

HUMAN TRAFFICKING, JUSTICE VERMA COMMITTEE REPORT AND LEGAL REFORM: AN UNACCOMPLISHED AGENDA

Abstract

Millions of women are trafficked for prostitution in India despite India's commitments to combat trafficking under various international human rights treaties. Any attempt to combat trafficking shall be an unaccomplished goal unless serious efforts are taken in this regard. The recent legislative amendment to the Indian Penal Code to define the term 'human trafficking' also shows a lack of seriousness on the part of the government. The government adopted a half-hearted approach in implementing the Justice Verma's Committee report for legal reform. The paper explores, through case studies, the impact of this crime (also called modern day slavery) on the victims' life and vulnerability factors involved in trafficking. It is argued that the recent amendment is not sufficient to combat trafficking and a comprehensive legal reform is required to synergize different legislations and institutional support mechanisms.

I Introduction

MILLIONS OF people are trafficked throughout the globe for forced labour, prostitution and other activities. In India too, thousands of young adults and minor females are trafficked for commercial sexual exploitation (CSE) in the guise of employment, marriage, and friendship among others.¹ In several parts of India, thousands of girls are forced into inter-generation prostitution by their own near and dear ones.² In most of the trafficking cases, the traffickers exploit the vulnerability of the victims and allure them or their families.. Accordingly, the Trafficking Protocol³ calls upon the state to have a comprehensive policy against trafficking including for prevention,⁴ as well as to address vulnerability.⁵ Human Right Council also advised all

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- 1 Shankar Sen and P. M. Nair, *Trafficking in Women and Children in India* (Orient Longman, New Delhi 2004), available at : <http://nhrc.nic.in/Documents/ReportonTrafficking.pdf> (last visited on May 1, 2014) (hereinafter referred as the NHRC Report).
 - 2 In the communities like Nat and Bedia inter-generation prostitution is common. The parents of the girls or near relatives force girls into prostitution. In fact their upbringing is done in such a fashion that the girls understand such slavery as their fate and accept exploitative lives. See for details on inter-generation prostitution, Anuja Agrawal, *Chaste Wives and Prostitute Sister: Patriarchy and Prostitution among the Bedia of India* (Routledge, New Delhi 2008).
 - 3 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, GA Res. 55/25, Annex II, UN GAOR, 55th Sess., Supp. No. 49, at 53, UN Doc. A/45/49 (Vol. I) (2001), done Nov. 15, 2000, entered into force Dec. 25, 2003 (Trafficking Protocol) available at: <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCbook-e.pdf>. (last visited on May 1, 2013).

states for developing mechanisms for prevention of trafficking among others.⁶ U.N. Trafficking Principles and Guidelines also strongly recommend for prevention, highlighting the need for states to take specific measures to “reduce vulnerability, including through the provision of genuine livelihood options to traditionally disadvantaged groups”.⁷ Thus, it is imperative for introducing legal reforms which take into account vulnerability factors in determining human trafficking and provide appropriate legal course of action.

Though the expression ‘human trafficking’ is used in many international legal instruments, until December, 2000 it had not been defined.⁸ The main reason for failure of the international community to arrive at an appropriate legal definition was the lack of an agreement on the different components of trafficking and its underlying ingredients. Lack of consensus on the definition at the domestic level was also reflected from the fact the term was used in the heading of the anti-trafficking legislation in India but again was not accorded a definition.⁹ In response to the nation-wide agitation against growing sexual offences, Justice Verma’s Committee, formed to suggest criminal law reforms, considered appropriate to discuss the menace of human trafficking and suggested legal reforms in this area.¹⁰ In order to implement the recommendations of Justice Verma’s Committee report, the Criminal Law (Amendment) Act, 2013¹¹ was enforced which attempted to fill the gap in the existing criminal law relating sexual

4 Trafficking Protocol, art. 9(1).

5 Trafficking Protocol, art. 9(4). It provides: “States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.”

6 UN Human Rights Council, “Trafficking in Persons, Especially Women and Children”, (UN Doc. A/HRC/RES/11/3, June 17, 2009) *available at*: http://www.un.org/womenwatch/daw/vaw/humanrights/A_HRC_RES_11_3.pdf (last visited on Jan. 10, 2014).

7 Anne T. Gallagher, *The International Law of Human Trafficking* 418 (Cambridge University Press, New York 2011).

8 *Id.* at 12.

9 Suppression of Immoral Traffic in Women and Girls Act, 1956 (Act 104 of 1956), hereinafter referred as SITA, was explicitly referred the term traffic in its heading but did not define either the term traffic or trafficking. The term has till not been defined though the legislation has gone through few phases of amendment. The legislation was renamed later and now stands as The Immoral Trafficking (Prevention) Act, 1956 (Act 104 of 1956), (hereinafter referred as ITPA) came into force on May 1, 1958 *available at*: <http://wcd.nic.in/act/itpa1956.htm> (last visited on May 26, 2013).

10 Government of India, Report of the Committee on Amendments to Criminal Law (2013) *available at* http://www.thehindu.com/multimedia/archive/01340/Justice_Verma_Comm_1340438a.pdf (last visited on Feb. 10, 2014) (hereinafter referred as Justice Verma Committee Report).

offences. It also incorporated the definition of the term human trafficking in section 370 of the Indian Penal Code (IPC).¹² The definition followed, more or less, the same language as in the Trafficking Protocol, but it omitted the expression "... [a]buse of a position of vulnerability," from its ambit.

This paper tries to explore how far such an omission on the part of the legislature in defining the term 'human trafficking' will adversely affect the anti-trafficking initiatives and the rights of the victims. While discussing the gravity of the offence of human trafficking, this paper seeks to analyze the definition of human trafficking, unpack the vulnerability factors through case studies explore the recommendations of Justice Verma's Committee report and finally critically evaluate the legal reforms initiated in this area.

II Gravity of the offence of human trafficking

Trafficking in persons is one of the worst forms of crime in modern day civilization. Globally more than 20.9 million people are its victims, the majority of them being girls and women susceptible to sexual exploitation.¹³ The clandestine nature of the human trafficking makes it difficult to reach correct estimation of human trafficking.¹⁴ The assessment of 20.9 million does not include trafficking for the purposes of removal of organs or forced marriage or adoption unless such practices

11 Criminal Law (Amendment) Act, 2013, (No. 13 of 2013) *available at* <http://indiacode.nic.in/acts-in-pdf/132013.pdf> (last visited on Jan. 8, 2014)

12 The Indian Penal Code, 1860 (Act 45 of 1860),

13 International Labor Organisation (ILO), Global Estimate of Forced Labour (2012) *available at*: http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—declaration/documents/publication/wcms_182004.pdf. (last visited on May 10, 2013). According to the ILO study, out of 20.9 million trafficked victims, 55% (around 11.4 million), are women and girls.

14 The U.S. Department of State is publishing Trafficking-in-Person Report (TIP) annually since 2001 and despite publication of 13 reports, they adopted ILO statistics of 2005 and 2012. While 2005 ILO report estimated 12.3 million forced labor, the figure jumped to 20.9 million in 2012. The challenge faced in quantification of human trafficking may be the reason for TIP report to adopt reasonably reliable data produced by ILO. All the thirteen TIP reports are *available at*: <http://www.state.gov/j/tip/rls/tiprpt/index.htm>. The ILO 2012 claimed that 'due to adoption of new methodology and through study carried out during such period, greater quantity and quality data available, the 2012 estimate can no longer be labeled as a minimum estimation but it may still be regarded as somewhat conservative due to the nature of the capture-recapture methodology. The report observed that 'the figure represents a conservative estimate, given the strict methodology employed to measure this largely hidden crime. It is not, however, labeled as a minimum estimate. With a standard error of 1,400,000 (7%), the range of the estimated global total is between 19,500,000 and 22,300,000, with a 68% level of confidence.' See ILO 2012, *supra* note 13 at 13.

lead to a situation of forced labour or services which implies that the figures of human trafficking covering all aspects may be much more than the current estimation of ILO.¹⁵ Accordingly, one another assessment suggests 29.8 million trafficked victims globally.¹⁶ Further, it is estimated that around 4.5 million persons are trafficked for forced prostitution.¹⁷ The ILO report also affirms that Asia and Pacific region, being source, transit and destination of trafficking, remain largest in terms of the number of victims. It accounted for around 11.7 million or 56% of the global trafficking.¹⁸ While it is difficult to precisely quantify the entire reach of human trafficking, there is no iota of doubt that millions of girls and women are trafficked for sexual exploitation.¹⁹

The Global Slavery Index has ranked India fourth in the countries having highest number of trafficking victims.²⁰ Studies of Central Social Welfare Board (CSWB), conducted around two decades back, have been frequently quoted to depict the magnitude of prostitution in six metropolitan cities of India. According to study, the total population of prostituted women in all the cities put together is between 70,000 and 100,000.²¹ The study further highlighted that of these; 30% are 20 years of age, nearly 15% forced into prostitution when they were below 15, and 25% entered between 15 and 18 years.²² Another report estimates the number of prostituted women to be 900,000.²³ According to the 1992 estimates of the Indian Association for the Rescue of Fallen Women, there are 8 million prostituted women in several brothels in India

15 *Supra* note 13 at 13.

16 Walkfree Foundation, *The Global Slavery Index 2013* (2013) available at: <http://www.globalslaveryindex.org/> (last visited on July 11, 2014).

17 Trafficking-in-Person Report, 2012 (TIP 2012) which had adopted 'ILO 2012' suggests that around 4.5 million person are trafficked for forced prostitution, among them around 98% are women and girls. See U.S. Department of States. Trafficking in Person Report 45 (2012) available at <http://www.state.gov/j/tip/rls/tiprpt/2012/>. (last visited on May 26, 2013).

18 The second highest number is found in Africa at 3.7 million (18%), followed by Latin America and the Caribbean with 1.8 million victims (9%). The Developed Economies and European Union account for 1.5 million (7%) forced labourers, whilst countries of Central, Southeast and Eastern Europe (non-EU) and the Commonwealth of Independent States have 1.6 million (7%). There are an estimated 600,000 (3%) victims in the Middle East. *Supra* note 13 at 16.

19 There is variance in figure found in respect of the number of trafficked people. Recently published report 'Global Slavery Index, 2013' estimated that around 29.8 million people are enslaved globally. *Supra* note 16.

20 The report estimates that India is host to around 13,300,000–14,700,000 slaves. The definition of slavery under Global Slavery Index is too broad which includes forced marriage and other categories which may not fall within human trafficking. *Supra* note 16 at 43.

21 K.K. Mukherjee and Deepa Das, *Prostitution in Six Metropolitan Cities of India* (Central Social Welfare Board, New Delhi 1996).

22 *Supra* note 1 at 21

23 Gathia Joseph, *Child prostitution in India* (Concept Publishing Company, New Delhi 1999).

and another 7.5 million call girls.²⁴ Despite variations in the statistics of trafficking which is mainly because of the hidden nature and under-reporting of this crime, every study uniformly referred to increasing occurrences of trafficking. Referring to these trends, in 1996, the UN Special Rapporteur on Sale of Children, Child Prostitution and Child Pornography stated, “all reports indicate a dramatic escalation of the number of sexually exploited children all over the world.”²⁵ On the one hand, the vulnerability of the trafficking victims, facilitates trafficking, the demand of young girls by customers further fuelled trafficking of teens along with other victims.²⁶ Thousands of children go missing every year, and large numbers of them are never traced. NHRC report pointed out that every year around 44,000 children go missing out of which 11,000 remain untraced.²⁷ Large number of those missing children may have become victims of trafficking and enslaved in some brothel. The existence of well established red light areas in several places throughout the country provides market for both traffickers to sell the victims as well as customers to buy girls for sex. Despite the illegality attached to such existence of red-light areas, rarely any effective legal action has been taken to combat trafficking.

III Definition of human trafficking and the significance of “abuse of position of vulnerability” as a “means” of trafficking

Prior to the adoption of Trafficking Protocol, it was frequently argued that an appropriate definition of the term human trafficking be adopted. Special rapporteur on violence against women in its report²⁸ also highlighted the absence of an appropriate definition of human trafficking. The special rapporteur also believed that the definition of trafficking should consider victim’s vulnerability and unfamiliar environment where she is culturally, linguistically or physically isolated.²⁹ The definition took into consideration all these factors and taken holistic approach to the trafficking problem. The term ‘human trafficking’ has been defined as:³⁰

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or

24 *Supra* note 1 at 16

25 *Ibid.*

26 *Ibid.*

27 P.C. Sharma, Report of the NHRC Committee on Missing Children (2007) available at: http://nhrc.nic.in/Reports_misscl.htm (last visited on Feb. 10, 2014).

28 UNCHR, Integration of The Human Rights Of Women And The Gender Perspective, Report of the RadhikaCoomaraswamy, Special Rapporteur on Violence against Women (Feb. 29, 2000) UN Doc E/CN.4/2000/68.

29 *Ibid.*

30 Trafficking Protocol, art. 3

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.

The definition divided itself into three components namely (a) act, (b) means and (c) purpose.³¹ One of the significant means of the term trafficking is ‘abuse of a position of vulnerability’ (APOV). It is identified as one additional means through which any victim can be recruited, transported, transferred or received for the purpose of exploitation.³² The outcome document of the judicial summit on access to justice attempted to explain the term ‘vulnerability’. It defined vulnerable people as those who, due to reasons of age, gender, physical or mental state, or due to social, economic, ethnic and/or cultural circumstances, find it especially difficult to fully exercise their rights guaranteed to them by law.³³

The explanatory report of the European Convention provides explanation of the definition. It provides that the expression “abuse of a position of vulnerability” means “abuse of any situation in which the person involved has no real and acceptable alternative to submitting to the abuse. The vulnerability may be of any kind, whether physical, psychological, emotional, family-related, social or economic.”³⁴ The UNODC Model Law on Trafficking in Persons has given a more expansive definition of the term. It offers two alternative definitions for the countries to adopt in their legislative responses.³⁵ The first definition provides that the term “abuse of a position of vulnerability” shall refer to any situation in which the person involved believes he or

31 *Ibid.*

32 UNODC, Abuse of A Position of Vulnerability And other “Means” Within The Definition of Trafficking in Person 6 (2012) *available at*: http://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Issue_Paper_-_Abuse_of_a_Position_of_Vulnerability.pdf (last visited on Jan. 10, 2014).

33 Judicial Summit, Brasilia 100 Regulations Regarding Access to Justice for Vulnerable People (Brasil 2008) *available at*: <http://justicia.programaeurosocial.eu/datos/documentos/noticias/1217852883.pdf> (last visited on July 10, 2013).

34 COE, Explanatory Report on Convention on Action against Trafficking in Human Beings, 83 (CETS No 197, 2009) *available at*: <http://conventions.coe.int/Treaty/EN/Reports/Html/197.htm> (last visited on Mar. 5, 2013).

35 UNODC, Model Law against Trafficking in Persons 10-11 (United Nations publication, Sales No. E.09.V.11) *available at*: www.unodc.org/documents/human-trafficking/Model_Law_against_TIP.pdf (last visited on Mar. 10, 2013).

she has no real and acceptable alternative but to submit. The second definition refers to taking advantage of the vulnerable position a person is placed in, as a result, of illegal entry; or pregnancy; or any physical or mental disease or disability of the person; or reduced capacity to form judgments; monetary transaction of promise thereof; being in a precarious situation from the standpoint of social survival; or other relevant factors. In human trafficking cases invariably APOV played a significant role as traffickers mostly take advantage of the vulnerability of victims.

IV Case study of fifty trafficking cases and critical evaluation of vulnerability factors

One of the major reasons for the constant increase in trafficking throughout the country is the failure of the government to address vulnerability factors which vary from child marriage to poverty and illiteracy. The analysis of 50 cases of two states of West Bengal and Bihar reveal diverse vulnerability factors for trafficking.³⁶ The findings in Bihar, where most of the persons interviewed were the members of the Nat community, revealed that most of the girls were trafficked by their family members and there were systematic violations of human rights in the practice of inter-generation prostitution in the community. However, the same was not true for victims belonging to other communities.³⁷ For instance, victim 'A',³⁸ 14 years old girl, had gone to Mokama for 'Ganga Asnan' from where she was abducted and made unconscious. When she opened her eyes, she found herself in Mojaffarpur, a famous red light district of Bihar. She was not prostituted there, but the brothel owner of Mojaffarpur sold her to another brothel owner of the Saharsa red light area. After continuous torture for three months, she agreed to be in the exploitative profession.³⁹ On receiving information from a local journalist, the police acted promptly in this case and rescued her.⁴⁰ During

36 The case studies from West Bengal and Bihar reflected diverse factors associated with trafficking as well as distinct manner in which trafficking takes place, ranging from kidnapping to child marriage and allurements for job. In case of Bihar as majority of cases belong to members of Nat community, it reflects factors associated with inter-generation prostitution. Indeed, in all cases there are vulnerability factors associated with trafficking even though process may differ from place to place.

37 Among Nat community the practice of inter-generation prostitution is a well known fact through which girls are enslaved. While victims from other caste are trafficked by other means such as kidnapping and/or abduction. There are factors like child marriage involved or traffickers posed as lover, allured the victims and sold them in exploitative conditions.

38 This case is classic example of how criminal groups function in remote areas and target vulnerable groups. Fortunately in this case because of an active police officer, rescue was made and a case was registered. However, fact remains that large number of similar incidents are never reported.

39 Mokama is a small sub-division near Patna, in Bihar while Mojaffarpur and Saharsa are districts within Bihar. Both the districts have red light areas.

40 The inspector with whom the researcher had interacted about this case said that he received information from a local journalist about this victim. He requested the said journalist to procure

the same rescue operation another victim, a 13 years old girl, was also rescued by the police who was also trafficked to Mojaffarpur red light area and subsequently sold to the brothel owner in Saharsha.⁴¹ While in majority of cases from Bihar studied by this researcher, girls were forced into prostitution by their parents or relatives, the aforementioned cases are examples of criminal gang members abducting someone and forcing them into slavery. Even though among members of Nat community, inter-generation prostitution is practiced without any effective obstruction or concrete interventions from the government, there are illustrations when some of them were forced into prostitution, not by the parents but criminal gang members.

In West Bengal, majority of the cases were from district Medinipur. Although there were no illustrations found of inter-generation prostitution but there are many cases in West Bengal in which some known people were instrumental in the victim's trafficking. An attempt has been made to quantify the qualitative information collected through case studies which, may not be homogenous, but will give a clear picture in the context of trafficking in respective places. The vulnerability of the victims has been divided into five categories namely: (a) vulnerability because of poverty; (b) vulnerability because of domestic violence; (c) vulnerability because of lack of education; (d) vulnerability because of child marriage; and (e) other vulnerabilities (which included vulnerability because of caste and the culture of dowry). Out of 50 case studies, there are many cases where the victim was vulnerable because of more than one reason, because of poverty as well as lack of education and being a member of the Nat community. In the research, 48 out of 50 trafficked victims were vulnerable because of their family poverty; 12 victims were found vulnerable because of domestic violence while 18 of them were subjected to child marriage. Again, a large number of them, around 39 were vulnerable because of lack of education or illiteracy and 12 victims were found vulnerable because of caste and the practice of inter-generation prostitution among the community of Nat. In those cases, their parents or guardians themselves forced their daughter or sisters into prostitution.

more information about the victim and her family. The journalist went to the brothel twice pretending to be customer and got information about the family of the victim. The police officer called the victim's father to Saharsa and secretly conducted a test identification of the victim in the locality. Once identification was confirmed, they rescued this victim. Another victim was also rescued on that occasion.

- 41 As informed by the investigating officer, the victim fell in love with a boy who asked her to go to a cinema. She initially refused but later agreed to go with him. Thereafter, he took her to a railway station and left her alone there. An old lady started talking to her and offered her tea after consuming which she became unconscious. When she opened her eyes, she found herself in Mojaffarpur. The brothel owner at Mojaffarpur sold her at Saharsa. As the girl was a mere child, the traffickers gave her a lot of food in the initial one month to increase her weight. After one month, she was tortured and forced into prostitution.

This data also established the fact that decreasing vulnerability by reducing one of the components is not sufficient. For example, economic empowerment will reduce the vulnerability of a majority of them but they may remain vulnerable on account of their caste, cultural practices, domestic violence or lack of education. Diverse comprehensive efforts and a holistic approach are needed to address the vulnerabilities of women at risk.

V Justice Verma Committee recommendation for legal reform to combat human trafficking for commercial sexual exploitation

While Justice Verma Committee extensively discussed and recommended on laws and policies relating to sexual offences, the committee explicitly recognised that any report on sexual offences will be incomplete without deliberation on human trafficking.⁴³ The committee acknowledged that one of the main reasons for trafficking is commercial sexual exploitation.⁴⁴ The committee was deeply concerned with the fact that efforts and accountability in cases of missing children were completely lacking and these cases were mostly dealt like ‘lost and found situation of inanimate objects.’⁴⁵ In *Horilal v. Commissioner of Police, Delhi*⁴⁶ Supreme Court issued detailed guidelines, which were further elaborated by NHRC Report,⁴⁷ to address the issue of missing children including registration of FIR and creating institutional support mechanism for tracing the children. The committee recommended implementation of these guidelines as one of the mechanisms to combat trafficking.

The absence of the trafficking definition is ironical according to the committee. The committee referred to the definition of human trafficking given in the Trafficking Protocol⁴⁸ and recommended for its adoption. The committee emphasized that the definition links traditional offences under the IPC with the human trafficking offences. According to the committee, phrases like “abuse of power or position of vulnerability” and ‘giving or receiving the benefit to achieve consent’ are *per se* not offence under the

42 Victim M1 was kidnapped when she was 12 years and sold in a brothel at Katihar. She was tortured and forced into prostitution to serve 10-20 customers very day. After two decades when her daughter, M2 grew up she was forced into prostitution by same set of traffickers. Researcher had several opportunities to meet M1 at Araria as presently she is working as community worker at one NGO working to end sex trafficking.

43 *Supra* note 10 at 152.

44 In *Bachpan Bachao Andolan v. Union of India*, (2011) 5 SCC 1, Supreme Court reaffirmed that most instances of trafficking of children take place for commercial sexual exploitation.

45 *Supra* note 10 at 153.

46 W.P. (Crl.) 610 of 1996.

47 *Supra* note 28.

48 Trafficking Protocol, art. 3.

IPC but these practiced in trafficking cases should be linked.⁴⁹ The committee also pointed out that the provision relating to human trafficking is scattered in different legislation namely the Immoral Traffic (Prevention) Act, 1956 (ITPA), Juvenile Justice Act⁵⁰, the Indian Penal Code amongst others and there is a complete lack of synergy among them.⁵¹ The committee recommended for synergy between different legislations and to provide protection to the children under Juvenile Justice Act.⁵² The committee further recommended for special investigating and prosecuting agency as well as a special court.⁵³ According to the committee, ‘the ITPA doesn’t achieve the objective it is meant to achieve, primarily since it doesn’t define trafficking and hence is reduced to a legislation dealing with prostitution.’⁵⁴ Accordingly, the committee recommended for incorporation of aforesaid definition of human trafficking in place of section 370 of the IPC.

VI Legal reform and half-hearted attempt to address human trafficking

The Criminal Law (Amendment) Act, 2013 has made several changes in penal provisions, including defining the term human trafficking in section 370 of the Indian Penal Code.⁵⁵

49 *Supra* note 10 at 164.

50 The definition incorporated acts of (i) recruitment, (ii) transportation, (iii) transfer, (iv) harbouring or (v) receipt of persons. The ‘means’ it suggested are (i) threat or, (ii) use of force or, (iii) other forms of coercion, (iv) of abduction, (v) of fraud, (vi) of deception, (vii) of the abuse of power or (viii) abuse of a position of vulnerability or, (ix) of the giving or receiving of payments or benefits to achieve the consent. The purpose it suggested was exploitation namely (i) the exploitation of the prostitution of others or, (ii) other forms of sexual exploitation, (iii) forced labour or services, (iv) slavery or practices similar to slavery, (v) servitude or, (vi) the removal of organs. See Trafficking Protocol, art. 3.

51 *Supra* note 10 at 168.

52 Committee referred to *Bachpan Bachao Andolan case* in which court gave detailed guidelines based on the recommendation of Solicitor General which include determination of juvenile, non-prosecution of trafficking victims as well as protection under juvenile legislation.

53 It is important to remember that section 22A of ITPA empowered the State Government to established special court to deal with offence of trafficking but most of the did not implemented this provision.

54 *Supra* note 10 at 199. Explanation 2.—The consent of the victim is immaterial in determination of the offence of trafficking.

55 IPC, s.370 reads this:

1. Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by—First.— using threats, or Secondly. — using force, or any other form of coercion, or Thirdly.— by abduction, or Fourthly.— by practising fraud, or deception, or Fifthly.— by abuse of power, or Sixthly.— by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

It also prescribed rigorous punishment for the commission of the offence of trafficking and more severe punishment when victim is more than one person or trafficking involved minor victims.⁵⁶ The legislation makes the offense more grievous if committed by police officer and higher punishment laid down in such cases.⁵⁷ The definition followed, more or less, the same wording as given in the Palermo Protocol, but it omitted the expression “[a]buse of a position of vulnerability (APOV),” from its ambit. This implies that if the trafficker allures the victim and obtains consent by exploiting the vulnerability of victims, it does not fall within the definition of trafficking. This is a major drawback of the definition because there are numerous occasions in which traffickers abuse the position of vulnerability of victims.

Justice Verma Committee Report categorically emphasized the need for adoption of the complete definition of trafficking protocol and discussed how APOV can be helpful in addressing trafficking. If there is an apprehension or lack of clarity on the issue of APOV, there is extensive literature prepared under the auspices of UNODC, which may be taken recourse to in order to clarify the scope of this expression. Most importantly state legislations like Goa Children’s Act, 2003 are surviving with the definition having APOV as its component. Goa Children’s Act defined the term ‘child trafficking’ which explicitly acknowledges APOV as one of the means for child trafficking.⁵⁸ While APOV is incorporated in the state legislation, there is no justification for its omission in the amendment of IPC.

Explanation I

—The expression “exploitation” shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

- 56 Cl. 2 of s. 370 provides that ‘whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine’. While clause (3) of section 370 prescribed more severe punishment of minimum 10 years which may extend to life imprisonment along with fine, if trafficking involved more than one victim. Clause 4 of section 370 laid down that ‘where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine’. It also prescribed higher punishment of minimum 14 years imprisonment which may extend to life imprisonment in case of trafficking of more than one minor victim.
- 57 Cl. 7 of s. 370 provides that, “when a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, and shall also be liable to fine”.
- 58 S. 2(z) defined the term ‘child trafficking’ as, ‘means the procurement, recruitment, transportation, transfer, harbouring or receipt of children legally or illegally, within or across borders, by means of 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 giving or receiving payments or

Justice Verma Committee Report emphasizes synergy between different legislations and institutional support mechanisms. Apart from penal laws, there are several other legislations which can be used for redressing the vulnerability and menace of human trafficking in India. For instance, Juvenile Justice (Care and Protection of Children) Act, 2000⁵⁹ can be used in respect of any children who are vulnerable.⁶⁰ In order to combat child marriage, Prohibition of Child Marriage Act, 2006⁶¹ was enacted which incorporates several punitive provisions as well as preventive mechanisms. Despite a legislative enactment, a large number of cases were found in this research where child marriage was instrumental in victimization processes as it increases vulnerability. The “Integrated Plan of Action to Prevent and Combat Human Trafficking with Special Focus on Children and Women” has elaborately drafted an action plan for preventing trafficking and laid emphasis on addressing vulnerability of the victim.⁶² But the legal reform introduced post Justice Verma Committee Report neither brought synergy between different legislations nor attempted to put in place institutional mechanism for effective anti-trafficking initiatives. Mere introduction of a single provision in IPC will not address the challenges posed by trafficking. The most important legislation for trafficking for commercial sexual exploitation is ITPA, which needs to be amended so that the victims of trafficking can get institutional support mechanism created under the legislation.

VII Conclusion

Human trafficking is a human rights issue as victims of trafficking are subjected to series of human rights violations during trafficking processes. It is frequently referred to as modern day slavery. The research found that the menace of inter-generation prostitution among the Nat community still exists in the state of Bihar. The study found that 48 out of 50 trafficked victims were vulnerable because of poverty

benefits to achieve the consent of a person having control over another person, for monetary gain or otherwise. Goa Children Act, 2003 (Goa Act No.18 of 2003) *available at:* <https://www.nls.ac.in/ccl/Acts%20to%20be%20loaded/The%20Goa%20Childrens%20Act%20and%20Rules.pdf> (last visited on Jan. 7, 2014).

59 As most of the trafficking victims are minor, they are entitled to the protection provided by Juvenile Justice Act which classifies Children into Juvenile in Conflict with Law (JCL) and Child in Need of Care and Protection (CNCP). All trafficking victims are CNCP within the ambit of law. See The Juvenile Justice (Care and Protection of Children) Act, 2000 (Act 56 of 2000) (J.J. Act).

60 S. 2(d) of J.J. Act defined the term ‘Child in Need of Care and Protection’ to include vulnerable children.

61 Prohibition of Child Marriage Act, 2006, (Act 6 of 2007).

62 Integrated Plan of Action to Prevent and Combat Human Trafficking with Special Focus on Children and Women *available at:* www.wcd.nic.in (last visited on Jan. 10, 2014).

suggesting that any poverty alleviation program should target this vulnerable group where the instances of trafficking are most likely to occur. Some of the groups are visible like members of the Nat community. Even after more than six decades of independence and explicit obligations under the Constitution, has made no difference to the Nat community where systematically human rights are violated, and their children are enslaved as a matter of practice. While various initiatives can help in preventing trafficking among Nat community and reducing their vulnerability, the Apne Aap Model of Kasturba Gandhi Balika Vidyalaya⁶³ is found to be a very effective model for preventing trafficking among vulnerable groups, like girl children belonging to the Nat community.

It is also apparent from multi-vulnerability status of victims that any singular initiative to reduce vulnerability will not work. The average age of the victims found in this study is around 15.3 years. A decade old study of NHRC also corroborates the same which found that around 20.7% victims were minors in brothels. The NHRC study conducted at that point of time had also found that around 62% of their respondents, were forced into prostitution when they were minors.⁶⁴ This implies that when girls are trafficked, they are of such tender age that it makes them incapable of giving legal consent. This finding also refutes the arguments of those who suggest that the victims entered into these exploitative situations voluntarily. This view was further corroborated by the opinion of the Supreme Court in *Bachpan Baccho Andolan* case⁶⁵ where court observed, “women and children do not usually come to brothels on their own will, but are brought through highly systematic, organised and illegal trafficking networks run by experienced individuals who buy, transport and sell children into prostitution.”

The lack of initiative in bringing domestic law in conformity with the international obligation is also apparent from omission of incorporation APOV within the definition of human trafficking. A half-hearted approach has been adopted by legislators to bring legal reform to combat human trafficking for commercial sexual exploitation. First, they failed to adopt an appropriate definition of the term human trafficking by

63 Kasturba Gandhi Balika Vidyalaya (KGBV) is a Government of India scheme in which hostel is provided for the girls for study and accommodation which is invariably attached with some schools. This can be an effective way to empower vulnerable group like Nats. Apne Aap Women Worldwide (AAWW), which is an International NGO fighting to end sex trafficking, run KGBV and accommodate 50% of the students from Nat community to prevent next generation prostitution. The idea is that once they are educated and empowered, they cannot be forced into prostitution by their parents. AAWW has to face several challenges in successfully running this initiative. Detail of this initiatives can be found in the website of AAWW, www.apneap.org.

64 *Supra* note 1 at 81, 92.

65 *Supra* note 48.

omitting to incorporate APOV. Secondly, no serious efforts have been taken to bring synergy between different legislations and institutions as recommended by Justice Verma's Committee report. By mere incorporation of a single provision in the form of section 370 in the IPC no far reaching changes can be made. What is needed is a strong institutional support system which can be effectuated by amending ITPA, which is the most important legislation for combating trafficking for commercial sexual exploitation in India.

*Sarfaraz Ahmed Khan**

* Research Scholar, City University of Hong Kong.