

# TRAFFICKING IN PERSONS IN SRI LANKA

*Sajeevani Dilka Lakmali Karunanayake\**

## I. INTRODUCTION

Human trafficking is a global issue that continues to affect many lives. Human trafficking is generally understood to refer to the process through which individuals are placed or maintained in an exploitative situation for economic gain.<sup>1</sup> Trafficking can occur within a country or may involve movements across borders.<sup>2</sup> Due to the increase and ease of movement of people across borders and due to the advancement of technology and the increase of usage of social media, trafficking of persons remains at a steady rise.

Why is trafficking in persons, irrespective of gender and age, objectionable and to be resisted in all its forms? According to the first report of the Special Rapporteur on Trafficking, especially women and children:

Trafficking represents the denial of virtually all human rights: the right to liberty and integrity and security of the person; the right to freedom from torture and other cruel, inhuman or degrading treatment; the right to freedom of movement; the right to home and family; the right to highest attainable standard of health; the right to education.<sup>3</sup>

Under the Rome statute of the International Criminal Court, trafficking in some circumstances can be a crime against humanity or a war crime.<sup>4</sup> While human trafficking affects both men and women, the overrepresentation of women and children as victims in global statistics reflects their particular and continuing vulnerability in many parts of the world.<sup>5</sup>

So, what is trafficking in persons? The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime defines trafficking in the following manner:

### **ARTICLE 3 (A)**

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harboring 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.*

*Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.*

The Protocol provided the first internationally agreed definition of “Trafficking in persons”.

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\* Senior Deputy Solicitor General, Attorney General's Department of Sri Lanka.

<sup>1</sup> Human Rights and Human Trafficking – Fact Sheet No. 36, p. 1. United Nations Human Rights, Office of the High Commissioner, Geneva, 2014.

<sup>2</sup> Ibid.

<sup>3</sup> Appointed at the 60<sup>th</sup> session of the UN Commission on Human Rights and mandated to focus specially on Human Rights aspects of the victims of trafficking in persons.

<sup>4</sup> Ibid.

<sup>5</sup> National Strategic Action Plan to Monitor and Combat Human Trafficking of Sri Lanka (2021-2025) p. 8

## II. TRAFFICKING IN PERSONS IN SRI LANKA

Sri Lanka is primarily a source country with men, women, and children being trafficked primarily for labour and also for commercial sexual exploitation, including domestic child sex tourism and at times a transit and a destination country for victims of trafficking.<sup>6</sup> Sexual exploitation of women and children is the most common form of trafficking that takes place within Sri Lanka and forced labour coming in second. Men, women and children are trafficked from Sri Lanka to the West, South, and East Asian countries and to Europe for commercial sexual exploitation and forced labour. There have been instances when women from South East and South Asia and the former Union of Soviet Socialist Republic were trafficked into Sri Lanka for commercial sexual exploitation.

As a country of origin, Sri Lankan men and women often voluntarily migrate through official recruitment agencies to Middle Eastern countries (Bahrain, Iraq, Israel, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia and the United Arab Emirates), and Asian countries (Malaysia, Singapore) to work as domestic workers, garment factory workers and as construction workers.<sup>7</sup> Although employment has been obtained through official channels, some migrant workers end up in exploitative situations. According to the Sri Lanka Bureau of Foreign Employment (SLBFE) statistics, the majority of migrant workers migrate to Middle Eastern countries for semi or less skilled categories of employment and can be exposed to the risk of human trafficking.<sup>8</sup>

It has come to light that some workers choose to travel on visit visas instead of work visas in order to avoid strict regulations that the country has placed on women who must meet numerous requirements before being granted permission to work in a foreign country. In some of these cases it has been reported that these migrant workers had been subjected to physical and sexual abuse and some have been placed under forced labour conditions.

Sri Lankan women have been subjected to forced sex work in countries such as Jordan, Singapore and the Maldives. There have been reported cases of women from Thailand, China and the former Soviet Union, particularly from Uzbekistan, being trafficked into Sri Lanka for sexual exploitation.

It has also been reported that narcotics are being used to lure children and women into commercial sex work. The unregulated proliferation of spas around the country which double as places offering sexual services which leads to the sexual exploitation of women and at times children, and the possible exploitation of unregulated foreign labour migrants who enter the country on temporary visa are some trends that have been observed and which may reveal trafficking in persons.<sup>9</sup>

An increase in online forms of exploitation was observed during and after the Covid-19 pandemic, presumably due to the increased use of social media apps brought about by the several lockdowns that were imposed in the country. Early last year a new form of trafficking where persons were forced to engage in criminal activities was reported in Sri Lanka. It was reported that several young men and women who were promised lucrative jobs in the IT industry in Bangkok, Thailand, were later forced to engage in cyber scamming and other cybercrimes in Myanmar, Cambodia and Lao PDR with Thailand as the main transit country.

## III. INTERNATIONAL COMMITMENTS

Sri Lanka signed the United Nations Convention against Transnational Organized Crime (UNTOC) as well as its two protocols related to trafficking in persons and smuggling of migrants in the year 2000.

<sup>6</sup> UNODC, Legal and Policy Review, Responses to Human Trafficking in Bangladesh, India, Nepal, and Sri Lanka (2011)

<sup>7</sup> International Organization for Migration, Handbook for the Sri Lanka Bureau of Foreign Employment (SLBFE) on identification, Protection and Referral of Victims of Human Trafficking (2016).

<sup>8</sup> SLBFE Annual statistical report of foreign employment, 2017.

<sup>9</sup> Resource package on Trafficking in Persons published by The Asia Foundation (2020) p. 14.

UNTOC was ratified by Sri Lanka in September 2006. Sri Lanka ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children in June 2015 and has ratified the SAARC Convention preventing and combating the trafficking in women and children for prostitution. Additionally, Sri Lanka has become a party to several other conventions to eliminate forced labour and slavery and to protect the rights of migrant workers and children. Among these instruments are:

- The UN Convention on the protection of the rights of all migrant workers and members of their families.
- Slavery convention.
- Co-conventions of the ILO including those on minimum age for employment (C138), worst form of child labour (C182), forced labour convention (C29), abolished of forced labour convention (C105), Protocol of 2014 to the forced labour convention (P29).
- Hauge convention on protection on children and corporation in respect of inter-country adaption.
- SAARC convention on child welfare.

#### **IV. DOMESTIC LEGAL FRAMEWORK RELATING TO TRAFFICKING IN SRI LANKA**

##### **A. Constitutional Safeguards**

At the national level, the constitution does not expressly prohibit trafficking in persons, slavery, forced labour or other forms of exploitation. However, the constitution does guarantee a number of fundamental rights and freedoms including: Freedom of thought, conscience and religion (Article 10); Freedom from torture (Article 11). The right to equality and non-discrimination on a number of prohibited grounds including sex (Article 12); Article 12(4) authorizes the government to take affirmative action for the advancement of women and children.

Article 27 of the Constitution carries the Directive Principles of State Policy. Directive Principles of State Policy direct the State to eliminate economic and social privilege and disparity and exploitation (Article 27(7)). These principles also direct the State to promote the special interests of children and youth and to protect them against discrimination and exploitation (Article 27(13)).

##### **B. Key National Legislation on Trafficking in Persons**

The government of Sri Lanka has two main criminal laws relating to trafficking in persons:

- The Penal Code (Amendment) Act No. 16 of 2006;
- The Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (Act No. 30 of 2005) although this act was brought in, it is not yet in operation.

###### **1. The Penal Code**

The Penal Code Act No. 2 of 1883, which was promulgated during the British occupation, still remains as the principal statute of Criminal Law. Over the years it was realized that this Act was not adequate to deal with the increasing number of incidents of crime and their complexities especially in relation to sexual offences, child abuse, trafficking of women and children etc. This realization led to many amendments being brought into the Penal Code. "Trafficking" was first criminalized by section 360(C)(1) of the Penal Code by Amendment Act No. 22 of 1995. The focus of this section was only on buying, selling, bartering of persons including children.

The most significant change in the domestic criminal law relating to trafficking in persons was brought in the year 2006 as an amendment to aforementioned section 360(C). Section 360(C)(1), which criminalizes varied forms of trafficking in its present form, was brought in by an amendment made to the Penal Code by

Act No. 16 of 2006. The manner in which trafficking is defined in this section is in line with the definition in the trafficking protocol. This new section reads as follows:

*Whoever-*

(a) *buys, sells or barter or instigates another person to buy, sell or barter any person or does anything to promote, facilitate or induce the buying, selling or bartering of any person for money or other consideration;*

(b) *recruits, transports, transfers, harbours or receives any person or does any other act by the use of threat, force, fraud, deception or inducement or by exploiting the vulnerability of another for the purpose of securing forced or compulsory labour or services, slavery, servitude, the removal of organs, prostitution or other forms of sexual exploitation or any other act which constitutes an offence under any law;*

(c) *recruits, transports, transfers, harbours or receives a child or does any other act whether with or without the consent of such child for the purpose of securing forced or compulsory labour or services, slavery, servitude or the removal of organs, prostitution or other forms of sexual exploitation, or any other act which constitutes an offence under any law, shall be guilty of the offence of trafficking.*

*Punishment, Section 360(C) (2),*

*Any person who is guilty of the offence of trafficking shall on conviction be punished with imprisonment of either description for a term not less than two years and not exceeding twenty years and may also be punished with fine and where such offence is committed in respect of a child, be punished with imprisonment of either description for a term not less than three years and not exceeding twenty years and may also be punished with fine.*

*Section 360(C)(3)*

*In this section, —*

*“child” means a person under eighteen years of age*

*“forced or compulsory labour” has the same meaning as in section 358A*

*“slavery” has the same meaning as in section 358A*

*“exploiting the vulnerability of another” means impelling a person to submit to any act, taking advantage of such person’s economic, cultural or other circumstances.”*

This definition includes elements which are not included in the Trafficking Protocol such as buying and selling of any person and the reference to any other act which permits the inclusion of other exploitative practices. The definition of “means” used is narrower, as means such as abduction referred to in the protocol are not included in the Penal Code definition.

## 2. The Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (Act No. 30 of 2005)

This Act was passed by parliament to give effect to the South Asian Association Regional Cooperation (SAARC) Convention on Trafficking in Women and Children for Prostitution. However, this Act has not been operationalized to date.<sup>10</sup>

### C. Related Legislation

The following legislation contains provisions which prohibit acts with elements of trafficking in persons:

- The National Child Protection Authority Act No. 50 of 1998 (NCPA Act)
- The Sri Lanka Bureau of Foreign Employment Act No. 21 of 1985 (SLBFE Act)
- The Immigrants and Emigrants (Amendment) Act No. 31 of 2006
- Prevention of Money Laundering Act 05 of 2006

The provisions in the Foreign Employment Bureau Act No 21 of 1985 aims to prevent the offence of

<sup>10</sup> The Act comes into operation on a date published by the Minister in charge of the subject in an order in the Gazette which has not been published as yet.

forced labour, some of the key provisions are as follows:

- S. 62 (1) - Unauthorized recruitment
- S. 62 (2) - Operating without a license
- S. 63 (b) - Forgery or inducement to leave
- S. 64 - Unauthorized fees
- S. 67 A - General penalty
- S. 67 B - Aiding and abetting an offence under the Act
- S. 68 - Repeat offending under sec. 63 and 64

The Amendment Act No. 29 of 2017 brought to the Prevention of Crimes Ordinance has included human trafficking as a finger-printable offence.<sup>11</sup> This amendment facilitates expeditious and accurate identification of offenders. It also contributes to maintaining accurate records on human trafficking.

## V. CHALLENGES

The clandestine nature of human trafficking makes it difficult for the investigators to detect cases of human trafficking. Due to the layered and nuanced nature of the offence of trafficking and due to the law relating to this offence being relatively new and complex, the investigators sometimes encounter issues in detecting this crime and identifying the victims. In Sri Lanka the investigating agencies often find investigating cases of trafficking challenging primarily due to the complex nature of section 360(C)(1).

The lack of cooperation of the victims also makes detection and the investigations difficult. In Sri Lanka due to the stigma that is attached to sexual exploitation, most victims of sexual exploitation do not seek help from law enforcement agencies and sometimes although an initial complaint is made, and when summoned to testify in court, they stay away due to shame and social repercussions.

The victims who have been exploited after being promised employment in foreign countries too at times have been found to be wanting to stay away from the criminal justice processes due to economic reasons. As Sri Lanka is currently undergoing an economic crisis, victims who are economically motivated may view taking part in legal processes as a barrier to seeking new employment and going in search of a better life. Even the victims who have taken steps to go to a law enforcement agency after being subjected to a form of exploitation sometimes are compelled to stay away from court proceedings. Often these cases end up in acquittals due to the unavailability of the victim and witnesses.

Long delays within the legal redress machinery also discourage victims from seeking legal redress. Delays at the level of investigations, at the level of filing of Indictment and during trial have become part of the formal justice process in Sri Lanka and may be even at times considered "normal". These delays have a detrimental effect on the victims and victims are deterred from taking part in the criminal justice processes.

The investigators have encountered difficulties in identifying and capturing the perpetrators who reside overseas in cases that take place across borders. A criticism that is made against the investigators is that they do not apprehend the offenders who orchestrate the crime and that they get only the persons who are easily detected and this has led to a culture of impunity for the perpetrators who are more complicit in the crime than the ones who are apprehended within the country.

The prosecutors prosecuting TIP cases also encounter challenges as the law is relatively new and complex and also due to the lack of precedent in case law.

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<sup>11</sup> Section 7, Prevention of Crimes (Amendment) Act, No. 29 of 2017.

## VI. COUNTERTRAFFICKING MEASURES TAKEN BY THE GOVERNMENT OF SRI LANKA

The Sri Lankan government is committed to preventing, investigating and prosecuting trafficking in all its forms. Sri Lanka strives to address the full cycle of human trafficking through the four pillars of the whole-of-government strategy which are: prevention and deterrence, detection and investigation, prosecution and compliance, and victim support and protection. Sri Lanka has introduced stringent laws with a mandatory term of incarceration through Act no. 16 of 2006 (Sec 360 C (1)).

The National Anti-Human Trafficking Task Force (NAHTTF) was established to address issues related to trafficking in persons in order to strengthen the coordination and collaboration of all key stakeholders in addressing human trafficking. The NAHTTF is responsible for making submissions to the TIP Report.<sup>12</sup> According to TIP rankings, Sri Lanka is at Tier 2. The NAHTTF meets on a monthly basis to discuss and initiate policy decisions and to promote interventions on Human Trafficking. Training programmes, with the objective of enhancing the capacity of investigators and prosecutors are regularly being organized on the recommendations of NAHTTF.

Another significant countertrafficking measure initiated by the government of Sri Lanka is developing Sri Lanka's National Strategic Plan (NSP) to Monitor and Combat Human Trafficking. The NSP endeavours to bring together the stakeholders to work in coordination and collaboration on targeted interventions to effectively address human trafficking. The action plan is predicated on four pillars – namely prevention, protection, prosecution and partnership, and it is a guiding tool for implementing actions to combat trafficking in persons in Sri Lanka.<sup>13</sup>

The Standard Operating Procedure (SOP) on the identification, referral and protection of victims of human trafficking was endorsed by the Cabinet of Ministers in 2015. The State Ministry of Women and Child Development developed SOPs with a focus on child trafficking. Further, the Department of Immigration and Emigration has also developed SOPs. The Department of Labour has a separate SOP on special investigations of child labour.<sup>14</sup>

A special unit in the Criminal Investigation Department (CID) has been established as the “Human Trafficking, Smuggling, Investigation and Maritime Crime Investigation Unit”. This unit has been established to investigate incidents of trafficking in persons. This is the ultimate authority vested with the powers to investigate allegations of trafficking in persons and the complaints received by other investigative agencies including the local police, the Department of Immigration and Emigration, the Sri Lanka Bureau of Foreign Employment, and also the complaints received by civil society organizations are referred to this unit for investigation.

## VII. CONCLUSION

Trafficking is a grave crime where exploitation of men, women and children lies at its core. Exploitation erodes human dignity, inflicts serious wounds and leaves indelible scars of trauma in the minds of the victims. Every government needs to endeavour to prevent and suppress this heinous crime by strengthening their countertrafficking efforts, which should necessarily include strengthening their national legislation, strict enforcement of the law and building the capacity of investigators and prosecutors. As trafficking is a transnational crime, the international community too has a moral obligation to join hands with high-risk countries to prevent and suppress human trafficking. Strong international cooperation is needed if human trafficking is to be eradicated from the world.

<sup>12</sup> The Trafficking in Persons (TIP) Report is the U.S. Government's principal diplomatic tool to engage foreign governments on human trafficking U.S. Department of State – <https://www.state.gov>

<sup>13</sup> National Strategic Action Plan to Monitor and Combat Human Trafficking of Sri Lanka (2021-2025) p. 2.

<sup>14</sup> *Ibid.*, p. 10.