

Trafficking Of Persons and Bonded Labour Overview: (INCLUDES LAW AND PROCEDURE, CASE ILLUSTRATIONS AND CASE LAWS)

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Synopsis:

This monograph is written from my perspective, where I support the cause to end sex trafficking and bonded labour in India and applaud the amendments made to the Indian Penal Code and other criminal laws by the Criminal Law Amendment Act, 2013, which will end legal impunity for most forms of trafficking and sexual violence against all citizens.

In this written detailed study, I have deliberately tried my best to edify and erudite what our country's legal system lacks, and what changes it has to enact for the eradication of these evils.

My apprehension was that a brief discussion of these more general, descriptive, theoretical, practical issues would provide some context for readers unfamiliar with the subject and bonded labour.

The topics and the subtopics which I have included in the article are listed in the index below:

Index:

A) Trafficking Of Persons:

- 1) Definition
- 2) The causes of human trafficking
- 3) The social cost of trafficking
- 4) The human rights dimension
- 5) Indian scenario
- 6) Legal framework
- 7) Case illustration

B) The Concept of Bonded Labour

- 1) Where and how big is the problem?
- 2) Why does bonded labour exist?
- 3) The legislation
- 4) Case illustrations

TRAFFICKING OF PERSONS:

1) DEFINITION:

The government of India's ministry of home affairs describes human trafficking as: ¹"The trafficking in human beings is a crime committed in order to target, lead or drive a human being into an exploitative situation with the aim to make profits. Such exploitation may take many forms, for example; commercial sexual exploitation, child labour, forced labour or illegal organ removal etc."

In other words, trafficking in persons can be defined as:

- The recruitment, transportation, harbouring or receipt of persons, by means of threat or using force or other forms or coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving payments or benefits to achieve the consent of

the person having control over other person, for the purpose of exploitation.

Furthermore, I take the liberty to expound on scope of the problem:

¹ India's ministry of home affairs

- About² two million persons are trafficked every year all over the world. People are trafficked for many purposes. Children are trafficked for camel jockeying, and to be child labours, or into brick factories.
- Human trafficking is certainly a big business. According to UN source traffickers of people make annual profit of 7 billion (USD)_ (INR=31,500 crores) in prostitution alone.

Generally speaking, almost every country in the world has trafficking problem. Countries can be roughly divided into:

- Origin: Speaking of which, countries of origin (usually the resource-poor countries or countries that are politically or economically unstable).
- Destination: Typically, the resource rich countries, where the demand is located.
- Transit: Countries along a traffic route, where traffickers have safe passage and harbour.

Some countries, such as India, Thailand and Nigeria are countries of origin, transit and destination.

2) The causes of human trafficking:

The causes of human trafficking are complex and often reinforce each other. Victims constitute the supply, and abusive employers or sexual exploiters represent the demand.

³For instance, there is unquenchable demand from Middle East for “virgin brides” from Hyderabad city. Often the media and newspapers show a 16-year-old bride being married off to a 70-year-old sheik.

What happens after marriage is anybody’s guess, goes without saying how many times she will be sold over, and again is something which is just not possible to know.

3) The social cost of trafficking

Victims of human trafficking pay a horrible price. Psychological and physical harm, including disease and stunted growth, often have permanent effects. In many cases the exploitation of trafficking victims is progressive: a child trafficked into one form of a labour maybe further abused in another.

4) The human rights dimension:

Fundamentally, trafficking in person violates the universal human right to life, liberty and freedom from slavery in all its forms.

Trafficking of children violates the inherent right of a child to grow up in a protective environment and the right to be free from all forms of abuse and exploitation.

5) Indian scenario:

India is an origin, transits and destination country for women, men, and children trafficked for the purposes of sexual and labour exploitation. Indian men and women are trafficked into situations of involuntary servitude in countries in Middle East and children may be forced to work as beggars and camel jockey’s.

- ⁴ Bangladeshi women and children are trafficked to India or trafficked through India en route to Pakistan and the Middle East for purposes of sexual exploitation, domestic servitude, and forced labour.
- Nepalese women and girls are trafficked to India for sexual exploitation, domestic servitude, and forced labour.

6) Legal framework:

The government of India being a signatory to the Convention to the Elimination of all forms of the decimation against Women (CEDAW) also brought about legislations resounding to article 16 dealing with family law and family life. In the well-known cases, *Vishal Jet v. union of India* and *Gaurav Jain v. union of India*, the Supreme Court called on the central and the state governments to set up an advisory committee on matters relating to child prostitution and to develop strategies for their rescue and rehabilitation.

a) The Immoral Traffic Prevention Act:

This Act does not prohibit prostitution per se. it penalizes commercial sex workers who are caught soliciting customers in public places whether by words or gestures or wilful exposure of a person. It is ironic that a sex worker can practice her profession inside a house but can’t solicit clients on streets. Another incongruity is that while minor girls are rounded up during raids and detained in homes, the pimps, brothel keepers, and clients go scot-free. They also manage to secure bail and continue running their business while blatantly exploiting the minor girls.

The Immoral Trafficking Prevention Act (ITPA) criminalizes the offenses of selling, procuring, and

² The anti-human trafficking unit survey

³ Deccan chronicle -

⁴ Source – AHTU Karnataka CID

exploiting any person for commercial sex as well as profiting from prostitution. However, section 8 of the ITPA also criminalizes the act of soliciting for prostitution, which has been used in the past to arrest and punish women and girls who are victims of trafficking.

b) The Juvenile Justice Act (care and protection of children of children) 2000:

The Juvenile Justice Act of 1986, amended in 2001, provides modest criminal penalties for sexual offences committed against minors, including the prostitution of children, but provides strong protection for child victims of trafficking through child Welfare Committees.

This act has elaborate provisions for the care and protection, education, vocational training, and rehabilitation.

c) The Child Labour Act (1986):

The Child Labour Act of 1986 has adequate provisions for the freeing and rehabilitation of children found in forced labour conditions, but carries provisions for criminal sentences of a maximum of only three years.

Similarly, the Abolition of Bonded Labour Act of 1976 provides adequate protection for victims of bonded labour but carries only a maximum sentence of three years' imprisonment.

7) A trafficked victim is therefore, a victim of multiplicity of crimes:

A victim who has fallen into the clutches of trafficking is a victim of many vicious crimes, extreme form of abuse and violation of human rights.

The constitution of India, under article 23 specifically prohibits trafficking in human beings. At present the legal regime to trafficking of women and children for commercial sexual exploitation includes the following.

- a. Indian Penal Code 1860
- b. ITPA-1956
- c. J.J. Act-2000.
- d. Special laws of various states.
- e. Rulings of Supreme Court and High Court.

8) Case Illustration: (names are not mentioned herein, to save the identity)

- ❖ ⁵ Young lady B comes from a remote village in India and did not receive much education. She worked in a garment factory supporting her family and a toddler son. One day on the way back from work she was lured into a car. They promised her a quick journey home, but she was kidnapped,

threatened and later sold to a brothel in another city.

She was rescued by the special police force and sent to the ashram.

Sisters of the home helped her to connect with her family in the remote village; her son is now 10 years old, her mother is old and ailing. Her family was willing to take her back, but she decided to first stand on her feet by earning some money.

A) The Concept of Bonded Labour

Bonded labour is the most widespread – yet the least known - form of slavery in the world. A person becomes a bonded labourer when their labour is demanded as a means of repayment for a loan. The person is then tricked or trapped into working for very little or no pay. The value of their work becomes invariably greater than the original sum of money borrowed. Often the debts are passed onto the next generations.

The term 'bonded labour' or '*bandhuamazdoor*' is of recent origin. Despite the abolition of the zamindari system, land reforms, *Bhoodan* movement, en-actment of legislation (Bonded Labour Abolition Act, 1976), establishment of *Panchayati Raj*, interest shown by Social Action Groups and spirited individuals from society, lakhs of bonded labourers continue to be exploited and carry the yoke of neglect, suffering and frustration in abject silence.

1) Where and how big is the problem?

Bonded labour has existed for hundreds of years. Debt bondage was used to trap indentured labourers into working on plantations in Africa, the Caribbean and South-East Asia, following the abolition of the Transatlantic Slave Trade.

- In South Asia it still flourishes in agriculture, brick kilns, mills and factories. In the Punjab region of India hundreds of thousands men, women and children are forced to work as bonded labourers in quarries and brick kilns where they receive little or no pay in return for a loan.

2) Why does bonded labour exist?

Bonded labour exists because of the persistence of poverty, widespread discrimination making large groups of people vulnerable to exploitation and the existence of people who are prepared to exploit the desperation of others. The need for cash for daily survival forces people to sell their labour in

⁵Andhra Pradesh police academy's DIGEST for professional policing

⁶Bandhuamuktimorcha vs union of India (1984) SCC 161, 206 ('bandhua')

exchange for a lump sum of money or a loan. In South East Asia bonded labour is rooted in the caste system and predominately affects Dalits (the lowest caste called 'Untouchables').

Despite the fact that bonded labour is illegal governments are rarely willing to enforce the law, or to ensure that those who profit from it are punished. Widespread discrimination against some social groups means they have limited access to justice, education and ways to get themselves out of poverty which is one of the main reasons the debt is taken in the first place.

3) The legislation:

The pernicious and inhuman, callous, reprehensible practice of bonded labour existed in many states in India. After independence, it could not be allowed to continue to blight national life any longer. As such, when the Constitution of India was framed, Article 23 was enshrined in it which prohibited 'traffic in human beings', 'beggar' and other similar forms of forced labour.

However, no serious effort was made to give effect to this Article and stamp out the shocking practice of bonded labour. The Forced Labour (Abolition) Convention adopted by the International Labour Organisation (ILO) in 1919 was ratified by India only in November 1954.

It was specifically laid down in most of these regulations (like those of Madras, Orissa, Bihar, and Hyderabad) that the agreement between the creditor and the debtor entered into after the commencement of the regulation was to be wholly void if:

- a) The full terms of the agreement were not expressed in writing and a copy thereof was not filed with the designated authority.
- b) The expressed and implied period of labour exceeded one year.
- c) The interest provided for was not simple interest over one year, and
- d) The interest exceeded 6.25 per cent per annum. But it was after the announcement of the 20-point programme on July 1, 1975 that the legislative exercise at the national level began with some amount of seriousness and urgency.

The ordinance was enacted in October 1975 which was later replaced by the Act passed in February 1976, called the Bonded Labour System (Abolition) Act. All the state laws became inoperative after the enactment of the Act by the union government in 1976.

The Act implies:

- (i) Identification of bonded labourers;

- (ii) Release of bonded labourers;
- (iii) Action against offenders, i.e., creditors who had forced agreement upon the debtors;
- (iv) Holding of regular meetings of Vigilance Committees at the district and Tehsil level;
- (v) Maintenance of the prescribed registers; and
- (vi) Conferring of judicial powers to Executive Magistrates.

The Act also provides for the rehabilitation of bonded labourers who are freed from their creditors. The 1976 Act was amended in 1985 in which it was clarified that the contract workers and inter-state migrant workers, if they fulfill the conditions laid down in the Bonded Labour System (Abolition) Act, will be considered as bonded labour.

4) Case illustration:

⁷MATHURA AND DOLAMANI BAGH

When I was 18 and my wife was 16 I took out a loan of 1500 rupees from a rich landlord in our village so that we could get married. To repay the loan we both had to do agricultural work on his farm for seven years. We started straight away and worked from 4am – 8pm every day, cutting grass, turning soil and doing whatever the landlord wanted us to do.

After five years someone from Anti-Slavery's partner in the country, Jan Jagriti Kendra (JJK -- People's Awareness Centre) came to our village to see if there was anyone there that was working in bonded labour.

We discussed our case with them, and they went and spoke to the landlord about us. The landlord was very angry so stopped providing us with grain, feeding it to his cows instead.

We decided to go on strike for three days and we chanted "those who work will eat, those who steal will go and a new age will come".

The landlords refused to the allegations and went to the police saying that they were causing trouble. Luckily, the authorities knew that this wasn't true and released them.

Since we were freed we have worked with Jan Jagriti Kendra – we want to unite people with JJK, because until they came to help we were alone, received no help and we suffered a lot.

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