



# Contextualizing Human Trafficking In India: A Critical Reflection

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## ARTICLE INFO

## ABSTRACT

Human Trafficking is one of the oldest forms of crime existing in current times. Humans have been victims of trafficking on various pretexts like labour, slavery, trade and so on. There have been various regulations put in place globally and in various countries to tackle the menace of human trafficking. There has been a trend of seeing human trafficking only in terms of prostitution thus restricting the efforts to deal with human trafficking per se prostitution only. Therefore, it is evident we find numerous laws and other measures which have constantly tackled the issue of prostitution as a form of human trafficking. However, with the advent of time a nuanced understanding of human trafficking was built wherein labour trafficking emerged as an increasing form of human trafficking. Thus, what we are currently witnessing is the reconceptualization of human trafficking by including new forms of labour trafficking within its ambit. This has further increased the scope of human trafficking by seen migration for labour as an interconnected web within the prism of trafficking. This paper tries to reflect upon the contextualisation of human trafficking in India and how it has been reshaped as a phenomenon over a period.

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## Introduction

Crime has been a part of human evolutionary history. It is very often reiterated that crime can be reduced but not eliminated. Therefore, having completely crime free societies is a misnomer. The problem of trafficking can be traced back to Greek city states where attempts were made by the city states to regulate, control and to limit certain sections of the society and certain kinds of activities, like, prostitution. The Greek State and following it, others regulated prostitution but despite the best efforts of State and social agencies, prostitution had retained itself in large towns for the last 2,500 years, proving its deep-rooted existence in human social life. Changes in the social, economic and moral fabric of the society had affected this institution as well. The abolitionist movement that set in at the end of the 19<sup>th</sup> century brought with it a system of State regulation of prostitution. It was spread of venereal diseases that the demand for its total abolition came to be heard. Apart from this, the inquiries conducted by various social organizations at the end of the 19<sup>th</sup> century revealed that women were more often than not forced into this and did not embrace it willingly as was the misconception hitherto. Since not all of the criminal acts required to carry out trafficking are undertaken in a single nation, it is an elusive crime. It involves luring girls from one nation under false pretences to another for complete exploitation. The UN's instruments are where the term "trafficking" was first understood. Around 1900, the phrase "traffic" was first used to describe the so-called "white slave trade" in women. European middleclass and government were particularly concerned about the trafficking and voluntary migration of white women from Europe to Arab and Eastern States as concubines or prostitutes. An international accord to end the "white slave trade" was established as a result in 1904. At this time, traffic meant the movement of women for immoral purposes. This concept originally called for the crossing of international borders, but by 1910, it had been modified to recognise the possibility of domestic trafficking in women. Women's trafficking was perceived as having ties to both slavery and prostitution. Globalisation had caused an enormous flow of individuals across national and international borders, both legally and illegally. Such movements revealed the permeability of borders, the international nature of migration, and the adhoc nature of the legal framework governing cross-border movements. Since ages, the idea of migration had given rise to many challenges, like, smuggling, slavery and trafficking. The distinction between issues of trafficking and migration had continuously blurred and cross-border movements were treated as an issue of trafficking. The rise of the practice for migration of people to work in foreign countries also possessed elements of nexus between migration and trafficking.

Human Trafficking was widely referred to as the “slavery of our times” or “modern day slavery” and was condemned in the early twentieth century almost by all developed nations but sadly, its presence had been haunting us even today. It was the fastest growing international crime second only to arms trade. It had now surpassed drugs trade purely because humans could be bought and sold many times over. International agreement on what constituted “trafficking in person” was of recent origin. In fact, it was not until the late 1990’s that states began the task of separating trafficking from other practices, like, migration.

In the last three decades, Asia has been a focal point for increasing and diverse international migrations. Many people migrate for a variety of reasons, including migration for permanent residence in traditional settlement countries such as the United States, Canada, Australia, and New Zealand; refugee migrations; forced migrations; temporary migrations of workers and the highly skilled; student migrations; and marriage migrations. Since the 1970s, the region has accounted for a sizable portion of international migration.

Asia hosts 53.3 million of the world’s 191 million international migrants, making it the second-largest region hosting international migrants after Europe, which hosts 64.1 million. Furthermore, Asia is home to 7.8 million of the world’s 13.5 million refugees. East and South-East Asia are frequently mentioned as trafficking hotspots, either as origin, transit, or destination locations. The illegal or clandestine nature of unauthorised migration and human trafficking makes it difficult to provide more precise or verifiable estimates. Among the debates and unanswered questions surrounding these phenomena, the institutionalisation of human rights violations experienced by unauthorised migrants and those trafficked provides a common ground for putting an end to these inhumane practises. When the scale or magnitude is large, the call to action becomes even more urgent. Since the 1980s, renewed international attention has been paid to the issue of trafficking in women for sexual exploitation (which later expanded into human trafficking for various purposes), resulting in a proliferation of anti-trafficking programmes and activities.

### Human Trafficking in India

Global Slavery Index indicates that more than eighteen million people in India are caught in modern-day slavery (Global Slavery Index, 2018). National Crime Record Bureau indicates that there were 8,312 reported cases of human trafficking across India in 2016. Most of the rescued victims reported being trafficked for purposes of forced labour followed by sexual exploitation for purposes of prostitution and other forms of sexual exploitation (National Crime Records Bureau, 2017).

The majority of trafficked persons in India, including men, women, boys and girls are trafficked for purposes of forced labour. While the bonded labour is formally abolished but a recent report found in the state of Tamil Nadu 351 of 743 spinning mills were using bonded labour schemes also known as *Sumangali*, in which young girls were subject to exploitative labour practices including restriction of movement, removal of mobile phones, withholding of wages and other payments in return for the prospect of lump sum of money (Theuws, Overeem, 2014). Such schemes appear to present opportunities to save for dowry payments but often result in trapping women and girls in situations of debt bondage. They work sixty hours per week round the year and cannot refuse to work because changing employers would mean losing all lump sum. Most often these women did not get their promised lump sum.

**Table 1: Victims rescued by type of purpose of trafficking.**

<b>Purpose</b>	<b>2016</b>	<b>(as %)</b>
Forced labour	10509	45.5
Prostitution	4980	21.5
Other forms of sexual exploitation	2590	11.5
Domestic servitude	412	1.8
Forced marriage	349	1.5
Petty crimes	212	0.9
Child pornography	162	0.7
Begging	71	0.3
Drug peddling	8	0
Removal of organs	2	0
Other reasons	3824	16.5
<b>Total Persons</b>	<b>23117</b>	<b>100</b>

Source: Human Trafficking, Crime in India, 2016, National Crime Records Bureau.

According to the National Crime Records Bureau, a total of 8,132 cases of human trafficking were reported in India in 2016 under the Indian Penal Code, 1860. This is 15% increase from the number of cases reported in the previous year. In the same year (2016), 23,117 trafficking victims were rescued. Of these, the highest number of persons were trafficked for forced labour (45.5%), followed by prostitution (21.5%).

India's failure to consistently recognize and punish labour trafficking as a form of human trafficking is consistently reflected in its legislations and policies. The constitution of India under article 23 (1) prohibits trafficking of human beings and forced labour but it doesn't define either term. Forced labour has also been penalised under Bonded Labour (System) Abolition Act, 1976 but the act has been found inadequate to provide any remedy to a person who has been trafficked and labour has been rendered. The Act does not allow for prosecution of traffickers, if the labour relationship does not constitute a "bonded labour system". Therefore, the act does not criminalise the trafficking of persons for forced labour- a form of trafficking proscribed by UN Trafficking Protocol.

Human trafficking for labour is the most invisible kind of trafficking. Its shackles and chains are not there but the bonds which are psychological are more powerful and invisible. It thrives on threats, coercion and deception. It preys upon vulnerability and abusive power dynamics. "In India where 62% of people are poor and 80% of India's poor live in rural areas. The low-income states such as Jharkhand, Rajasthan, Odisha, Uttar Pradesh, Bihar, Chhattisgarh and Madhya Pradesh continue to face poverty rates that are disproportionately higher than in other states. With 62 percent of India's poorer populations residing in these states" (The World Bank, 2016). Movement of people in the search of better economic and employment opportunities is a powerful incentive for people to migrate from lower to higher income states. The estimates from Ministry of Finance's and Economic Survey 2016-17 indicate an average flow of about nine million migrants internally between Indian states for the period of 2011-16. India also has a huge influx of labour migrants from neighbouring countries like Nepal and Bangladesh where open borders with India make it easy for Individuals with these nationalities to migrate.

The Constitution of India prohibits trafficking of human beings and forced labour. The Bonded Labour System (Abolition) Act, the Child Labour (Prohibition and Regulation) Act and the Juvenile Justice (Care and Protection of Children) Act penalize different forms of forced labour. The Immoral Traffic (Prevention) Act (hereafter referred to as the ITPA) criminalizes most forms of sex trafficking. The ITPA, however, also criminalizes some transactional aspects of voluntary sex work, for instance, solicitation. It, thus, ends up punishing both sex workers, who solicit sex work voluntarily, and sex trafficking victims who are coerced into doing so. The Criminal Law (Amendment) Act of 2013 was passed by Parliament in March 2013, amending Section 370 of the Indian Penal Code to align the definition of human trafficking with the UN Trafficking Protocol. This amendment substituted section 370 of the Indian Penal Code by sections 370 and 370(A). These amended sections provide: Section 370 (1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by - Firstly - using threats, or Secondly - using force, or any other form of coercion, or Thirdly - by abduction, or Fourthly - by practising fraud, or deception, or Fifthly - by abuse of power, or Sixthly - by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

In India, trafficking is primarily an offence under the Indian Penal Code, 1860. It defines trafficking as (i) recruitment, (ii) transportation, (iii) harbouring, (iv) transfer, or (v) receipt of a person for exploitation by use of certain forceful means. In addition, there are also other laws which regulate trafficking for specific purposes. For instance, the Immoral Traffic (Prevention) Act, 1986 deals with trafficking for the purpose of sexual exploitation. Similarly, the Bonded Labour Regulation Act, 1986 and Child Labour Regulation Act, 1986 deal with exploitation for bonded labour. Each of these laws operate independently, have their own enforcement machinery and prescribe penalties for offences related to trafficking.

### Conclusion

In Indian context trafficking for labour is emerging as a wider phenomenon engulfing almost all the states and there is cross country trafficking happening under various pretexts. It is interesting to note that still human trafficking is mostly seen as sexual trafficking particularly as prostitution, however we are now at least witnessing the data is pushing us towards the realisation that labour trafficking is a concern. It is high time that research involving human trafficking show consider these new data trends and show accordingly push their efforts in that direction. The intricate web of labour migration and human trafficking needs to be analysed more rigorously and thoroughly in the current times. The increasing migration within India is also a challenge to understand this web of human trafficking and migration in depth. The nuance realities and ways of trafficking as are being woven within the technology embedded mechanism are posing a challenge for law and policy makers to deal with the issue of trafficking. In India it is now right time to also reframe our laws within the prism of trafficking for labour and should develop a robust legal framework particularly tackling the issue of trafficking for labour. Indian legal framework is yet to develop the laws particularly considering labour trafficking as an issue of concern. Therefore, any effort in this direction is the need of hour.

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