

Human Trafficking and Vulnerable Group in SAARC Region- An Analysis

Dr. Stuti Deka¹

I. Introduction

Human Trafficking is a criminal offence or a crime against humanity. It is not a problem prevailing only in SAARC countries rather it is a global problem. The international community along with regional authorities have been trying to combat this social evil yet it is expanding immensely. The most common forms of human traffic in the SAARC region are sexual exploitation, force prostitution, servitude, force labour and other similar activities. The regional organization, South Asian Association for Regional Cooperation (SAARC) was established on 8th December 1985, initially with seven countries of late inserted Afghanistan in the year 2007. The objectives of it are to work on economic, social and cultural development of this region and ensure civil and political rights. It provides a platform for its people to work together in a spirit of friendship, trust and understanding. SAARC has been encouraging cooperation in diverse fields such as agriculture, rural development, science and technology, culture, health, population control, besides anti-terrorism thereby facilitating economic and social development among the member countries². This regional association has been formed almost three decades earlier, therefore it is pertinent to find out whether it has any common human rights mechanism to implement, monitor and regulate the human rights violation and thus control the sufferings of the vulnerable groups particularly human trafficking.

II. Human Rights Violation of Vulnerable Groups

Concept of human rights can be traced back to the philosophy of natural law school and the main philosophers of that schools Locke and Rousseau had explained the concept of natural law as human rights. According to Locke, “man is born “with a title to perfect freedom and an uncontrolled enjoyment of all the rights and privileges of the Law of Nature” and he has by nature a power to preserve his property --- that is, his life, liberty and estate, against the injuries and attempts of other men.”³ Thus, the

¹ Associate Professor. Department of Law, Gauhati University.

² Main objectives of the association as defined in Article 1 of the Charter.

³ Paton; Jurisprudence

concept of human rights represents right to life, liberty and property and an attempt to protect the individual from oppression and injustice. In modern times, it is widely accepted that the rights to life with dignity and right to liberty is the very essence of a free society and it must be safeguarded at all times. Trafficking is a serious type of human rights violation from the ancient time.

Since the dawn of civilization human being has been enjoying the human rights. But in this twenty first century with the advent of science and technology people enters in to the space age and globalisation. The whole universe becomes a global village. At the same time violation of human rights are become so rampant that people have to reassess whether they have become civilized or more uncivilized, cruel and inhuman. The frequent violation of human rights against women, children and more particularly the differently able person, aged person and sexual minorities are some vulnerable groups in every society.

Here in this article the issues of human trafficking would be discussed particularly in India, Bangladesh and other countries of the SAARC Regions in detail. Different legislations, policies, convention and protocol have been initiated by the national and international level to protect the vulnerable groups especially 'women and children', would be taken into consideration.

III. Human Trafficking

Trafficking is defined as a trade for illegal purpose. The concept of human trafficking refers to criminal practice of buying and selling of human beings like any other commodities for profit. The victims of trafficking are generally women and children and after being trafficked they are subjected to long term exploitation. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational organised Crime United Nations 2000, came into force in December 2003 defines the term 'trafficking in person' as follows:

- (a) "Trafficking in person" shall mean the recruitment, transportation, transfer, harbouring 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, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in sub Para graph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in person” even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) “Child” shall mean any person below eighteen years of age.

The definition is a very comprehensive one comprising all forms of human trafficking. It is evident from the definition that the ‘Trafficking in Person’ has three constituent elements, such as **the act**, i.e. recruitment, transportation, transfer, harbouring or receipt of persons; **the means** i.e. threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim. The last element is **the purpose** i.e. sexual exploitation, forced labour, slavery or similar practices and the removal of organs. According to recent survey women are bought and sold with impunity and trafficked to other countries from different parts of India. They are forced to work as sexual workers undergoing several exploitation and abuse. These women are the most vulnerable group in contracting HIV infection.⁴ Due to poverty, gender discrimination, illiteracy, lack of employment opportunity, lack of awareness and lack of good governance these women are easily trapped in trafficking. The position is same almost all the SAARC countries.

Trafficking both for commercial sexual exploitation or non commercial is a transnational and complex challenge for the world community. It is an organised criminal activity of extreme form of human rights violation and an issue of economic empowerment of women and social justice for all the vulnerable groups. Trafficking causes untold miseries as it violates the rights and dignity of the individual in several ways. It violates the individual’s right to life, dignity, security, privacy, health, education and redress of grievances. According to UNICEF reports, there are more than 650,000 child prostitutes in Asia, where the contribution of India is 20%.⁵ India is the main destination of ‘alarming flows’ of cross-border trafficking in South Asia⁶. From the ancient time women are used for prostitute and exploit them as they have no power against their oppressors. It

⁴ www.awadindia.org/social-issues/womwn trafficking in India acceded on 17.9.2014

⁵ Dr. Anjani Kant, Law Relating to Women and Children, Central Law Publications, Allahabad, 1st edn. 2003, pp. 163 (quoted from ‘Law and gender : A quest for Justice’ P.62)

⁶ *ibid*

is observed that human welfare activists are against the sex trade on the other hand the sex workers want it should be an accepted work. For the abolition of trafficking and prostitution all the SAARC countries should make a joint effort under the banner of United Nations directives.

IV. Women Exploitation in India

The status of women in India can be divided into three different periods—the ancient period, medieval period and modern period. During the ancient period or Vedic period women enjoyed high place in Indian society. Women were allowed to study Vedic literature and widows were permitted to marry in this period. During the medieval period the position of women were not so satisfactory. Some evils such as Child marriage, Sati, Purdah, and restriction on education for girl child were prevailing in our society. One major evil during this period was the custom of Devadasis. In this system girls were dedicated to temples in the name of Gods. The girls were known as ‘Devadasis’. It means servant of God and becomes religious prostitute. This Devdasi practice has been banned by the Prohibition of Dedication Act, 1982. It is pertinent to mention that ‘vesyas’ (prostitutes) were allowed in the society and were regulated by a code of conduct especially made for them. Thus, exploitation of women from the ancient India is very clear from the above incidents. Next comes the modern period, which can be divided into two periods such as pre-independence and post-independence. Various evils of the medieval period were abolished in the pre-independence period. Raja Rammohan Roy, a social reformer fought against the evil practice ‘Sati’. Accordingly with the initiative of the then Governor General Lord William Bentinck the Sati prevention Act, 1829 was enacted. Next widow Remarriage Act, 1856, and in the year 1929 the Child Marriage Restraint was passed. In the pre-independence period the women in India participated in the freedom movement under the leadership of Mahatma Gandhi. After independence the equal status of women has been ingrained in the Constitution and numerous legislations have been enacted to remove discrimination on the basis of sex.

V. Constitutional Provision of All SAARC Countries on Trafficking and Forced Labour

In the Constitution of India, a specific provision has been inserted by the framing fathers against trafficking and forced labour.⁷ The Article

⁷ Article 23 of the Constitution of India. “Prohibition of traffick in human beings and forced labour.— (1) Traffick in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.”

23(1) prohibits traffic in human beings, beggar and other similar forms of forced labour. The Article envisages legislation for the enforcement of this constitutional prohibition. In India, we have specific legislation regarding immoral traffic in women and girls and regarding bonded labour. The first legislation on trafficking was the Suppression of Immoral Traffic in Women and Girls Act, 1956. As per this Act, Trafficking mainly refers to transportation of girls and women by road or rail or other means of transport for monetary consideration of the person engaged in trafficking. The purpose of trafficking may be twofold: (a) flesh trade and (b) marriage. The nomenclature of the Act has been changed with effect from 26th January 1987 and now it stands as The Immoral traffic (Prevention) Act, 1956. In the Constitutions of all the SAARC countries slavery, forced labour or the like are prohibited⁸. Though the provisions for protection of human rights, such as trafficking and forced labour has been incorporated in the Constitutions of all the SAARC countries, the violation of human rights of the same nature as mentioned here are not reduced, but has been increasing alarmingly. Trafficking of children and engaged them in prostitution are the worst form of human rights violation.

⁸ **The Constitution of Afghanistan; Art. 49.-** Forced labor is forbidden. ... children shall not be subjected to forced labour.

The Constitution of the Kingdom of Bhutan; Art. 9(17). –The State shall endeavour to take appropriate measures to eliminate all forms of discrimination and exploitation against women including trafficking, prostitution, abuse, violence, harassment and intimidation at work in both public and private spheres.

The Constitution of the Peoples’ Republic of Bangladesh: Art. 34. – Prohibition of forced labour. (1) All forms of forced labour are prohibited and any contravention of the provision shall be an offence punishable in accordance with law.

The Constitution of the Republic of Maldives, 2008. Art. 25 (a). – No one shall be held in slavery or servitude, or be required to perform forced labour.

Interim Constitution of Nepal 2063 (2007) Art. 29. – Right against Exploitation: (1) Every person shall have the right against exploitation; (2) Exploitation on the basis of custom, tradition and convention or in any other manner is prohibited.

The Constitution of the Islamic Republic of Pakistan: Art.11. – Slavery, forced labour, etc., prohibited.

(1) Slavery is non-existent and forbidden and no law shall permit or facilitate its introduction into Pakistan in any form.

(2) All forms of forced labour and traffic in human beings are prohibited.

(3) No child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment.

The Constitution of the Republic of Sri Lanka: Art. 23. Freedom from forced labour: (1) A person shall not be required to perform forced labour.

VI. International Scenario on Trafficking

The international human rights system plays a central role in promoting the effective implementation of the international legal framework around trafficking. The United Nations Human Rights Council considers the issue of trafficking and, along with the General Assembly, regularly adopts resolutions on the subject. In the International level for the suppression of trafficking the United Nation Convention for Suppression of Traffic in Persons and of Exploitation of the Prostitution of Others, was approved by the General Assembly resolution 317 (iv) of 2nd December, 1949. The Government of India ratified the Convention in 1950. In pursuance of this Convention different nations have enacted their legislation for prohibiting trafficking and forced labour in their respective nations⁹. The United Nations Voluntary Trust Fund on Contemporary Forms of Slavery was established by the General Assembly in 1991 to provide humanitarian, legal aid financial aid to individuals who are victims of contemporary forms of slavery¹⁰.

VII. State Responsibilities to Combat Trafficking

It is very difficult to determine the responsibilities of the state to prevent or respond to trafficking. Sometimes the state may be reluctant to accept legal responsibility for trafficking and its concomitant violation of human rights. But states will be responsible for their own acts or omissions that breach their obligations under international law, including human rights law. The general principle is that state will not be able to avoid responsibility for the acts of private persons. It is responsibility of the state to take measures of prevention or response in accordance with the required standard, usually to be found in a treaty. The main obligations of state are, providing immediate protection and support, providing legal assistance, including temporary residence and not criminalizing the victims.¹¹ The government of Bangladesh prohibits trafficking of women and children for commercial purpose under the Repression of women and Children Act, 2000 (Amended in 2003). It prohibits the selling and buying of a child under the age of 18 years for prostitution. In Articles 372 and 373 of its Penal Code prescribed penalties under these sex trafficking statutes range from 10 years imprisonment to the death sentence. The most common sentence imposed on convicted sex traffickers is life imprisonment. These penalties are very stringent and commensurate with those as rape. Art. 374 of Bangladesh's Penal Code prohibits forced labour, but the prescribed penalties of imprisonment for up to one year or fine are not sufficiently stringent.¹²

⁹ Infra note 11. P.54

¹⁰ Infra note 11. P.57

¹¹ Human Rights and Human Trafficking. P.11 (Fact Sheet No. 36)

¹² "Bangladesh", Trafficking in Persons Report, 2010

VII.I. Immediate Protection and Support

The immediate and foremost obligation of the state is to ensure that the victim is protected from further exploitations. In most situations, reasonable protection from harm requires:

- Moving the trafficked person out of the place of exploitation to a place of safety;
- Attending to the immediate medical needs of the trafficked person;
- Assessing whether the trafficked person is under a particular risk of intimidation or retaliation.

The obligation to protect relates to victim but it may also extend to others such as informants, those giving testimony, those providing support services to the trafficked person and family members.

Another important aspect is right to privacy. Failure to protect privacy can increase the danger of intimidation etc. The key provisions relating to the right to privacy are as follows:

“There should be no public disclosure of the identity of trafficking victims and their privacy should be respected and protected to the extent possible, while taking into account the right of any accused person to a fair trial.”¹³

In Trafficking Protocol, Article 6 it is stated that “A State party is to protect the privacy and identity of victims of trafficking ‘in appropriate cases and to the extent possible under its domestic law’”.

VIII. South Asia and Human Trafficking

The United Nations Office on Drugs and Crime’s (UNODC) global report indicates that intra regional trafficking affects Nepal and Bangladesh as origins of trafficking victims and India as a destination country. The United Nations Department of State reports that Bangladeshi men and women willingly migrate to Middle Eastern and South Asian countries for work through recruiting agencies. The recruitment fees contribute to the placement of workers in debt bondage or forced labour once overseas. Bangladesh and India also experience domestic trafficking. The victims of trafficking in South Asia are mainly adult women and children of both sexes. It is reported that sexual exploitation is the most common form of trafficking. Domestic servitude and forced labour are also equally prominent in this region. According to the US Tip report, Afghan boys are trafficked

¹³ Recommended Principles and Guidelines, guideline 6 (quoted from Human Rights and Human Trafficking, p.14)

for paramilitary training camps by extremist groups. In Nepal and Pakistan, one of the major forms of human trafficking is bonded labour.

IX. Human Trafficking in India

In various multiple reports, it is pointed to India as a “source, destination and transit country”. The large population and the longest international border is the contributing factors of human trafficking in India. The number of borders India shares with its neighbours adds to the problem. China, Nepal, Bangladesh and Pakistan all have been identified as countries with a significant amount of human trafficking. Another important factor that contributes for trafficking is that many industries in India require manual labour.

At a briefing in Washington, D.C., Ambassador Mark P. Lagon, Senior Advisor on Trafficking in persons, was quoted saying, ‘ India has the world’s largest labour trafficking problem with hundreds of thousands of sex trafficking victims and millions of bonded labourers including forced child labourers. In India, there is no national anti-trafficking effort, no recognition of bonded labour on an official level, and poor efforts against sex trafficking. The world’s largest democracy has the world’s largest problem of human trafficking.’ The list comprised four consecutive years including 2007 and the reason given for this is that the Government of India has not recognised the countries huge labour problem. The Non- Governmental Organisations (NGO) estimate that between 20 million of 65 million bonded labours are held in India.¹⁴

X. Implementation, Monitoring and Accountability

To combat the vulnerability of trafficked persons the effective implementation of the international, regional and national laws are the most important aspect. The Trafficking Protocol does not establish a specific monitoring mechanism to oversee its implementation. The United Nations Convention against Transnational Organized Crime establishes a Conference of the Parties to the Convention, which has been empowered to request and receive information on state parties’ implementation of the protocol and to make recommendations to improve the Protocol and its implementation. In 2008 the Conference of the Parties set up a working group to assist and advise it in fulfilling its responsibilities with regard to the Protocol. That working group is mandated to:

- ❖ Facilitate implementation of the Protocol through the exchange of experience and practices between experts and practitioners;

¹⁴ Combating Human Trafficking in India:

- ❖ Make recommendations on how state parties can better implement the Protocol;
- ❖ Assist the Conference of the Parties in providing guidance to its secretariat (United Nations office on Drugs and Crime) on its activities relating to the implementation of the protocol; and
- ❖ Advise the Conference of the Parties on implementation-related cooperation with other bodies.

The international human rights system plays a central role in promoting the effective implementation of the international legal framework around trafficking. The United Nations Human Rights Council Considers the issue of trafficking and, along with the General Assembly, regularly adopts resolutions on the subject.

For each of the major international human rights treaties, a committee of independent experts has been established to monitor the implementation of its provisions by its State parties. Some of the treaty bodies perform additional functions aimed at strengthening the implementation of the treaties by their State parties, such as inquiries¹⁵.

XI. The Office of the United Nations High Commissioner for Human Rights (OHCHR)

OHCHR is involved in analysing the impact of migration laws, policies and programmes on the rights of migrants; assisting Governments and other national stakeholders in reinforcing their capacity to monitor, investigate and provide redress for violation of migrants' rights; and providing training to migration officials, law enforcement officers, parliamentarians, judges and lawyers, on identifying victims of trafficking and monitoring violation of migrants rights.

OHCHR is a member of the Inter-agency Coordination group against Trafficking in Person and has been instrumental in strengthening and transforming it from an information- sharing body to an inter-agency policymaking body. It is also a member of the Global Migration Group, comprised of 16 United Nations agencies and other international entities. OHCHR called on states to address the demand side of trafficking and exploitation and expressed continued commitment to anti-trafficking measures¹⁶

¹⁵ Supra note 12

¹⁶ Human Rights and Human Trafficking (Fact Sheet No.36) p.57

XII. The Global Plan of Action to Combat Trafficking

In 2010, the General assembly adopted the Global Plan of action to combat Trafficking in Persons. It focuses on preventing trafficking, prosecuting offenders and protecting victims and affirms many of the standards and rules. It does not directly contribute to strengthening monitoring and accountability mechanisms. It establishes the United Nations Voluntary Trust Fund for Victims of Trafficking in Persons, especially women and children, to provide humanitarian, legal and financial aid to victims of trafficking through governmental, intergovernmental and non-governmental organizations¹⁷.

XIII. Courts and tribunals

International and regional courts and tribunals are another important source of monitoring and accountability. Several ad hoc international criminal tribunals have occasionally considered trafficking related issues. The European Court of Human Rights has issued judgements in several cases that dealt with or touched on trafficking. Human rights issues relating to trafficking, such as slavery, forced labour and exploitation of migrant workers, have also been considered by regional courts¹⁸.

XIV. National Law for monitoring and accountability of Trafficking

In the final analysis it is observed that ultimately it is the national laws, procedures and practices will determine the nature of a state's response to trafficking. As recognized in the Recommended Principles and Guidelines, national mechanisms also have a critical role to play in monitoring the impact of anti-trafficking intervention as to ensure they do not interfere with or otherwise negatively affect established rights. A single national office, such as a rapporteur to oversee the national response to trafficking are setting up in different countries. In other countries, independent national human rights institutions, such as national human rights commissions have taken up the issue of trafficking. The commission has to conduct inquiries into the national situation, advising government agencies and assessing national responses that are seen to fall short of the State's international obligations.¹⁹

¹⁷ Supra Note 15 p.58

¹⁸ ibid p.58

¹⁹ ibid p.59

XV. Conclusion

Trafficking of women and children are very rampant in the SAARC region Particularly in India, Bangladesh and Nepal. Poverty, lack of education and awareness are the main reasons to trap the women and children by the traffickers. Numbers of non-governmental organisation have been working for child rights in these regions. They establish number of centres and help to create awareness among the women and children about the dangers of trafficking and similar crimes. Prevention of this type of heinous crime requires proper investigation, prosecution, conviction, addressing the demand effectively. This also involves proper care and protection of victims to ensure prevention of re-trafficking. To prevent re-trafficking, it is essential to rehabilitate the trafficked victim. The National Human Rights Commission's study has established the fact that a large number of rescued persons are re-trafficked .Improper and inadequate rehabilitation lead to lack of livelihood which makes these persons highly vulnerable and subjects of prey by traffickers. The various international and regional as well as national instruments are being incorporated to combat the problem of human trafficking but translating it into reality becomes very difficult because very few criminals are convicted and most victims are probably never identified. To combat trafficking is definitely difficult but not impossible, it is expected that if the SAARC countries jointly make an effort the result would be definitely would be positive and there would not be any victim of trafficking in this region.