

Human Trafficking in the United States of America



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Human Trafficking in the United States: Widespread but deliberately ignored

Introduction

30 July 2022 was observed as the World Day against Trafficking in Persons. Even though human trafficking is a global problem, there has been very little research on how prevalent it is in the developed countries. The real impact of human trafficking is seldom analysed or understood. Despite it being counted as the most organised crimes in the world, it is still seen as an issue that primarily affects the poor societies in the developing nations. Its real magnitude as modern-day slavery or forced servitude is not acknowledged by many in the developed world.

The United Nations has estimated that nearly four million human beings are trafficked globally every year with 600,000 to 800,000 persons being trafficked across national borders.¹ Human trafficking is supposedly the fastest growing international organised crime² and it is the third most lucrative underground business, next to arms and drugs.³ For traffickers, it earns a profit of roughly USD 150 billion per year and nearly two-thirds or USD 99 billion, of that profit, comes from commercial sexual exploitation.⁴ With only 19 per cent of victims being trafficked for sex, sexual exploitation earns 66 per cent of the global profits of human trafficking, according to an International Labour Organisation (ILO) report in 2014. The average annual profit generated by each woman in

¹UNODC, 2006

²Trafficking in Persons Report, 2004

³Rebecca A. Bishop, Charlie V. Morgan, Lance Erickson. (2013) Public Awareness of Human Trafficking in Europe: How Concerned Are European Citizens? Journal of Immigrant & Refugee Studies

⁴ Neal Davis [Human Trafficking Statistics: Global & State-by-State Data \[REPORT\] \(nealdavislaw.com\)](https://nealdavislaw.com)

forced sexual servitude is USD 100,000 which is about six times more than the average profits generated by each trafficking victim worldwide, or about USD 21,800.⁵

In view of the facts stated, it is evident that human trafficking has become one of the greatest tragedies of humankind and no country is free from this evil. But the larger narrative that has always been perpetrated is that developed countries like the United States are destination countries and their citizens are well protected from falling prey to this crime. But a look at the statistics clearly shows that a considerable portion of the victims of human trafficking have been trafficked from within the borders and this is an issue that needs immediate governmental attention and intervention.

It is worth noting here that the Emancipation Proclamation of 1865 had officially put an end to slavery in the U.S. Subsequently, the 13th Amendment of the American Constitution states: “Neither slavery nor involuntary servitude... shall exist within the United States.” Yet the practice of slavery never ended and it continues to exist in different parts of the country in the form of human trafficking.

What is human trafficking?

Human Trafficking is a crime that involves exploiting a person for labour, services, or commercial sex. The US federal law defines trafficking in persons as “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age”; or “the recruitment, harbouring, transportation, provision, or obtaining of a person for

⁵ Human Rights First. Human Trafficking by the Numbers [Human Trafficking by the Numbers | Human Rights First](#)

labour or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”⁶

In the year 2000, when it became clear that human trafficking is global problem that requires a coordinated response, the United Nations adopted the definition of trafficking as:(...) the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.⁷

The UN Protocol further adds: (...) exploitation shall include ... 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 [United Nations Office on Drugs and Crime (UNODC, 2006a)].

This definition was ratified by the U.S. in 2005 with reservations and remains the basis for dialogue among nations.

The term “forced labour” is of special significance in these definitions as it is often used to describe all forms of modern-day slavery. Forced labour or services include “labour or services that are performed or provided by a person and are obtained or maintained through force, fraud, or coercion, or

⁶22 U.S.C Section 7102

⁷Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime) (the U.N. Protocol)

equivalent conduct that would reasonably overbear the will of the person.”⁸

According to the U.S. law, a person is placed in conditions of forced labour if they are forced to work against their will through actual or implied threats of serious harm, physical restraint or abuse of the law. If the person is forced to work through physical force or threats of physical force, they are victims of involuntary servitude. A person is subjected to peonage if that person is compelled by force, threat of force or abuse of the law to work against their will in order to pay off a debt. If the value of a person’s work is never reasonably applied towards payment of the debt, the person has been subjected to debt bondage.⁹

According to the International Labour Organization, forced labour is all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily. This includes situations in which persons are coerced to work through the use of violence or intimidation, or by more subtle means such as manipulated debt, retention of identity papers, or threats of denunciation to immigration authorities.¹⁰

According to the U.S. Department of State, the factors that contribute to the supply of trafficking victims include:

- Poverty
- The attraction of perceived higher standards of living elsewhere

⁸Penal Code Section 236.1

⁹<https://www.aclu.org/other/human-trafficking-modern-enslavement-immigrant-women-united-states>

¹⁰<https://www.ilo.org/global/topics/forced-labour/definition/lang--en/index.htm>.

- Lack of employment opportunities in the immediate area
- Organised crime
- Violence against women and children
- Discrimination against women
- Government corruption, political instability, and armed conflict

Types of human trafficking in the USA

Human trafficking in the U.S. has many forms. The most common is sex trafficking where a mix of coercion and manipulation is applied on unsuspecting victims. The broad term escort services are used to refer to commercial sex acts that take place in a temporary indoor location. Traffickers deliver victims to a potential buyer's hotel room or residence. Victims are often tricked into these situations by the traffickers with fake job offers, false prospects of love and stability etc. Hotels and motels are a major venue for domestic sex trafficking because it lets traffickers quickly change locations to avoid detection and it also allows buyers anonymity. Illegal massage parlours also serve as important sites as the victims are forced to work for many hours and most of the clients do not realise that the women are trafficked. Other avenues for sex trafficking are Mexican cantina bars, residential brothels, or street-based pimp-controlled prostitution. The San Francisco Chronicle reported in 2006 that in the 21st century, women, mostly from South America, Southeast Asia, and the former Soviet Union, are trafficked into the U.S. for the purposes of sexual slavery.

Traffickers use the powerful tool of psychological abuse to make the victims believe that they have no way out and the traffickers are working in their best interests. When psychological manipulation falls short, extreme physical and sexual violence, often accompanied by weapons is used. Victims are

threatened with police involvement, jail terms, gang intimidation, social isolation etc. In many of the cases, traffickers threaten to bring harm to the victim's family if she doesn't comply with their demands. Women are made to lose their agency and they often stare at a lifetime of abuse and coercion in a system that is designed to help the buyers and traffickers.

The next is labour trafficking which involves the recruitment, harbouring, or transportation of a person for labour services, through the use of force, fraud, or coercion. Most of those who are trafficked are employed in sectors like agriculture, construction, restaurants, factories etc. The victims are often forced to live in overcrowded unsanitary conditions and they are threatened with their migratory status and find themselves in heavy debts which makes it difficult for them to break free.

In most of the cases, ethnicity plays an important role as it helps traffickers use cultural hierarchy to keep the victims trapped. The victims are most often brainwashed to not trust anyone except their traffickers.¹¹ Many of these victims are also made addicted to drugs by their traffickers because of which they get ensnared in a debt trap. The traffickers encourage the victims to buy drugs regularly which is then deducted from their pay. A case was registered in North Florida in this regard where it was found that American citizens were held captive in labour camps and were paid just 30 cents after deductions for the work they were doing.¹²

It is estimated that labour trafficking has resulted in a profit of USD 34 billion in construction, mining

¹¹<https://www.justice.gov/usao-cdca/human-trafficking#LAB>

¹²Naples Daily News, September 23, 2006

and manufacturing and USD 9 billion in agriculture.¹³

Another form of trafficking which also forms part of labour trafficking is domestic servitude. It often involves women who are forced to surrender their documents and made to work under harsh conditions in the homes of their employers. These women can be US Citizens, foreign nationals with work permit and undocumented immigrants.¹⁴ It is believed that labour trafficking victims are harder to identify than sex trafficking victims as they are often mistaken for smuggled immigrants. Amongst labour trafficking, the most difficult to identify is domestic servitude. This is because only diplomatic personnel and employees of certain international organizations are allowed to hire domestic workers from overseas and bring them to the United States on certain kinds of temporary visas. Due to the diplomatic immunity, they possess, it is nearly impossible to even investigate suspected cases of exploitation. Also, these domestic workers are home bound all the time and remain isolated from the outside world. The language barrier further worsens the situation as they are scared to approach for help and they remain hidden.

Domestic servitude claims 27 per cent of people in slavery in the US, agriculture 10 per cent and other occupations 17 per cent. Private households that employ domestic workers under forced labour conditions save USD 8 billion of profit annually.¹⁵

Due to the very nature of the crime and the covert ways in which trafficking takes place, it is extremely difficult to understand the real extent of the problem.

¹³Human Rights First

¹⁴ State of California Department of Justice Office of the Attorney General <https://oag.ca.gov/human-trafficking/what-is>

¹⁵Human Rights First

The United Nations refers to this as “the hidden figure of crime.” Still over the years, some organisations have made an effort to go deep into the issue and bring to light some hard facts and figures. Of these, the most authoritative reports available in the public domain is that of Polaris which was released in 2017 titled *The Typology of Modern Slavery*. It was based on the data available from the U.S. National Human Trafficking Hotline in a ten-year time span. The study identified 25 distinct types of sex and labour trafficking occurring in the country. It also found that immigrants were extremely vulnerable to both sex and labour trafficking. According to the report, the highest numbers of human trafficking victims were from Latin America and the Caribbean.

The findings were eye opening. During the course of 2015 to 2018, the U.S. National Human Trafficking Hotline identified around 31,000 individuals with unknown immigration status. This was two-thirds of the total number of trafficking cases reported to the Hotline. It was found from the cases reported that the labour trafficking cases were highest in the agriculture sector where 76 per cent of the victims were immigrants and nearly half of them were from Mexico. 77 per cent of immigrant victims from Latin America and the Caribbean were trafficked in labour situations. The primary type of trafficking reported to involve Latin American and Caribbean victims was in agriculture (35 percent of Latin American and Caribbean victims). The vast majority of Latin American and Caribbean victims were from Mexico (58 per cent), followed by Guatemala (12 per cent) and Honduras (seven per cent).¹⁶

¹⁶ Marie Skubak Tillyer, Michael R. Smith & Rob Tillyer (2021) Findings from the U.S. National Human Trafficking Hotline, *Journal of Human Trafficking*.

In most of these cases, Mexican recruiters were deployed by the producers in the U.S. to find cheap workforce. In the informal economy, forced servitude is an endemic problem as it lacks government regulation and oversight. These recruiters use the threat of deportation to keep the labour in servitude. Moreover, since most of these are often undocumented immigrants, they are seldom paid minimum wages. Even for documented immigrants, the threat of deportation is used as the US laws allows them to be subjected to that measure if they leave the employment of the specific sponsoring business.

Yet another industry that takes advantage of the lack of preventive measures is the construction industry. Most of those who are in this construction industry have either H2B visas or are undocumented. To escape the state's scrutiny and deny these workers of any employment benefits, the employers classify them as independent contractors. According to the calls that were made to the Trafficking Hotline, it was found that these workers go through extreme verbal abuse, harassment and even basic necessities like water and safety equipment are denied to them. They are made to live in cramped up places and those who have immigrated without any documents are charged an exorbitant recruitment fee. This way, they are caught in a debt trap and are unable to break free.

The Polaris study also found that there are a large number of victims from Asia and Latin America (26 per cent) in restaurants and food service businesses. These migrants are often faced with language barriers and they remain undocumented and hidden in the kitchens. Over 60 per cent of the people who are victims of forced labour end up in the private economy. These industries are typically those that the locals are not willing to apply for, so the industries are forced to find workforce

from elsewhere. The labour trafficking victims are more likely to be Hispanic (63%) or Asian (17%).¹⁷

Facts about human trafficking¹⁸

- Human trafficking earns global profits of roughly USD150 billion a year for traffickers.
- USD 99 billion of which comes from commercial sexual exploitation.
- Globally, an estimated 71% of enslaved people are women and girls, while men and boys account for 29%.
- Internationally, only about 0.04% survivors of human trafficking cases are identified, meaning that the vast majority of cases of human trafficking go undetected.
- Estimates suggest that about 50,000 people are trafficked into the U.S. each year, most often from Mexico and the Philippines.
- In 2018, over half (51.6%) of the criminal human trafficking cases active in the U.S. were sex trafficking cases involving only children.

The magnitude of human trafficking in the USA

The 2010 Trafficking in Persons report described the United States as, "a source, transit, and destination country for men, women, and children subjected to trafficking in persons, specifically forced labour, debt bondage, and forced prostitution."

The U.S. Department of State estimates that 14,500 to 17,500 people are trafficked into the U.S. each year through illegal ways and are exploited upon

¹⁷World Population Review

¹⁸Human Rights First

arrival. More than 80 per cent of those trafficked are believed to be women and girls, and approximately 70 per cent of those are reportedly forced into sexual servitude.¹⁹ But these statistics do not count those who are trafficked within the country every year. It is estimated that two-third of trafficking victims in the country are U.S. citizens. Most victims who are foreign-born come into the U.S. legally, on various visas. State Department estimated that between 15,000 and 50,000 women and girls are trafficked each year into the United States. The Human Rights Center at the University of California, Berkeley estimates that at least ten thousand people are working as forced laborers at any one time in the U.S. Human trafficking contributes directly to illegal immigration, drug sales, violence against women and children, illiteracy, and street crime.

As is the case worldwide, women and children suffer excessively from trafficking. Poverty, gender discrimination, illiteracy and low levels of education, regional conflicts, and a lack of job opportunities affect women in great numbers. An estimated 80 percent of trafficking victims worldwide are women and children. In the United States, victims of trafficking are almost exclusively immigrants, and mostly immigrant women. The average age of trafficking victims in the U.S. is 20. In extreme situations, these women are forced into trafficking because they were sold by a family member or physically abducted or kidnapped by traffickers.²⁰ Many from South Asia, especially Pakistan are trafficked into the country through forced marriages.

¹⁹TVPRA, 2005

²⁰Human Trafficking: Modern Enslavement of Immigrant Women in The United States. <https://www.aclu.org/other/human-trafficking-modern-enslavement-immigrant-women-united-states>

There are only few records of what happens when the victims reach the U.S. A review of some of the prosecuted cases in U.S. reveals shocking details. The study found that victims were often raped, beaten, brainwashed, threatened with their family's safety, robbed, held in unsanitary circumstances, and even killed.²¹ What makes the situation worse for the victims is they are torn away from their families and brought to an entirely different cultural set up. They do not understand the language and are scared to seek help. They are also threatened with police detention and suffer long-term trauma of the abuse that they were put through.²²

In 2018, 10,949 cases of human trafficking were reported in the U.S.²³ California is one of the largest sites of human trafficking in the U.S. with 1,656 cases of human trafficking reported in the year 2018 alone. Of those cases, 1,226 were sex trafficking cases, 151 were labour trafficking cases, 110 involved both labour and sex trafficking, and in 169 cases, the type of trafficking was not specified.²⁴

According to the FBI, Texas, Minnesota, Nevada, Florida, and Wisconsin were the top 5 states for arrest in 2019. Per 100k population, Nevada had 7.50, Mississippi had 4.99 Florida had 4.08, California had 3.80 and Texas had 3.63 trafficked people. One of the main points of entry into the United States for victims of sex trafficking is Los Angeles. Almost 1 in 10 homeless individuals in

²¹Jini L. Roby, Jennifer Turley & Jo Anna Garrick Cloward. U.S. Response to Human Trafficking: Is it enough? Journal of Immigrant and Refugee Studies 2008

²²Trafficking in Persons Report, 2005

²³ National Human Trafficking Hotline, <https://humantraffickinghotline.org/states>

²⁴National Human Trafficking Hotline, <https://humantraffickinghotline.org/state/california>.

Los Angeles reported being sex or labour trafficked.²⁵

It is evident that contrary to popular perception, trafficking is not just limited to foreign nationals but U.S. citizens are also trafficked within the country. Manipulation is often the favoured tool of traffickers with them luring the victims with promises of a romantic relationship or a high paying job. When these tactics fail, they resort to violence. Victims are forced to work as prostitutes, domestic, restaurant or factory workers with little or no pay.

What make it difficult to understand the real scale of human trafficking is that it is difficult to profile the victims. They include people of every age and gender and comes from diverse backgrounds in terms of race, colour, nationality, religion, socio-economic status etc. While some of the victims are forced into it on their own, others are kidnapped. The only common factor is that all these victims suffer from some form of vulnerability. For example, most of the domestic victims of trafficking in U.S. are either children or runaway youth forced to leave their homes due to physical and sexual violence, poverty or addiction. In most of the cases, traffickers exploit their vulnerability of being separated from their families and they are pushed into prostitution or drug peddling.

For example, it was reported that victims in a Jersey City prostitution ring were induced to use heroin and cocaine and beaten if they did not turn a daily quota of tricks. Girls as young as ten were discovered to have been trafficked from West Africa to work in hair braiding salons in Newark, only to be enslaved braiding hair for 14 hours a day.

Estimates put the number of American kids under the age of 18 who are victimized through the practice

²⁵Chest of Hope [Human Trafficking - Chest Of Hope](#)

of child prostitution at anywhere from 100,000 to 300,000 a year.²⁶ In 2003, 1,400 minors were arrested for prostitution, 14 per cent of whom were younger than 14 years old. A study conducted by the International Labour Union indicated that boys are at a higher risk of being trafficked into agricultural work, the drug trade, and petty crime. Girls were at a higher risk of being forced into the sex industry and domestic work. In 2004, the Department of Labour found 1,087 minors employed in situations that violated hazardous occupation standards. The same year, 5,480 children were employed violating child labour laws.

The 2019 Trafficking in Persons Report suggest that a large number of child sex trafficking survivors in the US were at one time in the foster care system. Many industries need workers who are smaller in size, have smaller hands and can be terrorised to stay. Children are seen as easy to capture, subdue, and obtain for human trafficking. Estimates suggest that the life expectancy for a child taken into sex trafficking is only seven years from the date of capture.²⁷

The data from a survey conducted by End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (ETCPA USA), an Anti-Trafficking agency states that the average age of entry into street prostitution is between 12 and 14 years old, though there have been cases of girls as young as nine years old. Many victims are runaway girls who were sexually abused as children. According to the FBI Uniform Crime Reports (2006), across the US, 36,402 boys and 47,472 girls younger

²⁶Kate Lee. Is New Jersey The Capital Of Human Trafficking In The U.S.? ajli.org

²⁷<https://www.wfla.com/news/by-the-numbers/by-the-numbers-human-trafficking-in-florida/>

than age 18 were picked up by law enforcement and identified as runaways.²⁸ The National Runaway Switchboard said in 2009 that one-third of runaway youths in America will be lured into prostitution within 48 hours on the streets.

It is worth noting that the media in the US has a major role in downplaying the real impact of human trafficking. Street prostitution is often shown as “joyous” and the control exerted by pimps and sex traffickers over the women is often ignored and, in most cases, it is portrayed that women get into prostitution on their own free will. The pimps get glamorised on television shows, music videos and movies. Even youngsters use the word in their everyday conversation without understanding its real meaning. Somehow, the practice has become far more normalised than what is understood or acknowledged.²⁹

Anti-trafficking Legislation in the USA

The Trafficking Victims Protection Act (TVPA) 2000 was the first comprehensive federal law to address human trafficking. It provided the first definition of human trafficking in the US and formulated new measures to prosecute traffickers. The TVPA was signed into law by President Clinton. It covers three broad areas: 1) protections and assistance for victims; 2) prosecution of criminals for human trafficking; and 3) U.S. efforts to prevent human trafficking in other countries. The Act was subsequently renewed in 2004, 2006, and 2008.

²⁸Heather J. Clawson, Nicole Dutch, Amy Solomon, and Lisa Goldblatt Grace. Human Trafficking into and Within the United States: A Review of the Literature. ASPE Reports. 2018

²⁹Molly Callahan. Human trafficking in the US is a much bigger problem than we think.<https://news.northeastern.edu/2019/08/16/human-trafficking-in-the-us-is-a-much-bigger-problem-than-we-think/>

In addition to the protections offered through immigration relief for foreign national victims of human trafficking, it focuses on prevention through public awareness programs, both domestically and abroad, and prosecution through new federal criminal statutes.³⁰

The TVPA granted the FBI the statutory authority to investigate matters of forced labour; trafficking with respect to peonage, slavery, involuntary servitude, or forced labour; sex trafficking by force, fraud, or coercion; and unlawful conduct with respect to documents in furtherance of trafficking.

The TVPA gave law enforcement the ability to protect international victims of human trafficking through several forms of immigration relief, including Continued Presence and the T visa. Continued Presence allows law enforcement officers to request temporary legal status in the United States for a foreign national whose presence is necessary for the continued success of a human trafficking investigation. The T visa allows foreign victims of human trafficking to become temporary U.S. residents and apply for permanent residency after three years. The TVPA also established a law requiring defendants of human trafficking investigations to pay restitution to the victims they exploited.

In accordance with the provisions of the Act, the FBI has categorised human trafficking cases under its Crimes Against Children and Human Trafficking program. The agency investigates:

- Sex trafficking: When individuals are compelled by force, fraud, or coercion to engage in commercial sex acts. Sex trafficking of a minor

³⁰TVPA Act <https://www.govinfo.gov/content/pkg/PLAW-106publ386/pdf/PLAW-106publ386.pdf>

occurs when the victim is under the age of 18. For cases involving minors, it is not necessary to prove force, fraud, or coercion.

- Labour trafficking: When individuals are compelled by force, threats, or fraud to perform labour or service.
- Domestic servitude: When individuals within a household appear to be nannies, housekeepers, or other types of domestic workers, but they are being controlled and exploited.³¹

In addition to this, to investigate the growing problem of child sex trafficking in the country, the FBI, in conjunction with the Department of Justice's Child Exploitation and Obscenity Section and the National Center for Missing & Exploited Children (NCMEC), launched the Innocence Lost National Initiative. It has expanded to 86 dedicated Child Exploitation and Human Trafficking Task Forces since the time of its establishment.

Loopholes in the existing laws

The Trafficking Victims Protection Act (TVPA) 2000 is definitely among the landmark legislations passed by the U.S. But it needs to be read with the previous laws to understand why this law may not be enough to prevent human trafficking in the country. Prior to this, the Commercial Sex Act was in force which made it illegal to recruit, entice, obtain, provide, move or harbour a person or to benefit from such activities knowing that the person will be caused to engage in commercial sex acts where the person is under 18 or where force, fraud or coercion exists. But this law applied only to interstate trafficking.

Another factor compounding to the ineffectiveness of laws even in the present times is that each state has

³¹<https://www.fbi.gov/investigate/violent-crime/human-trafficking>

its own laws for dealing with trafficking within its territory. Prosecution may occur under laws that specifically address sex trafficking, or under other laws such as laws prohibiting commercial sex services, including prosecution for any acts of abuse or unlawful detention of the victims of sex offenses. In 31 states, victims of sex trafficking may potentially be charged with crimes they were forced to commit. It is this dichotomy that exists in the American law that is strange and eventually becomes a means to perpetrate trafficking. Under federal law, a child under 18 years who is commercially sexually abused is a victim of trafficking. However, under local law a child is charged with child prostitution.

When the FBI started collecting data about sex and labour trafficking in each state in 2013, it was found that many state and local police districts did not have the option to classify a crime as human trafficking in their centralised reporting databases for a very long period. For example, some of the cases of sex trafficking was misclassified as prostitution simply because the state did not have a box to tick. This led to many victims being treated as offenders and there were underreporting of cases.

Take the example of New York City which is among the biggest sex trafficking destination in America. Women and children are purchased on the streets of the city openly and without fear of punishment. Why this happens with impunity is due to the criminal justice reforms introduced by the authorities which had resulted in a hands-off approach to prostitution. Even a cursory look at statistics is telling. In 2018, in Brooklyn, 279 arrests were recorded for buying sex. But by June 2021, that number reduced to just four. Arrests for promoting prostitution or pimping came down to two from 36. This means that victims

were being exploited openly while police turn a blind eye to the problem.³²

It is evident that till 2000, the laws that were prevalent were the major hindrances in addressing the issue of trafficking. Till that time, the U.S. government treated all individuals present in the country without proper documentation as illegal immigrants. There were no common policy instruments to prosecute traffickers. Across jurisdictions, traffickers were prosecuted and sentenced under different statutes. As seen earlier, some of the major laws did not differentiate between victims and perpetrators. For example, under the Mann Act which provided penalties for interstate transportation of women for purposes of prostitution, both victims and traffickers were prosecuted and punished by fines or jail terms. In fact, the Mann Act was also believed to have excluded victims who were not young white victims, as women of colour were often blamed, arrested, incarcerated.

An added graver concern was that the U.S. Supreme Court required the presence of force or legal coercion in involuntary servitude cases. It did not recognise psychological coercion which was amongst the most common tool used by traffickers to exert control over their victims. It was only with time that there came the realisation that those who are trafficked should first be categorised as victims if the issue has to be addressed. But even a law that was designed to prevent trafficking in the US has several flaws and, in a way, abets this serious crime.

According to the provisions of TVPA, only those victims who are found to be victims of “severe form” of trafficking are assisted. *Severe form* of trafficking in persons is defined as:

³²Lauren Hersh. New York City, sex trafficking hub? New York Daily News. 28 June 2021

(a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or

(b) the recruitment, harbouring, transportation, provision, or obtaining of a person for labour or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

If a victim is found to have been subjected to ‘severe’ form of trafficking, that person can receive benefits including (1) protection and assistance and (2) continued presence in the United States.

Here, the onus is on the victim to prove that she is a victim of ‘severe form’ of trafficking, and willing to assist, in ‘every reasonable way’, in the apprehension and prosecution of the perpetrator. This clause which mandates the victim to assist in the criminal case as the prerequisite to their initial and continuing status as victims is the most damaging point of this Act. Considering the physical, sexual and psychological trauma that the victims of human trafficking go through, it is inhumane to put the burden on them to prove the abuse. Many do not find the strength to testify against their abusers and often make the choice to remain in the exploitative situation.

As a justification to this clause, it is said that “force, fraud, or coercion” are important as they separate human trafficking from the crime of human smuggling. There is a general notion smuggling is done with consent and there is a cash transaction that takes place between the smuggler and the smuggled.³³ But it is a very fine line which gets often blurred and, in the process, denies justice to the victims of human trafficking.

³³Human Smuggling and Trafficking Center, 2005

It is due to the above reasons that even after a decade of the TVPA coming into force, the U.S. has still not been able to protect the victims of human trafficking. It remains a well-known destination for international trafficking. In 2011, Congress failed to re-authorise TVPA. There has never been a serious study or research conducted to understand the magnitude of the problem. In fact, the lack of statistics makes it difficult to take any concrete measures in terms of policy formulation.

In such a scenario, it is quite ironical that internationally the U.S. has set standards that the provisions of TVPA must be followed if other countries want to receive aid. The U.S. administration needs to understand that the language or cultural barriers, mistrust in the government, and fear of persecution contribute to victims not wanting to prosecute their traffickers. This leads to their inability to attain visa and they remain trapped in the vicious surroundings.

The cyber laws have also equally contributed to human trafficking becoming so widespread. According to Section 230 of the Communications Decency Act, interactive computer services are not held accountable for content provided by another party. This provides anonymity to the traffickers and immunity to the computer services company and the former uses this to advertise their victims on different forms of media including classified ads, social media, chat rooms, message boards, text message and patrolling streets. The majority of child sex trafficking cases referred to the National Center for Missing and Exploited Children (NCMEC) involve ads on Backpage.com, a classified advertising website.

Social media particularly Facebook and MocoSpace have played a significant role in aiding trafficking. Law enforcement agencies still do not have the

technical know how to navigate these networking sites and identify crimes in time. To evade surveillance, traffickers also create their own website. San Diego Adult Service Provider was a member-only website that was used for sex trafficking. Members were charged \$100 a month and the website operator personally vetted every member in order to evade law enforcement. The website was taken down in 2016 but there continues to exist many such similar websites. The liberal laws propounded by the U.S. and their continuous efforts in safeguarding the rights of their citizens have unknowingly paved the way for a double-edged sword – one where a certain section of population gets to enjoy their rights and freedom and another where a section is reduced the status of chattel.

Conclusion

There is no doubt that human trafficking is a result of various societal ills and the inherent inequalities and lack of opportunities in a society due to oppression, discrimination, poverty, endemic corruption. It affects all nations equally and it is time to look at it as a truly global issue that needs to be addressed with the cooperation and commitment of all nations. The U.S. needs to look beyond its subjective lens if it is earnest about eradicating the problem of human trafficking. It has to let go of its past burden and work for an equal and just society.

The TVPA that it imposes on other nations has many flaws and its inherent contradictions must be done away with if it has to be effective in rendering justice to the victims. The perpetrators need to be made accountable and the victims should be given a free passage without them having to recount the years of abuse and trauma that they have endured. Law enforcement officials should be trained to identify victims of human trafficking. This model of partial decriminalisation known as the “Equality Model” has

already been successfully implemented around the world in countries like Sweden, France, Ireland and Israel etc. There should be increased collaboration and information sharing within the country and between nations to combat human trafficking.

Taking a cue from other nations, there needs to be a complete overhaul of the system which issues temporary work visas to overseas workers in the U.S. There needs to be increased enforcement of existing protection of workers and there should be a mechanism in place to protect undocumented immigrants from trafficking.

It is important to note that the United Nations Protocol against Trafficking in Persons was entered into force in 2003 and was adopted by a number of nations. Yet in the 2014 UN report, it was found that not much has changed from a global perspective. The report stated that “Globally, the number of convictions per 100,000 population (in 2010-2012) remained basically unchanged in comparison to the 2007-2010 period (0.1 per 100,000 population)” and, 40 per cent of countries report less than 10 convictions a year. This situation can change only if there is more debate and discussion in societies and if there is a sense of understanding that the evil of human trafficking can be fought only if humanity comes together and acknowledges it as a global issue. It can no longer remain the problem of the less privileged.

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