

THE EVIL OF HUMAN TRAFFICKING OF TRIBALS IN INDIA: A SOCIO LEGAL ANALYSIS

*Shambhu Prasad Chakrabarty*¹

I. Introduction

Once the Europeans started their endeavor of colonization, the concept of slavery became popular. The inhabitants of their own lands became trespassers. The most important phase that actually existed during the process of discovery² is violation of tribal rights in all forms. The story of native rights violation has been particularly very high during this phase as has been depicted in various historical and philanthropic records across various common wealth countries.

Slavery was indiscriminately practiced all round the colonial countries and instances of bringing in slaves to European countries and to use them in various functioning was rampant. The categorization of the people in various classes was introduced during this period and the position of tribal and indigenous peoples degraded vastly. Their existence in many cases has been ignored and inhuman and deadly efforts were taken to conquer various tribal and aboriginal lands.

The fact remains that the use of tribals as slave started approximately five hundred years back.

Various instances of violent warfare emerged that even led to the destruction of clans and tribal communities including biological warfare.³ This process of exploitation is still continuing today with the advent of developmental and experimental projects in various tribal populated areas. The helpless tribals have very little to do than be victims in the hand of economically and technologically superior non tribals.

An Australian Aboriginal study named 'The First Australians',⁴ has identified that the British Army captured 'Bin Along', an aboriginal tribal

¹ Assistant Professor of Law, Amity Law School, Amity University Kolkata and Ph.D. Scholar, NBU. The author may be reached at shambhuprasadc@gmail.com

² The Doctrine of Discovery was formulated by John Marshall. The **Discovery doctrine** is a concept of public international law expounded by the United States Supreme Court in a series of decisions, most notably Johnson v. M'Intosh in 1823

³ Australian aboriginals have been allegedly killed by various biological warfare.

⁴ *First Australians* is an Australian historical documentary series produced over the course of 6 years and first aired in October 2008. The documentary is part of

from the coast of Australia. The primary object was to understand the culture and system of the aboriginals. However, it did not take long for the British people to identify that the tribals are not to be easily controlled. By one section of researcher it has been alleged that the failure of the efforts of the British to use the tribals to their advantage lead them to use biological war fare to eliminate any substantial resistance of the tribals.

This allegation was however protested by the British Historians. It was however not debated as to whether tribals have been taken to England for certain reasons. It was also found out that the major efforts of the British and other European countries failed to control tribals to their benefits barring a few exceptions. The doctrine of *res nullius* was also introduced to create an ownership over the land of the aboriginals and tribal areas. The process of deporting the Tribals from various parts of colonies, for varied reasons continued for the next few centuries. Majority ended up as bonded labour and slaves. They have been subjected to inhuman torture and extreme conditions and were rampantly sold as chattels. The process of human trafficking may be considered to be the new form of slavery and bonded labor. However, the majority of human trafficking is in furtherance of sexual exploitation of the tribal and indigenous peoples.⁵

II. International Legal Development Relating to Human Trafficking

Today, trafficking in human beings is a multi-billion-dollar form of international organized crime, constituting modern day slavery.⁶ According to Interpol, victims are recruited and trafficked between countries and regions using deception or coercion.⁷ They are stripped of their autonomy, freedom of movement and choice, and face various forms of physical and mental abuse.⁸

III.I. INTERPOL and Projects on combating Human Trafficking in SAARC Countries

The INTERPOL has also suggested very recently the need and importance of international co-operation to address the menace of human trafficking as it is not only a national crime but also a crime without any

a greater project that further consists of a hard-cover book, a community outreach program and a substantial website featuring over 200 mini-documentaries.

⁵ <https://www.coc.org/files/Women>

⁶ Trafficking in human being, Available at <https://www.interpol.int/Crime-areas/Trafficking-in-human-beings/Trafficking-in-human-beings> accessed on 14/12/2016 at 10.10 am

⁷ Ibid

⁸ Ibid

specific border.⁹ International collaboration however, not new to tackle the crime of human trafficking and success has also be achieved¹⁰ in this regard.¹¹ It has been found that international collaboration can really go a long way in combating human trafficking not only through INTERPOL but also in various projects in SAARC (South Asian Association of Regional Cooperation) countries. It shall be pertinent to state that the Indian legal system has necessary provisions in this regard in lieu of Section 166 A¹² and 166 B¹³ of the Code of Criminal Procedure, 1973.

⁹ Human Trafficking focus of INTERPOL conference, Available at <https://www.interpol.int/News-and-media/News/2016/N2016-137>, accessed on 14/12/2016 at 10:23 am

¹⁰ In June 2016 INTERPOL's Operation Intercops – Spartacus targeting human trafficking in South and Central America resulted in 134 arrests and the dismantling of at least seven organized crime networks. In Peru, actions targeting sexual exploitation and forced labour in the gold-mining industry rescued 190 women and 250 men, while police in Colombia dismantled a criminal network believed to have trafficked hundreds of women and girls from South America to China

¹¹ <http://www.un.org/press/en/2009/gashc3948.doc.htm>

¹² **166-A Cr.P.C. Letter of request to competent authority for investigation in a country or place outside India**

Notwithstanding anything contained in this Code if, in the course of an investigation into an offence, an application is made by the investigating officer or any officer superior in rank to the investigating officer that evidence may be available in a country or place outside India, any Criminal Court may issue a letter of request to a Court or an authority in that country or place competent to deal with such request to examine orally any person supposed to be acquainted with the facts and circumstances of the case and to record his statement made in the course of such examination and also to require such person or any other person to produce any document or thing which may be in his possession pertaining to the case and to forward all the evidence so taken or collected or the authenticated copies thereof or the thing so collected to the Court issuing such letter.

The letter of request shall be transmitted in such manner as the Central Government may specify in this behalf.

Every statement recorded or document or thing received under sub-section (1) shall be deemed to be the evidence collected during the course of investigation under this Chapter

¹³ **166-B- Cr.P.C. Letter of request from a country or place outside India to a Court or an authority for investigation in India**

Upon receipt of a letter of request from a Court or an authority in a country or place outside India competent to issue such letter in that country or place for the examination of any person or production of any document or thing in relation to an offence under investigation in that country or place, the Central Government may, if it thinks fit,

- i. Forward the same to the Chief Metropolitan Magistrate or Chief Judicial Magistrate or such Metropolitan Magistrate or Judicial Magistrate as he may

India through various agreements with other countries has with the passage of time collaborated to address trans-border crimes including human trafficking.¹⁴ The following table incorporates the list of 37 countries with which such agreement has been entered into and the year it was entered upon.

Mutual Legal Assistance Treaties

Sl. No.	Name of the Country	Year
1	Australia	2011
2	Azerbaijan	2013
3	Baharin	2005
4	Bangladesh	2011
5	Belarus	2006
6	Bosnia & Herzegovina	2010
7	Bulgaria	2008
8	Canada	1998
9	Ezypt	2009
10	France	2005
11	Hongkong	2009
12	Iran	2010
13	Indonesia	2011
14	Kazakhstan	2000
15	Kyrgyz Republic	2014
16	Kuwait	2007
17	Malasia	2012
18	Maritius	2006
19	Mexico	2009
20	Manglia	2004
21	Myanmar	2010
22	Rissia	2000
23	Singapore	2005
24	South Africa	2005

appoint in this behalf, who shall thereupon summon the person before him and record his statement or cause the document or thing to be produced ; or

ii. Send the letter to any police officer for investigation, who shall thereupon investigate into the offence in the same manner, as if the offence had been committed within India.

(2) All the evidence taken or collected under sub-section (1), or authenticated copies thereof or the thing so collected shall be, forwarded by the Magistrate or police officer, as the case may be, to the Central Government for transmission to the Court or the authority issuing the letter of request, in such manner as the Central Government may deem fit.

¹⁴ <https://indiankanoon.org/doc/445276/>

25	South Korea	2005
26	Spain	2007
27	Sri Lanka	2010
28	Switzerland	1989
29	Tajikistan	2003
30	Thailand	2004
31	Turkey	1993
32	Ukrain	2003
33	United Arab Emirates	2000
34	United Kingdom	1995
35	United States of America	2005
36	Uzbekistan	2001
37	Vietnam	2008

TABLE 1: MLAT signed by India with other foreign countries as per list provided by MHA¹⁵

It must however be noted that there are many other countries which must come under the umbrella of this agreement with India to play a pivotal role in resolving the human trafficking issues in the international level. Apart from the substantial part of the law lacunae is also there in the procedural laws. These procedural issues may be classified into two parts: a. Adherence to procedural law (and their inherent complications) of *lex loci* and b. political intent of the respective countries.

III. Human Trafficking: Scenario in India

It must be understood that one out of 10 victims of human trafficking in India is the subject matter of international trafficking issue.¹⁶ Human trafficking comprises of the following three¹⁷ types:

1. Trafficking for forced labor
2. Trafficking for Sexual exploitation and
3. Trafficking for the harvesting of tissue, cells and organs.

All these forms of trafficking in human being are found in cross border trafficking in India. On more than one occasion the government of India has warned that the menace of human trafficking is beyond borders

¹⁵ Available at <http://www.cbi.gov.in/interpol/invletterrogatory.php#assist> accessed on 14/12/2016

¹⁶ Sadika Hamid and others, "Human Trafficking in India: Dynamics, Current Efforts, and Intervention Opportunities for The Asia Foundation, available at <https://asiafoundation.org/resources/pdfs/StanfordHumanTraffickingIndiaFinalReport.pdf> accessed on 14/12/2016

¹⁷ Supra note 1

and has conducted special task force to protect the innocent victims from the clutches of these organized criminals which operate all throughout the world. The development of laws relating to human trafficking in the United Nations goes back to 1990s. UNODC has to a great extent worked in this field and has also made a marked difference in the development of laws relating to human trafficking. The UN has also played a pivotal role in the setting up of the laws in the Regional and National level on human trafficking.

There has been a lot of debate especially in the United States as to the claims that the state is making in relation to the aforesaid classification of human trafficking. The claims suggest that the majority of human trafficking takes place in furtherance of forced labor, however, the facts depicts a rather different picture. It has been found that the largest number of victims of human trafficking is moving straight towards the category of sexual exploitation. It is rather interesting to see the main reason as to how the perpetrators carry on the process of control over the victims. It has been found that in majority of the cases involving trans-border human trafficking, the following¹⁸ have been the main weapons of control:

- i) Debt – requiring the victim to pay off a debt.
- ii) Documents – taking the victim’s legal papers and documents.
- iii) Deportation – threatening to report the victim to immigration authorities.
- iv) Family – threatening to harm the victim’s friends and family.
- v) Drugs – providing the victim drugs to make him/her more compliant.
- vi) Abuse – abusing the victim physically and/or sexually.

In many a cases it has been found that the aforesaid factors may supplement or complement another. It must also be noted that the following list is not exhaustive. The aforesaid scenarios are vulnerable enough to put the necessary psychological pressure on the victim to follow the instructions of the criminals. The net of the perpetrators have benefitted them as the statistics evidently proves the contention that the economic strength of this industry has grown along with the increase of victims towards human trafficking. A lot many things are to be done by the organization of international players to curb this issue of human trafficking.

¹⁸ Human Trafficking: How to Get Help, available at <http://manhattanda.org/human-trafficking-0>, accessed on 15/12/2016

IV. Some Case Analysis of Trafficking of Tribals in India

The growing rate of human trafficking in India has been earmarked with massive human rights violation. Human life, human dignity has been compromised. Large scale abuse of such rights has been identified in the last decade where there has been a rise in human trafficking for prostitution in India. According to the recent reports of NCRB, 76% of human trafficking cases involve women and girls.¹⁹ With the growth of law enforcement mechanism and implementation, the traffickers have moved into remote areas where the enforcement mechanism has fallen short of expectation. The vulnerability of the tribal population of India has now become easy targets of the organized trafficking racket and these cases are coming out very frequently.²⁰

The tribals are common preys to the traffickers who lured them with better life than they are in. Techniques like providing jobs, good education, and marriage is very common in these areas.²¹

V. Some Actual Situations

In a recent case, an Assamese Girl of 23 was kidnapped and sold to a Jat Family in Haryana. She was forced to convert to Hinduism and get married to a Hindu boy. After almost one year of the incident, the girl, pregnant by over five months got access to a cell phone from where she contacted her parents. An intervention was sought from the police which with the help of Shakti Vahini, an NGO managed to rescue the girl.²² The trafficking of minor girls - the second-most prevalent trafficking crime - surged 14 times over the last decade and increased 65% in 2014, according to data released last year by the NCRB.²³ It has been found that, according to a CID report from Assam, over 5,000 children went missing between 2012 and 2015.²⁴

According to Rishikant of Shakti Vahini, "There is a growing demand for dark-skinned girls. Tribal girls are striking, and are trafficked

¹⁹ Shriya Mohan, "38.3% rise in human trafficking cases, great demand for tribal & Muslim girls" available at <http://www.catchnews.com/india-news/38-3-rise-in-human-trafficking-cases-great-demand-for-tribal-muslim-girls-1469878249.html/fullview> accessed on 19/12/2016 at 12 noon.

²⁰ Ibid

²¹ <http://www.voiceofgreaterassam.com/assam-emerges-as-hub-of-human-trafficking-in-india-most-victims-are-tribal/>

²² Ibid

²³ Ibid

²⁴ Ibid

when they are very young from Chhattisgarh and Jharkhand's villages."²⁵ He further quoted that, "The girls were promised labor in Uttar Pradesh, forced into flesh trade in Allahabad, told to keep the shame a secret back home, and were promptly sent back home every few months to meet their families."²⁶

In a recent revelation it was found that in Chhattisgarh, trafficking of tribal peoples is on a rise. For tribal families in Chhattisgarh and Jharkhand, to occasionally find one of their daughters missing is a familiar horror story. Two weeks ago, 32 young women were rescued in Allahabad. They were all from villages in the forests of Chhattisgarh; 18 of them were minors.²⁷ These girls hailed from Balod and Rajnandgaon. The previous group of girls was natives of Janjgir-Champa, Baloda Bazaar and Korba.²⁸ CID ADGP Rajeev Srivastava has told that, "Tribal girls from Chhattisgarh are subjected to all kinds of trafficking, but Operation Smile and our police teams' hard work to file FIR immediately after a person goes missing has been building pressure on traffickers. Now, leaving metros, they are rooting themselves in suburbs where the risk factor is low but the rates have gone high in rural pockets. We are strengthening our information network from panchayat level."

In another case a tribal girl was abducted and trafficked from Midnapore in West Bengal to Delhi. She was sold to a Brothel where she was tortured and abused vehemently. After a few months the girl broke out of the brothel, on her own, by physically breaking down a wall. The girl fell in love with a nice man and got married to him. Later they were blessed with two children. When the police called her for a court hearing recently, she didn't want to go. She simply did not want to recall the horror of her past life to a judiciary that hardly cared.²⁹

The problem with the execution and adjudication of these cases is primarily due to lack of knowledge and sensitivity of those working on it. Thus there is a direct impact on the conviction rate of these offences. "Most of the girls who are trafficked come from very remote areas. They have low self confidence and it is hard to get them to share their experiences. The inquiry officer who questions them in order to file an FIR asks such insensitive questions and is so shortsighted in his questioning that the entire process, the sequence of events, almost never gets recorded. Most FIRs will only reveal where a victim was found last. Trafficking has a complex

²⁵ Supra 1

²⁶ Ibid

²⁷ Supra Note 3

²⁸ Ibid

²⁹ Ibid

journey which, if traced accurately, can yield much higher convictions," he said.³⁰

Once the FIR is recorded, the victim has to face the harrowing experience of facing an insensitive public prosecutor. "The victim never has a strong lawyer. It is always the accused who has intimidating lawyers. Every effort is made in the questioning to break the confidence of the victim who has gathered all her guts to recall her journey," Rishikant explained.³¹ Rishikant explains that the biggest factor to blame for low conviction rates is an insensitive judiciary.³² Existence and growth of these problems could be seen from the following statistics. The number of registered human trafficking cases has increased by 38.3% over five years - from 2,848 in 2009 to 3,940 in 2013. The conviction rate for such cases has declined by 45% - from 1,279 in 2009 to 702 in 2013.³³

The main reasons for the grim situation in Assam and other similar tribal areas in India are as follows:

1. Floods
2. Militancy
3. Poverty
4. Lack of employment opportunities

Planned attacks on these peoples in these areas are very common and a large number of vulnerable people are becoming victims to these predators.

VI. Apex Court Judgments Relating to Tribal Trafficking in Remote Areas

The law relating to trafficking has gone a sea change in the last few decades due to the intervention of the judiciary. As a matter of fact, the Indian Judiciary has taken the fight against trafficking to the next level, and at times at par with that of the international standard. In many an occasion, it has been found that the apex court has given the necessary direction to the executive and also the legislative department. In furtherance of such direction, the legislature has also come out with certain legislations to deal with the third largest crime in the world.

There has been a plethora of cases that may be identified which has contributed to the fight against human trafficking. Especially in the last one decade the court has to a great extent changed the entire legal thought that was prevailing in India.

³⁰ Ibid

³¹ Ibid

³² Ibid

³³ Ibid

One of the interesting judgment that came up was the involvement of female judges in dealing with the trafficking related cases. The apex court also emphasized the need of sensitization amongst the male judges while dealing with issues like human trafficking.

In 2003, one of the important area in trafficking was identified by the apex court in *State of Maharashtra v. Dr Praful B Desai*³⁴.

In the case of *Shakila Abdul Gafar Khan v. Vasant Raghunath Dhabala*³⁵ the apex court has provided a very important direction to address the menace of human trafficking.

But it was *Sakshi v. Union of India*³⁶ which made specific direction to be adhered to in cases of human trafficking. The apex court has specifically stated to do the following in cases of Human Trafficking cases:

1. To carry on in camera proceedings to protect the dignity of the victim. In the case of *State of Maharashtra v. Dr. Praful B. Desai*³⁷ signified the need of adducing evidence by the mode of video conferencing as well.
2. Written Communication of the parties should be given rather than oral testimony.
3. There should be sufficient breaks during the trial proceeding to provide the time to the victim to gather courage and adequate legal help.
4. Adequate screen should be there so that the victim may not be identified by the accused as that may cause psychological effects on the victim.

In another landmark judgment the Supreme Court has deliberated the need of protection of the victims in human trafficking cases. The court in *Dharamanand Pant v. State of U.P*³⁸ observed that Section 273 allows the accused to challenge evidence, note the demeanor of the witness and confront witnesses making statements against him/her.

It is the case of *Sakshi* that has brought a sea change in the country. The post *Sakshi* development is really a revelation in the Indian legal system. In the case of *Sheba Abidi v. State of Delhi & Another*, the Supreme Court went a step further from the *Sakshi* judgement. The apex court noted that the child victim may be given the opportunity to give testimony outside

³⁴ (2003) 4 SCC 601, P 603

³⁵ (2003) 7 SCC 749

³⁶ (2004) 5 SCC 518

³⁷ (2003) SCC 601 P. 603

³⁸ AIR 1957 SC 594

the Court. The court also incorporated the opportunity to allow a support person to the victim who may also be a parent of the victim.

Importance of medical evidence has been one of the basis of decision making process amidst the judiciary. It has been identified that because of the inadequacy of such evidence a lot many cases could not be substantiated by the prosecution. In order to prevent such an impediment, the apex court in *State v. Dayal Sahu*³⁹ stated that, "...non exam by the doctors and other experts and non production of Medical Report would not be fatal to the prosecution case, if the other evidences are worthy of credence and inspires confidence". It has also been highlighted by the court in another case⁴⁰ that if the other side challenges the veracity of a medical certificate, the burden of proof lies upon the party producing it to prove the correctness of the statement made therein. In the absence of any challenge, it should be accepted as correct. In another case it has been held that medical certificates cannot be rejected simply because they are not printed simply because they are not printed on plain paper if an adequate explanation is given for why the proper form was not used⁴¹.

It shall also be relevant to mention in this regard that the manner by which evidence has been adduced has not been prioritised. The apex court has stated in the famous case of *Magraj Patodia v. R.K. Birla* that, "even when files containing correspondence against the accused may have been obtained by illegal means, they are still admissible as long as its genuineness and relevance was proven..."⁴²

The Supreme Court in another famous case has expressed its concern on the growing number of child missing in India. The apex court in *BBA v. UOI*⁴³ has stated that whenever a child goes missing it should be presumed to be a case of kidnapping or trafficking.

In the light of the aforesaid cases discussed, the following suggestions may be recommended:

- a. The methods to tackle this problem:
 - i. Conventional/Traditional methods and
 - ii. Alternative methods
- b. The alternative methods may include the following ways:
 - i. Closure of Brothels

³⁹ (2005) CrLJ 4375; AIR 2005, SC 3570

⁴⁰ *Navnital v. Hasmukhlal*, AIR 1988 Gujrat 34

⁴¹ *Ammini & others v. State of Kerala*, 1998 AIR (SC) 260; 1998 (104) CrLJ 481 (SC)

⁴² 1971 AIR (SC) 1295

⁴³ WP(C) No. 75/2012

- ii. Eviction of Offenders
 - iii. Sending the victims to various home etc.,
 - iv. Improve the process of rehabilitation of victims
 - v. Attachment and Forfeiture of Property under section 105D of the Code of Criminal Procedure, 1973
 - vi. Seizure of suspicious property
 - vii. Notification of address of previously convicted offenders. it has been introduced in Mexico who have been involved in various offences involving moral turpitude including human trafficking in their respective Passports.
- c. The report of National Legal Services Authority (NALSA) has substantiated the need of the following:
- i. Concepts and definition of trafficking
 - ii. Identification of strengths and gaps in legislation, schemes practices processes and existing protocols, including the judgments of the Apex Court of the country.
 - iii. Preparation of comprehensive protocols on prevention, pre-rescue, rescue, post-rescue and rehabilitation.

V. A Sum up

There has been a plethora of laws in India to counter the menace of human trafficking and its various facets. Efforts have been there by the legislators of our country to make more legal provisions to deal with this problem. India has come a long way from the days of being dependent on England and its practices for the good of its people with major reformatory measures to provide dignity to its citizens. It must also be mentioned that the international movement against human trafficking has also made a significant influence in the Indian legal scenario. However, a lot many things are yet to be done in the legislative form to make it happen in the grass root level. The major area of concern still today is the implementation of the existing law by the executive and administrative departments. Lack of co-ordination between various executive and administrative bodies and law enforcement department is also another area where improvement is needed. It must be understood that India must provide all the relevant things together to make a mechanism to counter the menace of human trafficking in India.