, bus stations and other places. They also provide awareness on safe migration to individual who cross border.



for traffickers. The legal framework of both States must ensure punishment of traffickers by conducting effective investigation and eliminating of the proceeds of trafficking with the effective judicial cooperation.

5. Addressing Illegal Migration to Curb Trafficking

The process of migration in the name of foreign employment has directly or indirectly linked to trafficking. Illegal migration contributes to an environment of vulnerability and abuse where anyone can become a victim of trafficking. As illegal migrants are highly vulnerable to being trafficked due to a range of factors like lack of legal status or protection, limited language skills, limited employment options, poverty and immigration related debts, and other socio-economic conditions (Walser, et. al, 2011).

Illegal/undocumented migration can be one reason of continuous increase of human trafficking in the name of foreign employment. For instance, according to the chairperson of Maiti Nepal, in Nepal, a 15 years old girl child is having a passport of 30 years of age. In this matter, the existing laws related to trafficking, foreign employment, migration etc. should focus or address those problems to control human trafficking or child trafficking in the name of foreign employment. Government, with other law enforcement agencies, NGOs, institutions etc. should work together to eliminate such dark side of foreign employment related human trafficking.

In short, a comprehensive and collective strategy is needed to combat human trafficking with a better enforcement of both the States immigration laws and greater cooperation in law enforcement.

6. Reforms in Rescue, Rehabilitation and Reintegration Programmes

Special and enhanced measures should also be in place to provide safety, support and assistance to human trafficking victims and to protect their privacy during their stay in the country of destination and throughout any repatriation (*UN Trafficking Protocol* 2000, Art. 6). Protection of Children's right as a measure from child trafficking, violence, exploitation and abuse should be developed in both the States and made operational in national and community levels (UNICEF, 2008). These measures include empowering children and youth through raising awareness on the risk of trafficking as well as its legal and policy framework to combat such a crime. Rescued child victims should provide child-friendly legal, medical and psychosocial services with proper reintegration programmes. Systematic collection of data and monitoring is also needed to control the magnitude of human trafficking.

Special support to victims as witness should be provided by the law enforcement agencies, as victims have a critical role to play in the criminal prosecution of traffickers. It will be difficult or impossible to investigate and prosecute without the cooperation and testimony of victims. It is a fact that victim of trafficking are often unwilling to cooperate with criminal investigations for fear of harm to themselves or their families. In such situations, the State or concerned department or law enforcement officials should do all within its power and resources to provide or otherwise ensure effective protection to victims who are cooperating in criminal investigations (*UN Organized Crime Convention* 2000, Art.24). Victims should also be provided with adequate levels of support, assistance and information for the duration of their involvement in criminal proceedings. They should not be repatriated until after the completion of relevant legal proceedings and after they have been able to claim and receive compensation or other remedies (*UN Trafficking Protocol*, 2000, Art 8).



7. Collaboration and Cooperation among Concerned Anti-Trafficking Institutions

The coordination between institutions such as the Ministry of Women and Child Development (MWCD), Ministry of Home Affairs (MHA), National Human Rights Commission (NHRC), National Commission for Women (NCW), Anti Human Trafficking Units etc. of the entire nation is needed.

8. Re-examining the SAARC Convention in case of Human Trafficking

Legal jurisdiction to provide safeguard against such crimes like human trafficking is not fully implemented in the South Asian region as a whole. For instance, the *SAARC Convention on Combating the Crime of Trafficking in Women and Children for Prostitution*, 2002 has been ratified but not been implemented in an effective manner yet.

One of the major shortcomings is that the definition provided in the Convention is very narrow and focuses only on 'prostitution'⁶. The title of the SAARC Convention should be expanded to cover trafficking not only for the issue of prostitution but also for other issues such as forced labour, slavery, bondage, organ transplant, forced beggary, forced marriage, child trafficking etc.

Conclusion

While it is clear that India have made enormous progress towards addressing human trafficking, it still does not comply with international standards and much still needs to be done to tackle with the problem of human trafficking. Effective regional and domestic measures should create with protective environment, where all human beings are free from violence, exploitation, and unnecessary separation from family. Similarly, an integrated coordination among all sections of society will definitely address human trafficking as a human/national security problem.

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⁶The person subject to trafficking means "women and children victimised or forced into prostitution by the traffickers by deception, threat, coercion, kidnapping, sale, fraudulent marriage, child marriage or any other unlawful means" (*SAARC Convention on Combating the Crime of Trafficking in Women and Children for Prostitution*, 2002).



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