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## A HUMAN RIGHTS APPREHENSION ON MODERN DAY SLAVERY – THE CRIME OF HUMAN TRAFFICKING

### INTRODUCTION

Oluale Kossola. The last known survivor from the last slave ship<sup>1</sup>. His name echoes through a history that believed some humans had lesser to offer and hence lesser worth — sadly, an ode to the ‘living monuments’ of a supremacist, power driven world that people of color, women, and almost every minority have become at some point. One would think 400 years of being abolished is long enough to wipe the existence of something from the world today, but like Edmund Burke put it in the simplest way possible, slavery is indeed a weed that grows on every soil. Termed as ‘modern-day slavery’, human trafficking in the 21st century follows the same principles slavery did — a power and profit driven economy and community that has its foundations within socioeconomic inequalities, increasingly restrictive laws that neglects pragmatism by adopting morally idealistic views, and most importantly, factors that heavily contribute to the trafficked persons count such as poverty, illiteracy, and violence.

Human trafficking in its most basic sense is described as individuals being abducted and kept in an abusive and exploitative state for profit. While the ways in which such persons are abducted include forceful methods such as kidnapping and actual abduction, using deception to recruit individuals under the guise of providing them a livelihood is also very common. Such processes have no boundaries: exploitation of these individuals happens both within countries and

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<sup>1</sup>NEALE HURSTON & Z., WALKER, A., & G. PLANT, BARRACOOON: THE STORY OF THE LAST "BLACK CARGO" (Amistad Publishers, 2018).

internationally. Although the past decades have placed more emphasis on the sexual exploitation of women across the globe, it is important to keep in mind that women, men, and children are all exploited for many purposes that include sexual exploitation, forced labor, exploitative labor for private individuals etc.

## **UNDERSTANDING THE *VICTIMS***

The Global Data Hub on Human Trafficking is a Counter Trafficking Data Collaborative<sup>2</sup> that has identified a total of 1,08,613 individual trafficking cases across 164 countries with traffickers' and victims of 175 nationalities as of 3<sup>rd</sup> of June 2020. This begs the question; how can something that is both, unlawful and morally horrific have numbers that are even more astounding? This is partly because few of the primary factors that make an individual vulnerable or a potential victim are very subjective to each issue — for example, inter country trafficking makes the victim vulnerable solely by virtue of transportation one place to another: the lack of proper legal documents to travel becomes something that is 'taken care of' by the traffickers. Other factors include the economic status of the individual and it is commonly seen how poverty often blindsides individuals into thinking they have no other option than the one presented to them at hand, which may look like good money albeit at the cost of their liberty and sometimes, unfortunately, their entire lives. Violence and abuse history also play a role in the case of some victims who continue living in the traumatic cycle without even realizing it.

The most common types of trafficked victims are found in categories of sex trade, forced labor, child trafficking and domestic service. With almost 80% of sex trafficking victims being women and girls<sup>3</sup>, sex trade thrives on the commercial sexual exploitation that includes prostitution, mail-order brides, sex-tourism etc., with most of its victims being coerced, blackmailed, or defrauded into thinking a different job was opportunity was waiting for them. Persons with low levels of education or income often fall prey to peonage or debt bondage that results in them being reduced to forced laborers. As per the International Labor Organization Report 2017, migrants and indigenous people are most vulnerable to this industry that generates almost \$150 billion in illegal

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<sup>2</sup>*The Global Data Hub on Human Trafficking*, COUNTER-TRAFFICKING DATA COLLABORATIVE (CTDC) (Jun. 16, 2021, 7:34 PM), <https://www.ctdatacollaborative.org/>.

<sup>3</sup> Neha, A., & Nawal, M., *Sex Trafficking of Women and Girls.*, 6 REV OBSTET GYNECOL, 22–27 (2013).

profits per annum<sup>4</sup>. Similar tactics are also used to ‘recruit’ domestic labor from various countries, especially those that are still developing. Something that is common throughout all these types is the trafficking of young girls and boys. Children who fall prey to this include those that are pledged by their parents as collateral or as servitude for a debt, kidnapped, abducted, or otherwise imprisoned. While young girls and boys are kept imprisoned at brothels for sex trade, underdeveloped countries tend to often have families that sell their children for domestic service whereas unorganized sectors are infamous for having forced child laborers.

### **UNDERSTANDING THE *PERPETUATOR***

Identifying victims are comparatively easier than the perpetrators. This is mainly because much like any other crime, traffickers take advantage of conflicts and other humanitarian dilemmas (such as poverty and violence) and use those persons who are vulnerable in these situations to create an opportunistic and dynamic profit-earning scenario. Here, it becomes important to understand how ‘dynamic profit-earning’<sup>5</sup> as a *motive* alone in itself contributes to creating a *type* of trafficking group; a group that is characterized by extreme control and discipline with a single leader and limited members with networking ‘associates’ who are not directly linked to the group. Such groups may not have a strong ethnic identity and continuously focus on activities that generate the most profit.

The sectors that look to economically generate most profit from human trafficking include the agriculture sector, manufacturing industries, hospitality sector and the commercial sex industry. Understanding how the economics of human trafficking pan out is very important when it comes to understanding the kind of market the perpetrators create or want to create. Most perpetrators participate in a competitive market where they meet demand with supply, neither in surplus nor in short to ensure a steady flow of cash<sup>6</sup>. Forced laborers are often transported from one country to another, usually, to places that can earn better profits and other times, to places where trafficking

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<sup>4</sup> Guy Rider, *ILO says forced labour generates annual profits of US\$ 150 billion*, INTERNATIONAL LABOR ORGANIZATION, (Jun. 16, 2021, 8:51 PM), [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_243201/lang--en/index.html](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_243201/lang--en/index.html).

<sup>5</sup> UN & ESCAP, *COMBATING HUMAN TRAFFICKING IN ASIA: A RESOURCE GUIDE TO INTERNATIONAL AND REGIONAL LEGAL INSTRUMENTS, POLITICAL COMMITMENTS AND RECOMMENDED PRACTICES* 176-253 (1st ed. 2004).

<sup>6</sup> SIDDHARTH KARA, *SEX TRAFFICKING: INSIDE THE BUSINESS OF MODERN SLAVERY* 86-87 (33661st ed. Columbia University Press 2010)

is rampant enough for their crime to go undiscovered. Perpetuators in the form of private individuals usually take the form of private households and wealthy individuals looking to employ house help and workers for domestic purposes; using trafficked individuals that will save them almost \$8 million dollars<sup>7</sup> – cheaper costs of employment, underpaying these workers or not even paying them because of the assurance they have nowhere else to turn to are all factors that contribute to this.

## **THE RELATIONSHIP BETWEEN HUMAN RIGHTS AND HUMAN TRAFFICKING**

The relationship between human rights and human trafficking is something that requires no elaborate design – the very virtue that makes human rights human is that such rights are mundanely humanitarian. A person should not have to fight for their right to live or their right to not be treated as a commodity or object. Throughout the course of history to this present day, human rights laws have unequivocally argued that appropriating the legal personality, humanity or labor of another human is not just obviously legally wrong, but also just fundamentally immoral. The Universal Declaration of Human Rights<sup>8</sup>, the milestone document when it comes to human rights make it clear that these rights are universal: every individual in this world, regardless of their race, sex, gender, ethnic identity, socio-economic status, or any other distinction cannot be treated differently when it comes to certain inherent matters. Laws that prohibit debt bondage, forced labor, sex trade and other trafficking activities are not bound to the geographical territory of a country; a trafficked person, enslaved or taken away from their country of origin are protected by international law. The trivial argument that they are ‘non-citizens’ or ‘non-nationals’ have no ground here – humans rights are *all* humans’ rights, and no ground of discrimination can be used to deny these rights to any person. This basic principle overrides other diplomatic and legislative concerns such as the legality of their transportation to a country, legal validity of their existence in a country, any other immigration control related concern or even public order. Such considerations come second to ensuring that their physical and moral integrity is not compromised. While this understanding alone helps one see how powerful the link between human rights and human trafficking is, it also brings us to the disheartening realization that despite that, the measure of the distance that is to be

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<sup>7</sup> CTDC, *supra* note 2.

<sup>8</sup>E.R, UNIVERSAL DECLARATION OF HUMAN RIGHTS 16-18 (Applewood Books 2001).

travelled between these two stretch long, filled with obstacles that we must try to continuously conquer.

## **THE INDIAN LEGAL AND CONSTITUTIONAL STANDPOINT**

Article 21 of the Indian Constitution<sup>9</sup> and how it has been interpreted by the judicial system in India as a key instrument in how we need to approach the human trafficking issue. While the Article alone refers to Right to Life of an individual, the judicial interpretation is what gives it a wholesome meaning. Protection of a mere existence alone is not what the Law should seek to provide to its citizens, but rather a dignified life<sup>10</sup> with an acceptable standard of living, one that protects them from being sold as commodities<sup>11</sup>. This bigger and broader outlook of what the basic human right to life is will help us understand the many rights that are violated through the act of human trafficking including the right to freedom of movement, the right against torture or degrading treatment, the right to freedom of expression and the right to freedom and liberty. For a common man, these are aspects of his life he does not think about twice because it is ingrained into his mere existence of being, whereas, for a human trafficking victim, these are their end goals and dreams they wish to achieve to finally live their life on their terms.

In more distinct terms, Article 23<sup>12</sup> is a fundamental right that prohibits human trafficking and any form of forced labour. Article 39(e)<sup>13</sup> and Article 39(f)<sup>14</sup> are Directive Principles of State Policy that further emphasize the idea that the health and strength of citizens are not to be exploited by means of economic necessity and that children should be protected against any such exploitation, respectively. Therefore, the Indian Constitution in itself has enshrined a human rights approach through both the fundamental rights and the DPSP. While the DPSP may not be enforceable in Court, it plays a very important role in the way our policies are shaped. Shaping the policies of the State in a manner that places human rights at the forefront is one of the most significant ways to combat human trafficking. Further, ensuring such policies are guided by these principles pave the way for a sounder foundation that leads to better legislation and judicial pronouncements. Prajwala

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<sup>9</sup> INDIA CONST. art. 21.

<sup>10</sup> Maneka Gandhi v. Union of India, (1978) AIR 5971.

<sup>11</sup> Kharak Singh v. State of Uttar Pradesh, (1963) AIR 1295.

<sup>12</sup> INDIA CONST. art. 23.

<sup>13</sup> INDIA CONST. art. 39 cl. e.

<sup>14</sup> INDIA CONST. art. 39 cl. f.

v. Union of India<sup>15</sup>, where the Court demanded the need for a victim protocol is an example of how the judiciary adopted a human-rights approach with the protection of the victim(s) as the primary framework.

## **THE PATH FORWARD: A HUMAN-RIGHTS BASED SOLUTION**

There is no quantitative or qualitative method one can use to measure how much farther we need to go to completely absolve the world of human trafficking, which is why it is important to keep a human-rights approach or a human rights framework to tackle this issue. This task is multi-dimensional; the quickest way to ensure we reach there and that we do so in time with the minimum number of casualties is to pay adequate attention to each dimension and component. Identifying traffickers and discriminatory practices, identifying the unjust power distribution and centralization, establishing a redressal platform that is both efficient and effective, establishing State legislative measures that clearly identify the problem and creates duties within the State to improve are all various components that need to be addressed individually with great concern. Apart from the practical benefits a human rights-based approach brings, it is important to remember that the most significant insight needed to fight this battle comes from those who were the most affected – i.e., the victims themselves. Adopting this approach helps us see trafficked individuals not as criminals who have crossed borders illegally, but as victims of abuse who have been exploited and isolated. *Rantsev v. Cyprus and Russia*<sup>16</sup>, an important landmark case that highlighted that someone who was coerced into committing a crime cannot be held responsible for the same, is an example of an international law tribunal that adopted a human-rights approach. Not only does it help us address the roots of the problem like identifying the primary factors that made them vulnerable, but it also helps us ensure that the entire law-making process is anchored to the main objective of protecting human life.

## **CONCLUSION**

For the fortunate, Oluale Kossola is an unfortunate story. For Luiza Karimova<sup>17</sup>, his name might be foreign but his story, to her, is just another day in her life before she figured a way out. His

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<sup>15</sup> Prajwala v. Union of India, (2004) SCALE 531.

<sup>16</sup> Rantsev v. Cyprus and Russia, (2010) ECHR 25965/0.

<sup>17</sup> Rena Effendi, *In the words of Luiza Karimova: "We were sex slaves"*, UN WOMEN, (Mar. 18, 2021, 9:05 AM), <https://www.unwomen.org/en/news/stories/2017/2/in-the-words-of-luiza-we-were-sex-slaves>.

story does not startle 17-year-old Mary<sup>18</sup>, smuggled from Libya to Italy and forced into prostitution to make sure her mother was well-fed and safe back home. If one were asked to measure the distance to be travelled from human rights to human trafficking, they would not be able to do so. That is because the answer lies in the acknowledgement of the fact that they are not two different ends of a spectrum – one is the path to another; recognizing the human rights of the trafficked and adopting a human-rights approach in our policy making and legislation is the only way to end their misfortune. It is indeed a long battle, and one that needs to be fought with perseverance and courage – *until justice rolls down like water and righteousness like a mighty stream.*

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<sup>18</sup> Ferguson. S, *Fleeing Boko Haram, and Tricked into Sexual Exploitation*, UNICEF USA, (Mar. 18, 2021, 10:17 AM) <https://www.unicefusa.org/stories/fleeing-boko-haram-and-tricked-sexual-exploitation/32525>.