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REVIEW ARTICLE

HUMAN TRAFFICKING: OVERVIEW AND LEGAL MEASURES FOR ITS PREVENTION IN INDIA

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ABSTRACT

Human trafficking is the trade in humans, most frequently for the function of Sexual Slavery, Forced Labor or for the extraction of organs or tissues. Each year millions of persons are trafficking both nationally and internationally in India. The weak legal landscape of developing countries such as India, supported by factors such as gender biasness, domestic violence and lack of access to education and economic prospects, provide existing and potential traffickers with sufficient available victims. Based on case studies and NGO interviews, the diversity of India's state and territories leads TIP to vary greatly based on the characteristics of a given region. NGOs indicated that trafficking was widespread in destination states because of high inflows of migrants, high demand for sex workers, generic gender/caste issues, a lack of community responsibility for social security and welfare, and the absence of a strong legal framework. No doubt government is trying to stop human trafficking in India and the constitution of India also provides a fundamental right which includes right to religion, right to speech, right against exploitation, right to education also. According to these rights every person has personal right to fight against trafficking and to stop trafficking in India but in modern society every person has money and guilty mind through which trafficking developing in India.

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INTRODUCTION

Human trafficking is the trade in humans, most frequently for the function of Sexual Slavery, Forced Labor or for the extraction of organs or tissues. Trafficking is a profitable industry, representing an estimated \$32 billion per year in worldwide trade, compared to the estimated annual \$650 billion for all unlawful international trade during 2010. According to the Protocol to Prevent, Suppress and Punish Trafficking in Persons Article 3 Paragraph (a) "Trafficking in persons" is "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 includes, at a minimum, 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."

According to UNODC¹ (United Nations Office on Drugs and Crime), trafficking in person is a serious felony and a grave violation of Human Rights. Every year, thousands of men, women and children fall into the hands of traffickers², in their own countries and abroad. Almost every country in the world is pretentious by trafficking, whether as a country of origin, transit or destination for victims. UNODC, as guardian of the United Nations Convention against Transnational Organized Crime (UNTOC) and the Protocols thereto, assists States in their efforts to put into practice the Protocol to Prevent, Suppress and Punish Trafficking in Persons (Trafficking in Persons Protocol). Trafficking does not subsist in isolation. It is connected to economic, political and social forces that increase the susceptibility and desperation of the poor, refugees and migrants, and women and children. Trafficking is one of the most horrific end results of economic and social disparities that increase the vulnerability of millions of people. Such vast disparity allows many within our societies to be considered little more than disposable commodities. Trafficking has been described as "the dark underbelly of globalization." It is one of the end outcome of rapid economic,

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¹ UNODC.(2009) Global Report on Trafficking in person

² Duggal-Chadha, A.(2006). "Children and Disasters (In Refugee Survey Quarterly)"

technological and social changes worldwide. Such rapid changes have created or exacerbated people's vulnerability and, at the same time, expanded the opportunities for predators to take advantage of that vulnerability.

Human trafficking in Indian scenario

Human trafficking has been defined as the commercial trade of human beings, who are subjected to instinctive acts such as begging, prostitution or forced labor. The United States (US)³ has placed India on the Tier-2 Watch List for human trafficking as India has failed to take effective measure in combating it. According to its report, India is a source, destination, and transit country for men, women, and children trafficked for the purposes of forced labor and commercial sexual exploitation. Men, women and children are all being trafficked. However, the most susceptible groups, those with inadequate rights or protections, have been the hardest hit. Unreasonably, trafficking affects poor women, children and members of disadvantaged minority groups.

Each year millions of persons are trafficking both nationally and internationally in India. Trafficking in Persons (TIP) a 9 billion USD Industry is estimated to be the fastest growing enterprise of the 21st century. This crime comes at an incalculable human cost and represents one of the most shameful facets of the modern world. Unsurprisingly, the majority of victims of human trafficking are women⁴ and children the most marginalized segments of society in developing countries. The weak legal landscape of developing countries such as India, supported by factors such as gender biasness, domestic violence and lack of access to education and economic prospects, provide existing and potential traffickers with sufficient available victims. Globalization and technology advancements have also resulted in an increasing number of men being trafficked, such as South Asians particularly Indians wishing to explore service opportunities in the Middle East who end up as workers.

The Asia Foundation (TAF) which has a presence in at least 21 countries in the region, implements a varied collection of women's empowerment programs designed to combat TIP in Asia. TAF recently stretched its operations to India and wishes to strengthen its presence by spearheading initiatives in the area of human trafficking. TAF recognizes that a one size fits all approach is now appropriate and wishes to address India's Human trafficking problem by employing original practices to tackle the root causes. In the long term TAF will contribute via policy work and on the ground programs to help eradicate human trafficking in India. This research involves the dynamics of TIP and examination of the current anti – TIP efforts by non – governmental organizations (NGOs) and the government, and suggests initiatives for TAF to employ in its anti – TIP programming in the coming years. According to the U.S. State Department report⁵, India is both a source and transit country for trafficking, as well as one of the most accepted trafficking destination is south Asia. It is estimated

that 10 percent of India Trafficking in persons is international while 90 percent is domestic a pattern that differs from the more common model of trafficking across international borders. Given India's size, trafficking tends to occur across state borders instead. Of the women and girls that are trafficked into India most come from Nepal, Bangladesh, Pakistan, Cambodia, and Burma. Many of the Indian women trafficked out of the country end up either in the Middle East for sexual exploitation or in Europe, the United States, or the Middle East as domestic and low skilled labor.

Nature of trafficking

The nature of trafficking differs across the various states within India. Trafficked persons are exploited in a wide variety of ways. These include use of victims for bonded labor, domestic work, agricultural labor, begging, organ trade, adoption, forced prostitution, entertainment, forced marriages, and child soldiers. While trafficking for any of these purposes can be found in many nations, Trafficking in persons (TIP) for labor and/or sexual exploitation is a widespread and serious problem in India. The Asia Foundation (TAF) has a number of anti-TIP programs in other Asian countries and recently expanded their operations to India. Based on case studies and NGO interviews, the diversity of India's state and territories leads TIP to vary greatly based on the characteristics of a given region. NGOs indicated that trafficking was widespread in destination states because of high inflows of migrants, high demand for sex workers, generic gender/caste issues, a lack of community responsibility for social security and welfare, and the absence of a strong legal framework. For transit areas, the main reasons cited were infrastructures and naturally, location between source and destination states.

The most prevalent sectors employing trafficked people in India are the following commercial sex work; bonded labor in different industrial and agricultural sectors; domestic work; entertainment sector (circuses, camel jockeying); and begging & other cartel-like exploitative activities although it receives insufficient attention in the literature, labor trafficking was identified by NGOs as just as much of a problem as sex trafficking.

Research initiatives and its results

The TAF tasked a research team at Stanford with undertaking a qualitative study on the dynamics of human trafficking in India, evaluating the current efforts of nongovernmental organizations for TAF to implement in the Indian anti-TIP effort. The research was conducted through a two-stage process. The first stage occupied reviewing available secondary information and data unfolding the dynamics of human trafficking in representative states. In addition the team identified recent interventions of NGOs, state governments, local bodies, and major multilateral organizations and conducted a preliminary review of the legal framework. The second stage involved interviewing NGO and donor organizations in India to understand their implementation hard less and identify best practices. The team also undertook a detailed analysis of the legal framework and further developed the literature review. At the conclusion of the process, based

³ US Department of State. (2009). "Trafficking in persons report: India"

⁴ Mukerjee. K.K. (2007) "Girls and Women in prostitution in India"

⁵ US Department of State. (2009). Trafficking in persons report: India

on the information from both stages, the team developed a range of policy alternative, ranked them against 14 selected criteria, and suggested recommendations for TAF. Coupled with the recommendations are implementation analyses and suggested organizations with which TAF should partner. India's trafficking patterns indicate that 90% of TIP is domestic (i.e. intrastate trafficking). With only 10% taking place across international borders. In addition to being a source for trafficking, India is also a destination and transit country.

There are both supply-side factors that are root causes of TIP. The supply-side factors leading to trafficking include: poverty; social and cultural practices such as gender discriminations; impacts of globalization on livelihoods; vulnerability of women and children to trafficking due to conflicts/disaster; and governance issues that make it easy for traffickers to get away with the crime. The demand-side factors include increased sex tourism in India's Major tourists destinations and economic booms that have led to increased demand for cheap labor (e.g. child labor and bonded labor) and consequently, increased levels of migrant workers who far from home and mostly male, have a demand for sex workers.

Impact of human trafficking

Trafficking has substantial social, economic, and health impacts⁶. From the social prism, extensive trafficking that goes unimpeded leads to a re-enforcing cycle of patriarchal values that impinge on the basic rights of women. From an economic perspective, it leads to loss of livelihoods as the labor remains outside the formal economy of India. From a health perspective, trafficking compounds the existing and massive HIV/AIDS problem that India already faces. Like the drug trade, human trafficking contributes to premature death and spread of HIV/AIDS.⁷ No doubt government is trying to stop human trafficking in India and the constitution of India also provides a fundamental right which includes right to religion, right to speech, right against exploitation, right to education also. According to these rights every person has personal right to fight against trafficking and to stop trafficking in India but in modern society every person has money and guilty mind through which trafficking developing in India

Legal framework in India⁸

The present Indian legal structure with respect to trafficking is severely blemished. While there are a large collection of statutes, existing international & Regional conventions, active institutes, and a defined legal process that is designed to ensure that TIP offenders be prosecuted and TIP victims are protected/compensated⁹, the legal framework is inundated by several weaknesses. These include mammoth levels of corruption, an overburdened judiciary/law enforcement sector, and poorly resourced protection services. While there exist many national Indian laws criminalizing the buyers, traffickers and profiteers of the trade, there fails to be a cohesive definition and understanding of 'trafficking' in human beings per se. however the biggest problem remains in the

implementation of the law. Where implemented, the penalties are not enough to deter trafficking or give adequate punishment. This is compounded by the existence of a plethora of national laws and acts, which lead to confusion among law enforcement and judicial officials. At the level of central government, there is a fragmentation of efforts because of a diversity of vested interest in TIP across several departments & Ministries. State governments have not utilized the provisions within the Immoral Trafficking Prevention Act (ITPA) to develop special courts for trafficking. Furthermore, the major thrust of their effort's (Limited in most cases) is towards prevention and protections, with only minimal support for prosecution. The absence of compensation schemes is another hindrance. The courts face two issues: first, they are generally stuffed with cases and thus trafficking cases often remain on the docket for years; secondly, they lack careful assessment towards trafficking cases and often prosecute and punish the victims, not the traffickers. Similarly, the police lack sensitivity and often do not prioritize trafficking as an offence, leading to a low rate of registration of such crimes. They often register the crime against the victim instead of the trafficker. Figures show that in the process of prosecution, one of the weakest links is the failure to get cases past the second level of scrutiny. This is where the magistrates determine whether or not the case is viable based on the evidence and arguments presented by the investigating police officer. This combines with limited police efforts to register cases appropriately, if at all, to make for a very disturbing legal backdrop to trafficking.

Government anti-trafficking interventions

Anti-trafficking interventions can be classified under preventions, protection (Including rehabilitation) prosecution, and capacity building. The main thrust of government programs is towards prevention, with some attention to protection and little attention to prosecution. NGOs have mixed views on the government initiatives. From the survey results, 50% feel that the government is making at least a reasonable effort to improve the anti-trafficking background, while a little under 50% were aware of extensive state interventions. However, these results should be treated with caution as the interviews were only conducted with organizations from nine states. The NGOs identified the following gaps in implementation of state initiatives: jurisdiction lack of political will and commitment, funding, coordination failures, low standards of shelter homes, poor legal framework, and poor infrastructure. However, India's central government has launched new programs such as the integrated Anti-Human trafficking Units (IAHTUs), Anti-disciplinary approach and inter – agency collaboration – aspects that were absent in previous government initiatives.

Non – governmental organizations' efforts

In light of the fact that the sample of states analyzed included predominantly source areas for trafficking. The NGOs profiled and interviewed in these states tend to pursue interventions in the categories of prevention and protection. Prosecution tender to be the least-attempted intervention, not just by NGOs and governments but also by donors, who mostly concentrate on capacity building. Many NGOs collaborate through networks,

⁶ Aronowitz, A. (2009). "Human Misery: The Global Trade Human Beings"

⁷ Shelley Louis. (2010). "Human Trafficking : A Global Perspective:

⁸ Nair P.M.(2007), "Hand Book for Law Enforcement Agencies in India"

⁹ Kant V, "Victim Compensation in India"

and an overwhelming majority cited that they partnered with government in some manner. When interventions fail, it tends to be because of poor coordination, low awareness, lack of an integrated plan that involves all the key stakeholders, and high levels of corruption/organized crime. Funding was identified as a major challenge for the NGOs followed by implementation of the law, lack of cooperation, coordination between NGOs and with government, and lack of human resources.

Conclusion

Taking into account all the results, the following interventions may be recommended for the removal of Human Trafficking:

- Coordinate new economic cooperatives or link existing cooperatives with the private sector
- Hold anti-trafficking festivals in rural areas
- Scale up NGO-led transit point interventions
- Create a registry of Anti-trafficking Individuals/ organizations.
- Support the government Anti-trafficking Nodal Office.
- Increase communicative capacity of the National Anti – Trafficking networks.
- Conduct monitoring and evaluation of the new 297 integrated anti-human trafficking units.
- Train prosecutors on post-conviction activities (e.g. compensation law, rehabilitation law
- Conduct in-field research on labor- trafficking
- Create training/sensitization programs for police & other prosecution stakeholders.

As inference we can say, while TIP in India is certainly an alarming problem, it is not insurmountable.

The dedication of India's government appears to be improving each year and the commitment of the NGO and donor community has not lessened despite facing several hurdles in fighting TIP. Without doubt, we can say that in near future meaningful and sustainable impact in combating TIP in India will be reflected.

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