

Need of New Comprehensive Anti Trafficking Law in India

Sheetal Sagar

Abstract:

Human trafficking is the modern way of slavery and exploitation all over the world. Article 23 strictly prohibits human trafficking and forced labor in india. In spite of that india is the signatory of various international conventions on the prohibition and prevention of human trafficking such as un conventions against transnational organised crimes 2000, including (un convention for the suppression of the traffic in persons and of the exploitation of the prostitution of others, 1950) and hence india is bound to prohibit the human trafficking by taking necessary steps in this regard. In spite of that the cases of human trafficking in india is been increasing day by day as in the year 2019 the total cases of human trafficking registered in the country were 6,616 which is far higher than the number of cases registered in 2018 which were 5,788 and the total number of cases in 2017 were 5,900¹. In the year 2013 committee was set up to study the issue of human trafficking in india². The said committee observed that our laws have many effective provisions to deal with human trafficking and they are scattered in different statutes like itpa³ juvenile justice act, ipc, bonded labour act, transplantation of human organs and tissues act, protection of children from sexual offences act, begging prohibition act, “however due to lack of synergies, these provisions remains underused and in many cases abused and finally the committee recommend that the law need to be sensitized and overhauled lest it degrades into a tool to stigmatize and women for the rest of their lives”⁴. The recommendations of the committee are not implemented properly by the government yet. Recently lok sabha passed “the trafficking of persons (prevention, protection and rehabilitation) bill, 2018” this bill will create the confusion and clashes as there are other legislation also which are dealing with the specific forms of trafficking and have their own enforcement mechanism. The bill is silent on the point that which enforcement mechanism will be used in the case of human trafficking. In this study of research it will be comparative in nature taking into the consideration of other country measures in this regard to combat human trafficking by finding the gap and loopholes between the legal enforcement and to fill the same. The focus of the research will be on eradication of the loopholes and clashes which creates the legal mess through the existing of various laws on the same issue by studying the various reports and international conventions and the legislations of the other countries.

Introduction: Millions of children and women are trafficked every year they are forced into the prostitution work, forced labor, physical exploitation etc which is a direct exploitation of their rights including the Right to Life⁵.

¹ National Crime Bureau Report 2018

² Justice Verma committee

³ (Immoral Trafficking Prevention Act),

⁴ Justice Verma Committee Report, 2013

⁵ Article 21 of Indian Constitution

In Bachpan Bachao Andolan v/s Union of India⁶, Supreme Court held that it is now stands undisputed that one of the main reasons for human trafficking is for commercial sexual exploitation of these children and women and it is this vicious circle of missing children and women trafficking-abuse-prostitution which needs to be curbed with the urgent measures.

In Vishal Jeet v. Union of India,⁷ The Supreme Court ordered for an objective multi-dimensional study and a searching investigation into the matter relating to the causes and effects of this evil and requiring most rational measures to weed out the vices of illicit trafficking.

In Prajwala v/s Union of India⁸ case Supreme Court recorded the Ministry of Women and Child Development submission that it had to set up a committee to study existing laws, identify gaps and draft a comprehensive legislative framework covering all aspects of trafficking.

Various Laws on Human Trafficking:

1. The Immoral Traffic (Prevention) Act, 1956
(This act deals with the regulation of prostitution work and human trafficking for the purpose of sexual exploitation)
2. The Bonded Labor System (Abolition) Act, 1976
(This act deals with the prohibition on bonded labor and provides punishment for the same, human trafficking for the purpose of bonded labor will be dealt under this act)
3. The Bombay Prevention of Begging Act, 1959
(This act deals with the punishment and prohibition of the begging in Bombay and if the trafficking is done for the purpose of begging than it will be dealt under this act)
4. Juvenile Justice (Care and Protection of Children) Act, 2015
(This act deals with the protection of children from exploitation, if the children trafficking are done than it will deal under this act)
5. Indian Penal Act 1860
(This act provides the definition under section 370 for the human trafficking and describes the punishment for the same)
6. The Transplantation of Human Organs and Tissues Act, 1994
(This act deals with the regulation and prohibition of removal of organs and if the trafficking of person will done for the purpose of removal of organs than it will come under this act)

⁶ (2011) 5 SCC 1

⁷ (1990) 3 SCC 318

⁸ (2015) 17 SCC 29

7. The Protection of Children from Sexual Offences Act, 2012
(This act deals with the protection of children from sexual by providing punishment to the offenders and all the human trafficking of children for the purpose of their sexual exploitation is comes under this act)

8. The passport Act 1967
(This act regulates the entry and exists of the trafficked persons and the human trafficking if takes place outside India and from India to other country comes under this act)

There is a **Need of New comprehensive law on human trafficking**, because the existing laws like Immoral trafficking act 1956 which has the main focus on the prevention and regulate the prostitution work and there was loopholes in the existing act because it merges the prostitution regulations and human trafficking at the same time without providing the required steps for dealing with the cases of human trafficking and the remedies for it. Immoral trafficking act was in the existence since 1956, after 64 year of enforcement of this law the number in the human trafficking cases has been increasing badly which shows the urgent need of new comprehensive anti-human trafficking law. Because human trafficking can be done for the sexual and no sexual purposes as it said in the justice Verma committee report so there are many other laws also exist which deals with the various forms of human trafficking like in the IPC, Juvenile Justice Act, Bonded Labour Act, Prevention of Begging Act, etc. These laws have their own procedure and it become a legal mess which directly will give the benefit to the accused and the low conviction rate will directly contribute in the increasing of human trafficking cases.

Recommendations of the committee

That is why there is a need to introduce a new comprehensive law to combat with the problem of human trafficking. Recommendations to combat with the problem of human trafficking are⁹:

1. Need to define human trafficking because human trafficking is nowhere defined properly.
2. Need a comprehensive law on human trafficking.
3. Need to established special court for human trafficking cases.
4. Need to set up special trained police force.

Step of United States of America towards comprehensive law to combat human trafficking

In the United State also there were many laws on the same issue of trafficking and none of the federal laws were enough to fight against the trafficking. This inadequacy in the existing laws and enforcement of law was address and eradicated by introducing the new comprehensive law namely The Victims of Trafficking and Violence Prevention Act (TVPA), under which many forms of trafficking address in one comprehensive law. Similarly India also needs its one comprehensive law in

⁹Justice Verma committee

this regard because Indian federal law on human trafficking are also fail to prevent human trafficking crime which is shown in the national crime record bureau data.

The International framework for action to implementation the trafficking in person's protocol:

This framework assists UN member in identify the gaps and putting in place additional measures they need according to international standards and it provides the need to adopt a comprehensive approach to trafficking in persons which address an aspects of the crime and which balances criminal justice concern with the need to ensure the rights and protection of victims. There is an urgent need to focus on one comprehensive law rather than providing the supplementary law to the existing one. Clashes with the other law can't be fruitful for the victim and it will surely give the benefit to the accused in escaping from the legal liability that will increase the crime.

FLAWS ON THE TRAFFICKING OF PERSONS (PREVENTION, PROTECTION AND REHABILITATION) BILL, 2018,

Recently lower house of the India parliament passed this bill to prohibit the human trafficking but again this bill will not be considered as comprehensive bill because there are numbers of loopholes which restrict this bill in becoming a comprehensive draft such as

1. The bill continues to retain all existing laws on human trafficking and because all laws have their own enforcement procedure and implementation agencies hence it will be a legal mess. Recommendation of the committee was to introduce the comprehensive law but this bill is the supplementary to the existing law.
2. The bill does not include the human trafficking for the purpose of removal of organs as an offence under human trafficking again for this offence the transplantation of human organs and tissue act will be taken into consideration which again shows that this bill is not a comprehensive draft.
3. The bill does not provide any definition for the human trafficking and for the definition again the Indian penal code will be considered. In 2013 report said "Ironically, the term 'trafficking in person is nowhere defined in our law'¹⁰. it has been however defined in the UN protocol¹¹ as "Trafficking in persons" shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum,

¹⁰ Justice Verma Committee 2013 .

¹¹Article 3 of Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the, United Nations Convention against Transnational Organized Crime, Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000.

the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs;

4. Committee also observe that the definition for human trafficking which is given in Indian Penal code does not include the phrases like ‘ ‘ abuse of power or position of vulnerability and giving or receiving the benefit to achieve consent’ ’ which should be included in the definition of human trafficking.
5. The bill is not clear and comprehensive since India needs a comprehensive law on human trafficking to prohibit this crime which is increasing day by day and numbers of existing laws are creating a legal mess which directly affect on the conviction rate of the traffickers.

¹²In the report of US department it was found that India stands on the Tier 2 stage it is because when the country is not fully meet the minimum standard for the elimination of trafficking but it making significant efforts to do so than the country stands on Tier 2 stage. The report said the government decreased investigation, prosecution, and case conviction of traffickers, and the acquittal rate of the traffickers increase to 83% in 2018. West Bengal and the Maharashtra have the highest number of cases on human trafficking with the lowest number of conviction rate that is just on 4 and 5% respectively.

It is common knowledge that if more laws will apply than it will be easier to find the acquittal and if the conviction rate will low than the crime will increase because the fear of law will end which give the traffickers courage to exploit the people by doing their trafficking.

Outcome of Comprehensive Law on Human Trafficking: the legal mess will be resolve by comprehensive law and the acquittal rate will be decreases which will also decreased the crime as well. The rights of the victim will be protected. Demand of comprehensive law and identify the gap in existing law is international also and it will be implemented according to the international standards.

Conclusion: Human trafficking violates the rights of the individual by exploiting them physically, mentally, sexually,. There is need to draft a comprehensive law which will cover all the aspects of human trafficking in one law and which includes all the purposes of human trafficking in one law so that the trafficking of human can be prohibit without legal mess and the victims are protected from being exploit. If the loopholes in the draft will be removes than it will directly decrease the crime by improving the conviction rate of the accused of human trafficking and crime will be decreased. Because India is a signatory of various international conventions hence government has a duty to implement the international conventions and treaty to prohibit the human trafficking. ‘ ‘¹³Legislation for giving effect to international agreements Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body’ ’. Moreover the Supreme Court also

¹² US department of states report 2020 Trafficking in person report India.

¹³ Article 253 in The Constitution Of India 1949

ordered and observes that there is a need to identify the gap in existing law and draft a new comprehensive law. Human trafficking cases are rising day by day and the conviction rate is decreasing sometimes the crime are not even reported. In the **office of the high commission for human rights recommended principles and guidelines on human rights and human trafficking** also said that lack of specific and adequate legislation on human trafficking is the major obstacle on combating trafficking and further it is said that there is a need to provide adequate and effective definition, procedure, cooperation at national and regional level according to the international standards. Law plays an important role to combat crime and if the law itself is not adequate and specific than the crime will increase. Committee of 2013 said there is a complete lack of synergy among various laws dealing with trafficking.

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