

A Critical Analysis on Human Trafficking and Commentary on Violation of Right to Privacy with Respect to Sting Operations

Shruti Patil

Student, Department of Law, Christ University, Bengaluru, India

Abstract—Human trafficking which is for the purpose of sexual exploitation has been identified as the fastest growing criminal industry across the globe. This paper addresses the situation of human trafficking in India. It explains about the factors influencing the traffickers and the trafficked to indulge in such crimes. It discusses the root causes or vulnerability factors of trafficking such as structural inequality, poverty or economic insecurity, organ trade, bonded labour, gender violence, which are further exacerbated by corruption, have remained unrecognized in academic and policy areas. Further the paper lists down the need and ways for prevention of trafficking in the country. Also the paper aims at discussing the rights of the victims that are violated and the conflict between Right to Life and Right to Privacy emerging due to undercover operations conducted by law enforcement agencies and how one right can be used as a defence for the breach of another right with reasonable restrictions.

Index Terms— Human Trafficking, Sting Operations, Critical Analysis

I. INTRODUCTION

The trade of human beings for exploitative purposes including bonded and forced labour, commercial sexual exploitation and illegal organ-trade is called 'human trafficking'. It is an umbrella term often reduced to mean prostitution, when it involves sex trafficking.

Close to 80% of the human trafficking across the world is done for sexual exploitation and the rest is for bonded labour and India is considered as the hub of this crime in Asia.

Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons defines 'Trafficking in Persons' as 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.

A. Human Trafficking in India

Trafficking in India remains illegal and is a significant growing problem. Women and minor girls are trafficked within the country for the purpose of commercial sexual activities and forced marriages, especially in those areas where the sex ratio

is highly skewed in favour of men. Men are trafficked for the purpose of labour. A significant portion of children are subjected to forced labour as factory workers, domestic servants, beggars and agricultural workers and are used as armed combatants by some terrorist and insurgent groups.

In March 2018 in the wake of the rape against a minor, India's parliament passed a bill amending laws concerning sexual violence and making sex trafficking a criminal offense. But the gap between enactment and enforcement remains unacceptably wide in the country. The Parliament acted in response to the recommendations of a judicial committee led by the late Justice Jagdish Sharan Verma. In addition to urging tougher laws protecting women and children from abuse, the Verma Committee Report recommended stiffer penalties for sex-related crimes as well as swifter justice for the perpetrators.

Amending India's laws is a good step, but a law is only as good as its enforcement. The trafficking world is profitable and corruption is widespread. It is convenient for traffickers to buy the police and other law-enforcement agents in order to keep the business functioning.

B. Factors Leading to Sex Trafficking

Victims of sex trafficking disproportionately come from disadvantaged segments of the Indian society. Persistent poverty is one such major factor influencing the youth to enter the flesh trade business as many vulnerable women and girls are lured by promises of employment and some parents are in need of financial security which forces them to sell their daughters to traffickers. Rapid urbanization and migration of large number of men into India's growing cities creates a market for commercial sex. There are 2 sides of factors influencing the growth of the trafficking world.

The push factors include: poor socio-economic conditions of a large number of families, poverty coupled with frequent, almost annual natural disasters like floods leading to virtual destitution of some people, lack of education, skill and income opportunities for women (and for their family members) in rural areas, absence of awareness about the activities of traffickers, pressure to collect money for dowries which leads to sending daughters to distant places for work, dysfunctional family life, domestic violence against women, low status of girl children,

etc.

The pull factors are: lucrative employment propositions in big cities, easy money, promise of better pay and a comfortable life by the trafficking touts and agents, demand of young girls for marriage in other regions, demand for low-paid and underage sweat shop labour, growing demand of young kids for adoption, rise in demand for women in the rapidly expanding sex industry, demand for young girls in places of military concentration like Kashmir in India in recent times, demand for young girls for sexual exploitation as a result of the misconception that physical intimacy with young girls reduces men's chances of HIV/AIDS, or of the myth that sex with a virgin can cure HIV/AIDS and impotence.

1) Supply side:

- Illiteracy, inadequate educational and employment opportunities
- Patriarchy, which is the main cause of discrimination of a girl child
- Erosion of traditional family values and pursuit of consumerism encourages the sale of women and children
- Racial discrimination, racism and related intolerance which makes women vulnerable to trafficking
- The media and new technologies which through advertising and commercialization of sex, present women's bodies as objects solely for sexual pleasure

2) Demand side

- Male attitudes and the perception of women in the society
- Pornography and its role in the growth of demand for sex
- Patriarchy resulting in the unequal power relation between men and women
- Consumerist behavior considering a women's body as a commodity for sexual pleasure

C. Need and Ways to Prevent Human Trafficking

Men, women and children are being trafficked and exploited all over the world: 2.4 million have been trafficked into prostitution and bonded labour every year. It is impossible to reach a consensus on the true scale of the problem.

It is one of the worst violations of human rights since it denies the victim's right over their own person, their freedom and liberty, and forcibly extorts their labour exploiting them in innumerable ways.

As the extent of human trafficking is recognized, a number of approaches and methods are introduced to tackle the problem. The first step to preventing human trafficking and prosecuting the traffickers is therefore to recognize the complexity of the crime which cannot be resolved in a vacuum. Anti-trafficking strategies have to be embedded in every policy area.

The government must set up Health Care providers for the purpose of identifying the indicators of human trafficking and

assist victims. With the assistance of the anti-trafficking organizations, low cost or free services should be enabled to the trafficked victims. They also should be given employment opportunities. The Attorneys also play an important role in the prevention of trafficking activities by offering the victims legal services and encouraging them to gather confidence and voice out the crimes against them.

Another way to prevent and spread awareness regarding trafficking is by students taking action on campus by joining clubs that raise awareness about human trafficking and initiate action throughout the local community.

Another most important way to reduce trafficking is to conduct 'sting operations' permitted by the law enforcement agencies where the officers are appointed to go undercover to catch people involved in the sex trade or labour exploitation. Since commercial sexual activities usually occur in private such operations are conducted, due to which the modesty of women is being outraged also breaching the Fundamental Right to Privacy of the women and minors.

D. Research Questions

1. What are the Rights violated due to 'sting operations' and role of media of the trafficked victims?
2. Whether Right to Life can be used as a defence for breach of Right to Privacy?

E. Rights of the Trafficked Women and Children Violated Due to Undercover Operations

The law enforcement agencies conduct these undercover operations in order to capture both the traffickers and the victims. Such operations violate the Fundamental Right of the victims under Article 21 which guarantees Right to Life and personal liberties and provides for every citizen to lead a dignified life.

The Supreme Court included Right to Privacy as a Fundamental Right and derived it from Article 14, 15 and 21 of Constitution of India. It was stated that the right is natural and subsists as an integral part to the right to life and liberty. It is also an inalienable right relating to a person's information or choices that he/she makes.

With such operations there is high risk of victims being subjected to media and are brought into the eyes of the public after which these victims undergo embarrassment and humiliation in the society as they are treated like criminals due to the involvement and role of media violating their Right to Privacy. The victims are often subjected to violence and are denied employment opportunities or even a status in the society for having been indulged or forced into trafficking activities.

In the case *State of UP v. Kaushalya* the women weren't given absolute right of privacy over their decisions in respect to their occupation and residence. The court decided as constitutionally permissible 'reasonable restrictions' on their movement. Right to Privacy is the right to be let alone. The victim is entitled to privacy and if there is an invasion, it must be done in good faith to save the life of that individual.

F. Right to Life a defence for Breach of Right to Privacy

The sting operations conducted by the law agencies as per the procedure established by law is to reduce the level of illegal trafficking of children and women to promote a life of dignity.

The Supreme Court Bench headed by Justices Markandey Katju and Gyan Sudha Misra in its order stated that sex workers also have a right to live with dignity under Article 21 of the Constitution of India

The motive of conducting such sting operations is to reduce illegal forms of employment generation and punish the institutions exploiting the youth of the country. Even though such undercover activities breach the right to privacy of victims, the law aims to focus on providing help and support to such suppressed class of people. There is some amount of damage suffered by the victims with regards to privacy but on a larger scale the government focuses on rehabilitation of such damages and provide them with a facility to lead a dignified life. Therefore, Right to Life can be used as a defence for breach of Right to Privacy.

II. GUIDELINES FOR MANUSCRIPT PREPARATION

Due to the backwardness of certain sections of the society,

women and children are often coerced into illegal activities. The law intervenes to ensure that such kind of illegal trafficking does not take place. Hence, it conducts sting operations to identify the areas where such victimization takes place.

Human trafficking jeopardizes the dignity and security of trafficked individuals and severely violates their human rights. The Constitution of India guarantees equal rights of men and women, but they are often merely rhetoric when it comes to practical implementation. In order to combat trafficking and to protect the human rights of the vulnerable people, strong political will of the government is vital in implementing their anti-trafficking mandates. Thus we can say that any crime which can be used as business one day becomes a social evil as in the case of human trafficking.

REFERENCES

- [1] <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>
- [2] <https://www.ucanews.com/news/how-to-end-human-trafficking-in-india/78525>
- [3] <https://indiankanoon.org/doc/210785/>