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Abstract

The crime of trafficking in persons needs to be understood as a serious crime and a grave human rights violation. Every year, thousands of men, women, and children fall into the hands of traffickers in either their own countries and/or abroad. As part of its commitment to combat human trafficking (HT), India has ratified various international conventions and enacted its own domestic frameworks. In addition, the efforts of the Government in terms of commitment to the international convention can be seen in terms of the establishment of Anti-trafficking Human Units post-2011. The draft bill of The Trafficking in Persons (Prevention, Care, and Rehabilitation) Bill, 2021, is still pending in parliament. In this context, a review of the existing efforts to combat trafficking in human beings is essential. The chapter highlights the existing discrepancies and evaluates the lacuna in policy implementation, based on secondary data. The chapter will also highlight the nature and magnitude of HT, along with vulnerability factors.

Keywords: human trafficking, slavery, human rights, vulnerabilities, India

1. Introduction

Trafficking in persons has been a concern to the international community as it results in profound violation of the human rights of its victims. Conceptually human trafficking includes “the criminal practice of exploitation of human beings where they are treated as commodities for profit and after being trafficked, are subject to long-term exploitation” [1]. Traffickers tend to interfere with the basic rights of victims, ranging from the right to make decisions, move freely or choose one’s employment to affect their life and individual dignity. The concern becomes graver as the extent of human rights violations to which victims of human trafficking are subjected are both unimaginable and unbelievable [2]. Global attention to the issue of trafficking was acknowledged with the adoption of the UN Convention for the Suppression of the Traffic in Persons and the Exploitation of Prostitution (1951), which remained the only convention for addressing the issue for almost a period of 50 years. Further, initiatives to combat trafficking in persons were followed by the anti-trafficking movement by Global North Feminist movements, the SAARC Convention on Prevention of Trafficking in Women and Children for Prostitution (2002), and

2. Understanding modern-day slavery

Historically, the crime of human trafficking has been associated with the trafficking of women and girls for prostitution. Evidence of this understanding can be seen as the first international instrument in which the word 'traffic' or 'trafficking' is used related to persons is the International Agreement for the Suppression of the White Slave Traffic (1904). In Western countries, human trafficking has been conceptualized and analyzed as a form of slavery, as many-a-time these terms are also used interchangeably. The evidence of a large number of victims for the purpose of sexual exploitation and the related human rights violation is what resulted in making the comparison between human trafficking and slavery.

The patterns of exploiting someone without their consent are the common factors that bring parallels between forced labour, child labour, bonded labour and slavery. Even though legally, slavery and human trafficking are different, there are certain common elements in them that make trafficking in persons to be considered as 'modern-day slavery'. For understanding the similarities of both, an analysis of both definitions is mandated. The Slavery Convention (1926) defines slavery as a "status or condition of a person over whom any or all of the powers attaching to the right of ownership is exercised" [3]. The phrase 'right of ownership' can be interpreted as 'the absolute control the owner has over what he/she owns', typically involving the ability to control a 'thing' that is being possessed or owned. In that sense, slavery provides the ability to the owner to control another person in the same way as controlling a thing that they possess [4]. The exercise of such control can be through threats of violence, coercion or deception, resulting in the deprivation of individual liberty to the slave [4]. In addition, the sense of possession provides for an ability to buy and sell.

The system of slavery attaches a right of ownership or possession, which could be understood as an ability to engage in transactions. That means the system of slavery also provides the master to use his/her slave as an object of the transaction. Another aspect of this ownership is the 'ability to use the slave' in a way where there is a determinant of control which is tantamount to ownership or possession. This 'use' indicates obtaining benefits, either monetary or any other gratification, from the services of the person. Another feature of use and possession is the ability to manage, directly and indirectly, the activities of the person by isolating them from their social relationships, forging a new identity for them, or compelling them to follow an alien religion, confine to a place of residence or marriage or a particular language. The power to transfer property or possession is another feature that is distinct from slavery. When considered as a property, it offers the right to the possessor to dispose of, mistreat and/or neglect the possessed. A feature that makes slavery distinct is the inability of the enslaved to establish that the person was enslaved.

The factors that are critical while drawing this similarity between trafficking in persons and slavery include elements of 'consent' and 'exploitation'. The United Nations (UN) Protocol to Prevent, Suppress and Punish Trafficking in Persons (2000) which is supplementary to the UN Convention against Transnational Organised Crime (2000), defined trafficking in persons under Article 3(a). According to this definition.
“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of a 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 [5].

From this definition, it can be understood that, similar to slavery, the people who are trafficked experience a sense of helplessness under the possession of the traffickers. According to the above-stated definition, there are three elements of trafficking in persons; (i) the action (which includes recruitment, transportation, transfer, harbouring or receipt of persons), (ii) the means to achieve the Act (threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability and the giving or receiving of payments or benefits to achieve consent of a person having control over another person); and (iii) the purpose of the intended action (i.e., exploitation). The victim’s consent is irrelevant in cases of trafficking in persons. The use of threat or force or coercion or deception to secure control over the person makes it similar to a slave system. The traffickers possess complete control and exploit the traffic, which could also be similar to that slavery. Further, the purpose for which people are trafficked includes various forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. Similarly, slaves were also used as manual labourers, for sexual exploitation, etc., which also draws parallels between both. In this context, post-nineteenth-century trafficking in persons could be equated to modern-day slavery [6]. The reality that human beings are obtained, sold and transferred for whatever purposes, which reduces their life to total misery, is what makes it similar to the slave trade [6].

3. Trends of human trafficking: a global scenario

Despite international efforts to combat it, a large number of people are trafficked around the world. Every year, thousands of men, women and children fall into the hands of human traffickers, either in their home countries or elsewhere. Technically, most countries around the world are dealing with this issue because they are either the origin, transit, or destination of victims [2].

The Global Report on Trafficking in Persons 2021 [7] provides a detailed picture of the trends and patterns in trafficking across the globe. Data indicates the highest level of trafficking in persons from Western and Southern Europe (approx. 11,800 cases) followed by Northern America (approx. 9300 cases), of which victimization of women and children shows an upward trend. In 2018, it was found that of every 10 people trafficked, about 5 were women and 2 were girls [7]. Children, both boys and girls, form one-third of the overall trafficked population, while 20% are adult males.

Examining the trend in the age and sex of victims in the past 15 years, it is found that (Figure 1) the number of adult women who are being trafficked is declining while the number of children is increasing rapidly to over 30%. Data also show that the number of boys who are rescued from traffickers is also increasing when compared to that of girls.
The 2018 United Nations Office on Drugs Crimes (UNODC) data reveal that 77% of women victims reported being trafficked for sexual exploitation, whereas 67% of men victims reported being trafficked for forced labour. However, this does not mean that men are not trafficked for sexual exploitation or women are not trafficked for forced labour. “When 14% of women are trafficked for the purpose of forced labour, 17% of men are trafficked for sexual exploitation, making it the second largest purpose for which both men and women are trafficked.” In the same way, 72% of girls are reported to be trafficked for sexual exploitation, while 66% of boys are trafficked for forced labour in 2018 [7]. The same pattern can be observed in the case of boys and girls, 21% of girls are trafficked for forced labour, while 23% of boys are trafficked for sexual exploitation. Globally, around 50% of the victims are trafficked for sexual exploitation, while 38% are trafficked for forced labour. Statistics since 2015 show that the share of persons trafficked for sexual exploitation is decreasing while other forms like forced labour, engaging the various types of criminal activities [7], begging, etc., are on the rise.

3.1 Trends of human trafficking in India: NCRB

The National Crime Records Bureau (NCRB) report demonstrates a huge drop in cases related to trafficking of persons in India in the last 5 years. The incidence of human-trafficking cases in India was 2848 in 2009, reaching around 8132 in 2016, dropping to 2189 in 2021. Can this drop be attributed to the anti-trafficking efforts in India? A report published in Reuters in 2019 attributed the fall in numbers, not to an increase in vigilance, but to the change in the mode of operations of the perpetrators who have learned to circumvent law enforcement officers [8]. Digvijay Kumar, a civil-society member from the Institute for Development Education and Action, states that “Traffickers have changed their mode of operating, discarding known routes and finding new ones... In many cases, the police are not registering cases under trafficking laws” [8]. The decrease in numbers could also be attributed to inaccuracy in the sources from which data is collected.

Based on the data provided by NCRB, Table 1 describes the trend of human trafficking in India from 2016 to 2021. As shown in the table, in the year 2016, the number
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The number of human-trafficking cases reported was 8132 and the number of cases reported in the year 2021 was 2189. Though the table shows a steady decline in the reported cases over the last 5 years in India, the number of cases has increased in the year 2021 as compared to 2020 with the addition of 475 new cases. Experts predicted that COVID-19 has limited the economic and livelihood options for people, which may make people more vulnerable to traffickers. However, the data for the year 2020 paints a different picture. This may be due to the unavailability of data for the year 2020.

Table 2 shows the disparity in numbers provided in the NCRB data and the actual figure presented in the Legislative Council in the State of Karnataka, India. Even the trend of trafficked victims provided similar results as presented in Table 3. This table has mapped the gender of victims trafficked in India to assess whether sex trafficking tops the Indian statistics, similar to the global figures.

It is not at all surprising to see that each year, more female victims are trafficked as compared to male victims as "sexual exploitation for prostitution" comes out as one of the major purposes of trafficking for all the years (Table 3). As presented in Table 3, in the last 5 years, the number of trafficked victims is more for the purposes of forced labour, sexual exploitation for prostitution and "other reasons." Though it is not clear what constitutes "other reasons," the number of victims trafficked for other reasons is higher as compared to victims trafficked for domestic servitude, forced crimes, petty
21st Century Slavery - The Various Forms of Human Enslavement in Today's World

crimes and others. Out of the total victims (6533) trafficked in the year 2021, 44% (2704) are trafficked for the purpose of forced labour, 33% (2049) are trafficked for the purpose of sexual exploitation and prostitution, and 12% (753) are trafficked for other reasons.

4. Factors contributing to trafficking

Factors contributing to trafficking in person are complex and vary from country to country. Although there is a tendency to attribute the causal factors to the economy, global figures show that this crime occurs both in developed and underdeveloped nations. However, the vulnerability of people in developing countries is much higher [9]. Generally, trafficking occurs from countries that are economically, politically and environmentally weaker to those where the relative quality of life is better. Literature on this crime identifies certain specific factors that contribute to trafficking, including poverty and unemployment, globalization of economy, feminization of poverty and migration, non-inclusive development strategies, armed conflict situation, gender discrimination, law and policies on migrant labour and migration, law and policies on prostitution, corruption, cultural and religious practices, etc. [10]. Many other studies also suggest that economic factors can add to susceptibility to trafficking in persons [11–14]. The 2018 report also shows that recruitment of the victims is characterized by demand for economic resources and basic survival needs, including food, shelter, and healthcare [7].

People who are subjected to trafficking get exploited in an ample way at the hands of traffickers. Many-a-times, the nature of exploitation cannot be classified under straight categories. A victim could be subjected to multiple kinds of exploitation. The NCRB data also captures the purpose for which persons are trafficked.

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### Table 3.
Victims trafficked in India from 2016 to 2021 by Gender.

<table>
<thead>
<tr>
<th>Year</th>
<th>Total</th>
<th>Male</th>
<th>Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016</td>
<td>15,379</td>
<td>5229</td>
<td>10,150</td>
</tr>
<tr>
<td>2017</td>
<td>9900</td>
<td>2362</td>
<td>3538</td>
</tr>
<tr>
<td>2018</td>
<td>5788</td>
<td>2069</td>
<td>3719</td>
</tr>
<tr>
<td>2019</td>
<td>6616</td>
<td>2537</td>
<td>4079</td>
</tr>
<tr>
<td>2020</td>
<td>4709</td>
<td>1912</td>
<td>2797</td>
</tr>
<tr>
<td>2021</td>
<td>6533</td>
<td>2471</td>
<td>4062</td>
</tr>
</tbody>
</table>

constitutes “other reasons,” the number of victims trafficked for other reasons is higher than victims trafficked for domestic servitude, forced crimes, petty crimes and others. Similar results can be seen for the year 2021, as represented in Figure 1. Out of the total victims (6533) trafficked in the year 2021, 44% (2704) are trafficked for the purpose of forced labour, 33% (2049) are trafficked for the purpose of sexual exploitation and prostitution, and 12% (753) are trafficked for other reasons.

Figure 2 demonstrates that forced labour constitutes India’s largest trafficking problem [15]. Traffickers use debt-based coercion (bonded labour) to compel men, women, and children to work in agriculture, brick kilns, rice mills, embroidery and textile factories, and stone quarries. Traffickers often target those from the most disadvantaged social strata. The traffickers lure the victims with better life facilities by way of moving to cities that provide employment opportunities. As reported by Gouri Lankesh News Desk (2020) [16], eight Adivasi women were trafficked from Jharkhand to Bengaluru via Delhi in September-October 2019 with the promise of

Table 4.
Purpose of human trafficking from 2016 to 2021.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Forced labour</td>
<td>2704</td>
<td>1425</td>
<td>1141</td>
<td>1046</td>
<td>1657</td>
<td>10,509</td>
</tr>
<tr>
<td>Sexual exploitation for prostitution</td>
<td>2049</td>
<td>1466</td>
<td>2080</td>
<td>1922</td>
<td>1257</td>
<td>4980</td>
</tr>
<tr>
<td>Other forms of sexual exploitation</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2590</td>
</tr>
<tr>
<td>Domestic servitude</td>
<td>475</td>
<td>846</td>
<td>364</td>
<td>143</td>
<td>1113</td>
<td>412</td>
</tr>
<tr>
<td>Forced marriage</td>
<td>182</td>
<td>187</td>
<td>227</td>
<td>220</td>
<td>240</td>
<td>349</td>
</tr>
<tr>
<td>Petty crimes</td>
<td>32</td>
<td>11</td>
<td>13</td>
<td>7</td>
<td>9</td>
<td>212</td>
</tr>
<tr>
<td>Child pornography</td>
<td>5</td>
<td>14</td>
<td>0</td>
<td>154</td>
<td>0</td>
<td>162</td>
</tr>
<tr>
<td>Begging</td>
<td>7</td>
<td>10</td>
<td>68</td>
<td>21</td>
<td>358</td>
<td>71</td>
</tr>
<tr>
<td>Drug peddling</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>8</td>
</tr>
<tr>
<td>Removal of organs</td>
<td>6</td>
<td>0</td>
<td>4</td>
<td>6</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Other reasons</td>
<td>753</td>
<td>694</td>
<td>2674</td>
<td>1745</td>
<td>2137</td>
<td>3824</td>
</tr>
</tbody>
</table>

a job in an incense factory with monthly wages ranging from 7000 to 9000 rupees. However, after joining the factory, they were made to work 15 hours a day. In their attempt to escape from the factory, their Aadhar cards were snatched away from them and were reported to have been raped repeatedly in the same factory premises. Until October 2020, when they finally escaped from the factory, they were only paid Rs 200 per week with only two meals a day.

Some traffickers lure poor parents to sell their children to provide their children with a better future. In a case reported by Indian Express (2021) [17], Bengaluru police arrested an interstate infant trafficking gang and rescued 15 children. As reported by Bengaluru police, the gang had sold 28 infants for an amount ranging from 3 lakh to 20 lakh rupees. The traffickers would take children as old as 10 days to 1 month from poor parents and sell them to childless couples. In some cases, they would promise couples to get babies cheaply through surrogacy and collect sperm and later return after 10 months with a baby, sometimes with fake medical records of a surrogate mother. As the surrogacy procedure costs somewhere between Rs 15–20 lakh, many childless couples were lured by the gang's offer of a baby at a cheaper cost.

In India, traffickers exploit millions of women and children for sexual exploitation. An 11-year-old girl from AP was trafficked and sold to a brothel in Pune where she was repeatedly raped, starved, and injected with oestrogen and finally died of full-blown AIDS [18]. These women, weakened by starvation and ignorance, are easy prey for predators who transport them to cities where they are exploited.

Another girl Nadira, 22 years old from Mumbai narrates a similar experience to the police as reported in Deccan Chronicle (2018) [18],

“I lived with an ‘aunty’ in Mumbai. She was very abusive. I ran away from her home and landed in a government home. I escaped from there also after a boy I met on Facebook promised to get me a job in Bengaluru. He even bought my flight tickets. Here, I was received by some men, who were his agents. They took me to a PG accommodation in R.T. Nagar, which was full of young girls. All of them worked in dance bars in and around Majestic area. They were trafficked like me.”

Traffickers target Indian women and girls but also fraudulently recruit significant numbers of Nepali and Bangladeshi women and girls to India for sex trafficking. In a case reported by a Bangalore-based NGO, a Bangladeshi couple, aged 17 (husband) and 18 (wife) years old, was brought to India on November 29, 2021. After reaching Bangalore, they realized they were trapped in the name of a Shopping Mall job. They were beaten badly and were subject to several types of exploitation. The girl was desperately trying to contact Bangladeshi authorities to be rescued, not knowing a single word of Hindi, English and Kannada when she was finally rescued by the NGO [19].

Another purpose of human trafficking in India is domestic servitude. As reported by photojournalist Smita Sharma (The New York Times, 2017) [20], girls as young as 10 years are trafficked for domestic servitude. Those girls who are not in demand in the sex industry due to their skin color and body (e.g., too dark and skinny) are sold as domestic slaves. They were kidnapped, sold to placement agencies and then put in houses for domestic work. In a similar case,

"a mother of three who was a victim of domestic violence went to her mother for safety. But her mother couldn’t take her in. That’s when a man promised her a good job in the city. Instead, she was sold into servitude and placed in a house. It took a
year before the woman broke down and told her employers how she had ended up in their home” narrates Smita Sharma.

Personal circumstances like low levels of literacy, awareness and lack of information can also make individuals vulnerable to trafficking. Women and children with disability are more vulnerable and become easy targets. Fragile or dysfunctional family relationships, marital discord, experiences of physical and sexual abuse, gender discrimination, family pressures, desertion by husbands, etc., make women more vulnerable than their counterparts. Studies also reveal that unmarried, divorced, separated or widowed women are more vulnerable than married women. Other structural factors that influence trafficking in persons include industrialization, globalization, urbanization, economic crisis, privatization and liberalization, policies to promote tourism, commercialization, loss of traditional livelihood and inflation, etc. [2]. Further inadequate or faulty laws, poor enforcement of laws, minimal chances of prosecution and ineffective penal policies, the nominal probability for prosecution, high levels of corruption, less awareness, debates on the gravity of the matter and a lack of legislative will to develop and implement policies towards protection to victims also facilitate the crime [2].

The Global Report on Trafficking in Persons [7] states that even though the crime of trafficking is found in most countries in the world, it tends to remain hidden with perpetrators operating in a highly sophisticated manner exploiting the loopholes in the cyber laws and the disparities in the global economic distribution. It is to be acknowledged that even though spread across the globe, this crime remains hidden as the perpetrators operate in a highly secretive manner hiding deep beneath the economy and exploiting the vulnerabilities of the victims. Literature also suggests that victims of trafficking undergo a range of human rights violations [21] both at the hands of the perpetrators of trafficking in persons and the criminal justice system, although the nature of victimization varies [22], and hence this crime becomes a grave concern.

5. Legal framework to curb trafficking in persons in India

While India ratified the Protocol [5] in 2011 and has anti-trafficking legislation, enforcement of this legislation is inadequate. This is not a situation limited to India. Among the 132 countries that have ratified the Convention, 15% did not record any conviction and 40% had less than 10 convictions for the offense of trafficking in persons between 2010 and 2012 [15]. The report of 2016 also shows a similar trend [23]. The number of convictions in India for this crime during the past 5 years is not also that great (refer to Table 2 for conviction rate). This calls for an evaluation of the existing legal framework to address the trafficking of persons in India.

The supreme legislation governing citizens’ rights in India is the Constitution of India, which has recognized the need for preventing trafficking in persons under Article 23, Article 39(e), and Article 39(f). Article 23 forms part of the scheme against exploitation under the Indian Constitution. Although initially conceived as a provision to abolish slavery, after multiple deliberations, Article 23 was drafted to include the prevention of beggars, traffic in human beings and bonded/forced labour. Article 23 (1) reads: “Traffic in human beings and the 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” [24].
The judicial intervention has resulted in expanding the provision to be applicable for the prevention of unpaid and underpaid work, forced labour, bonded labour, and compulsory services, in addition to trafficking in persons and bonded labour contacts [25–29]. Under Article 39(e), the state is obliged to have policies aimed at social welfare, including policies for preventing the abuse of any citizen who is ‘forced’ by their circumstances, for example, economic necessities, to enter any occupation that are unsuitable. The data presented under ‘factors contributing to trafficking in persons’ shows economic factors as a major determinant (refer to page 6, para 3). Article 39 (f) ensures the equal opportunity rights of individuals to develop in a healthy manner under conditions of freedom and dignity with a guarantee to protect children and youth from exploitation.

Until the amendment to Indian Penal Code (IPC) in 2013 [30], the only anti-trafficking legislation in India was the Immoral Trafficking Prevention Act (ITPA), 1956 [31], in pursuance to the obligation under Article 23 of the Indian Constitution. This covers a few elements of trafficking, including procurement, inducing or taking a person for prostitution (Sec 5), detaining a person (Sec 6), and seducing or soliciting for the purpose of prostitution (Sec 8). Under this legislation, the authority for issuing directives for the rescue is a Magistrate (Sec 11), the procedure for search and interrogation (Sec 12), etc. In addition, provisions in the IPC, such as 363A, 366A, 366B, and 370 (before 2013 amendment) [32], also comprised the framework for combating trafficking in persons (Table 5).

The ITPA, initially drafted in 1956, is heavily impacted by the broader understanding that the crime of trafficking in persons is linked with the procuring women and girls for the purpose of prostitution. Although named as the central legislation to combat trafficking in persons in India, its scope is limited to prostitution or commercial sexual exploitation and penalizes all those who facilitate and abet this crime, including clients and those who live off the earnings of prostitution [33]. Analyzing this legislative piece from the lens of trafficking in persons, it is widely criticized for its conceptual loopholes and definitional inconsistencies [33]. Even though the word ‘traffic’ exists in the title of the legislation, it does not define the term ‘traffic’ or ‘trafficking,’ nor does it define ‘commercial sexual exploitation.’ This lack of definition creates confusions on the nature of the offense under this legislation; namely, is engaging in prostitution an offense or trafficking for the purpose of prostitution an offense. This ambiguity has also resulted in confusions while implementing the legislation, say law enforcement officers invoking ITPA instead of the provisions

<table>
<thead>
<tr>
<th>Offense</th>
<th>Punishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trafficking of person</td>
<td>7–10 years + fine</td>
</tr>
<tr>
<td>Trafficking of more than one person</td>
<td>10 years to life + fine</td>
</tr>
<tr>
<td>Trafficking of minor</td>
<td>10 years to life + fine</td>
</tr>
<tr>
<td>Trafficking of more than one minor</td>
<td>14 years to life + fine</td>
</tr>
<tr>
<td>Person convicted of offense of trafficking of minor on more than one occasion</td>
<td>Imprisonment for natural-life + fine</td>
</tr>
<tr>
<td>Public servant or a police officer involved in trafficking of minor</td>
<td>Imprisonment for natural-life + fine</td>
</tr>
</tbody>
</table>

Source: Sec 370, IPC.
under IPC. Another issue with this legislation is that it assumes that prostitution takes place in brothels. This completely undermines the fact that sexual exploitation can also occur in private premises, like hotels, residences, clubs, mobile locations, etc.

Treating victims of trafficking as offenders and hosting them in corrective homes also raises concerns. It is to be noted that the same person cannot be a victim and an offender at the same time. Considering them as both victims and offenders at the same time exhibit the contradiction in the attitude towards prostitution and prostitutes in our country. While sex work is not an offense in India, all those who sell their bodies for a living are considered as offenders under the ITPA. Further, the use of the term ‘corrective home’ is also considered ambiguous as victims of trafficking who are forced into brothels need not be corrected. Another flaw of the legislation is that it does not bring it to its ambit socio-religious practices like the devadasi system. Further rights of victims, including psycho-social rehabilitation and health and educational support are also absent in this legislation. Another drawback of this legislation is the lack of witness support mechanisms.

The penal policies under this legislation also require scrutiny. For example, the punishment awarded to those who visit the brothel could be revisited as not all visits to the brothel involve trafficked persons. The Standing Committee report (2006) describes incidences of widespread misuse of Sec 8, which carries a punishment for solicitation, resulting in the harassment and punishment of women involved in sex work/victims rather than the perpetrators [34].

The Indian Penal Code also provides a framework to define trafficking in persons and penalize the same. In furtherance to the ratification of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons [5], the Criminal Law Amendment (2013) subbed the existing section of 370 with Sec 370 and Sec 370A [30]. This came as a response to the proposal of The Report of the Committee on Amendments to Criminal Law who proposed a definition for trafficking, which again did not distinguish trafficking from voluntary sex work [35]. This faulty assumption defined ‘exploitation’ to include both voluntary and non-voluntary prostitution [36]. The responses from various civil-society organizations resulted in defining trafficking without conflating it with prostitution. With the amendment, Sec 370 is now expanded to include slavery, trafficking in persons for the purposes of forced/bonded labour, sexual exploitation, organ transplantation and even child marriages. Sec 370 currently reads as follows:

“whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by

i. using threats, or

ii. using force, or any other form of coercion, or

iii. by abduction, or

iv. by practicing fraud, or deception, or by abuse of power, or

v. 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, harbored, transferred or received, commits the offense of trafficking. The explanation for this includes expressions of slavery, practices
similar to slavery, servitude, forced labour or services, forced removal of organs, etc. constitute the crime of trafficking [32]. The punishment under this section could be summarized as follows:

“Sec 370A provides punishment for exploitation of trafficked person, a snapshot of which is provided in Table 6.”

Although the definition of trafficking provided under Sec 370 is very much like that provided in the Trafficking Protocol, it omits two key elements: ‘an abuse of a position of vulnerability’ and ‘forced labour’. This omission raises challenges in terms of failing to cover economic or social vulnerabilities. Although ‘forced labour and services’ existed in the Ordinance [36], it was omitted in the Act. This omission has further resulted in limiting the scope of the legislation to prostitution while overlooking those performed in households, construction sites, mills, kilns, factories, farms, etc. [37]. A study conducted between 2013 and 2018, assessing the cases registered under Sec 370 shows that many of the cases are related to sex work, with a minority of cases which dealt with exploitation of workers and migrants. This study also observes that the Appellate Court judges have been concerned with the procedural aspect under Sec 370 rather than expanding the substantial aspect of this legislation [37]. They also observed that Sec 370 is also used as an additional charge in other criminal law cases, for, e.g., cases where a wife left her husband to live with another man along with her child or in cases of rape and sexual abuse, for securing confinement, making the scope and application of this provision more dynamic. Considering the substantial elaboration, a High Court ruled that Sec 370A could be imposed on a customer who has approached a sex worker [38]. Further, another High Court clarified that imposition of Sec 370A in such cases is dependent on the facts and circumstances [39]. Such elaborations of Sec 370A could target all sex workers, whether trafficked or not, creating ambiguity similar to ITPA. The larger application of Sec 370 along with ITPA in 2017–2018 displays this danger [37].

Other practical issues with Sec 370 are, it requires proof that the accused has recruited, transported, harbored or transferred, either single-handedly or in group, any victim for engaging in the crime of trafficking. When it becomes difficult to prove the modes, as many-a-time, the victim(s) may not be aware that they are being trafficked or who the trafficker is, it raises challenges in proving the same. The Global Report on Trafficking in Persons (2020) demonstrates that it could be a person that the victim trusts (including partners/parents) who would have sold the person to traffickers [7]. Another essential element is proving ‘exploitation’. What constitutes exploitation is another ambiguity with the legislation.

The lack of a concrete framework towards protection and rehabilitation of victims of trafficking has led the Ministry of Woman and Child Development (MWCD) to propose the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill 2018 [40]. The Bill does not define ‘trafficking’ but defines ‘aggravated form’ of

<table>
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<tr>
<th>Offense</th>
<th>Punishment</th>
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<td>Exploitation of a trafficked child</td>
<td>5–7 years + fine</td>
</tr>
<tr>
<td>Exploitation of a trafficked person</td>
<td>3–5 years + fine</td>
</tr>
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Table 6. Punishment under Sec 370A IPC.
trafficking, which may include trafficking for the purpose of forced labour, marriage, childbearing and begging. However, trafficking for sexual exploitation does not fall under the definition of ‘aggravated form’ and is kept as a separate category. Although the Bill claims to prevent, protect and rehabilitate victims of trafficking, it is heavily criticized for replicating the essence of the earlier legislation, focusing on sex trafficking and prostitution. One of the merits of this legislative piece is that it has defined the term ‘victim’, which is found to be ignored in other frameworks, either in India or in the Protocol [5]. Although there are provisions for social integration and reparation, the Bill is criticized for leading to the extradition of victims, which may add to their vulnerability and re-victimization. The institutional model prescribed for rehabilitation of victims, similar to the ITPA has already been proven to be ineffective, facilitating sexual abuse and suicide [41–44]. The schemes for compensation and witness protection included in this Bill can be seen as a welcome step. Further the terms like ‘brothel,’ ‘public place,’ etc., are omitted from the definitions making it a law to supplement the ITPA, which also suggest the conflict between ITPA and the Bill, where the legislative intent varies. The Bill assumes all sex workers as victims of trafficking and does not differentiate consensual and voluntary sex work from that is forced.

Several versions of the bill have been presented post-2016; however, its basic framework has not changed, making it faulty legislation. Moreover, when the political will to combat trafficking is also in question when multiple drafts are still presented, and the Bill remains on hold even after 5 years.

6. Conclusion

The trafficking of persons has been a challenge to the international community as it results in gross human right violations. How individuals are being exploited, losing their fundamental rights bring comparisons between the practice of human trafficking and slavery, by which this crime is termed as modern-day slavery. This association of trafficking in persons to prostitution for a century resulted in a very narrow interpretation of the crime, creating practical issues with respect to the implementation of such instruments. According to data presented for the last 5 years, globally there has been a steady decline in the number of persons who have been trafficked. This decline could be attributed to the increased debates on human trafficking across the globe and the human-trafficking efforts. There was an assumption that the increased levels of vulnerability followed by the pandemic would result in increasing levels of trafficking, but the reports suggest the contrary. This could be due to the difficulty in capturing data during the pandemic, as reports suggest the challenges in anti-human-trafficking efforts during the period. The Indian statistics also show a decline in the number of trafficking persons during the past 5 years. Although the numbers were much higher in 2016, they fell to almost one-fourth during the next year, remaining almost at the same levels afterwards. There are different explanations for these reduced numbers, as either a credit to the functioning of anti-human-trafficking cells in the country or, on the contrary, arguments that the traffickers have changed their modus operandi, which makes it difficult to trace them. Furthermore, the existing laws tend to attribute human trafficking to sex trafficking, resulting in challenges with identifying the victims and offering victim protection. Hence, it can be said that the efforts to combat trafficking have not materialized to a great extent, although the statistics show a decrease in numbers.
Conflict of interest

“The authors declare no conflict of interest.”
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[38] S Naveen Kumar v State of Telangana 2015 (2) ALD(Crl.) 156(AP)


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