

Chapter 10

Human Trafficking – Need of the Hour

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Abstract

This paper is a study on the problems arising due to Human Trafficking in the society. Human Trafficking is a serious crime which is a grave violation of the human rights. Human Trafficking is a trade carried upon human beings. It is nothing but an act of illegally transporting people from country to another, typically for the purpose of using them as forced labor or sexual exploitation. Humanity is under threat, any human being regardless of their gender, their financial status and so on needs to be given due respect and care for the very fact that he is a human being who is enshrined with basic human right.

In this era where the development of human race is increasing day by day, the rate of Human Trafficking has also become a widespread issue. These sorts of social evils need to be dealt with great concern especially for the reason that “Women” need to live a desiring life free from any external force. No one has rights to curtail the basic fundamental right of the citizen namely, human right. Human Trafficking is one of the most heinous crime as it is a worst kind of abuse against any human.

This paper provides a general overview on the issue which covers the history of the crimes, relevant cases, measures taken and possible suggestions to curtail the same. The laws related to the freedom and will of women need to be taken into consideration in order to frame stringent laws to curtail the crime rate.

It studies various legislations such as “The Immoral Trafficking Prevention Act”, “The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill 2018”. It analyzes the United Nations Convention on Transnational Organized Crimes to prevent the human rights and other international conventions on the subject matter. The primary concern of this paper is to detail the current problem and to recommend measures which would be taken to stall this problem to the most possible extent.

Keywords: Human Trafficking, Victim- Centered approach, Stringent Laws, Domestic Legislations, International Conventions.

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Introduction

Trafficking is one of the most complex crimes in India in this era. Although illegal under Indian law, it remains a significant problem. Trafficking is a form of trade which is illegal. Human Trafficking is carrying out a trade on humans. These humans are being trafficked for the purpose of sexual slavery, Commercial sexual exploitation, extraction of organs or tissues, forced labor, marriage or domestic servitudes.

Many international conventions for preventing human trafficking of which more of the countries have ratified it. It is a serious violation of human rights of the individuals. Sexual exploitation of children is the most heinous form of crime. Not only women and children but men too are subjected to human trafficking.

Large number of people are trafficked not only for sex trade but for various other forms of servitudes such as bonded labor, drug peddling/smuggling, organ harvesting etc. Human trafficking seems like a distant problem or one that does not involve us directly, but we are unwittingly involved any time we buy something made by exploited labor.

Historical Background of Human Trafficking

We can understand the phenomenon of 'trafficking in persons', and the need for a clear and unambiguous definition better if we trace the historical development of the concept of "trafficking", and see what it has meant to different people, organizations and governments over 2 time. The earliest understanding of "trafficking" comes from UN instruments. The term "traffic" was first used to refer to the so-called 'white slave trade' in women around 1900. The trafficking and voluntary migration of white women from Europe to Arab and Eastern States as concubines or prostitutes was of particular concern to European middle-class men, women and governments. The result was the creation of an international agreement for suppression of the 'white slave trade' in 1904. At this time, "traffic" meant the movement of women for an immoral purpose i.e., prostitution. Initially, this definition required the crossing of country borders, but by 1910 it changed to acknowledge traffic in women could occur within national boundaries. Traffic in women was seen as related to slavery, but also to closely linked to prostitution.

The link between trafficking and prostitution solidified even more in the following decades, most clearly in the adoption of the 1949 Convention. We already discussed this problematic treaty under 'Primary Human Rights Instruments'. This early confusion of trafficking with prostitution is still seen in the anti-trafficking activism of some individuals, organizations and governments today.

Unfortunately, governments of some destination countries also continue to conflate trafficking with undocumented migration, particularly into prostitution. The response of

such governments is predictable and harmful to women; they adopt stricter immigration policies particularly to combat the movement of young women, under the guise of combating "illegal trafficking in persons". Some countries of origin object to this approach because it violates the rights of their citizens abroad. However, some countries of origin have adopted similar policies to prevent young women from leaving their country under the mistaken belief that they are preventing 'trafficking'.

So, we can see that at different times in history, the then prevailing concept of trafficking has

- (1) Ignored the human rights of trafficked persons;
- (2) Been used by moralists to dictate to women in prostitution;
- (3) Been used by governments to restrict the movements of women.

Scenario of Human Trafficking in India

The recent trafficking in persons Report, observes that India is a destination of women and girls from Nepal and Bangladesh for the purpose of commercial sexual exploitation. According to the report, India does not fully comply with the minimum standards for the elimination of trafficking. However, the report also points out that India in making significant efforts to control it. Despite the efforts there has not been sufficient progress in its law enforcement to address human trafficking. Child-trafficking for so called 'sex - tourism' is increasing in places like Goa, Kerala, Karwar and Himachal Pradesh as poor parents use their poverty as an excuse. Agents enter the picture; they bribe the police to turn a blind eye. Andhra Pradesh, West Bengal, Maharashtra, Tamil Nadu, Karnataka, Bihar, Orissa and Delhi have been identified as the most affected states. At the cross-border level, the major victims trafficked into India for the purpose of commercial sexual exploitation, belong to Nepal and Bangladesh.

Demographics of Traffickers

Traffickers of young girls into prostitution in India are often women who have been trafficked themselves as adults they use personal relationships and trust in their villages of origin to recruit additional girls.

Causes and Modes of Trafficking

There are several contributing factors for trade in human beings particularly in women and children. The factors of trafficking in women and children can be divided into two categories: push and pull factors.

The push factors include: poor socio-economic conditions of a large number of families, poverty coupled with frequent, almost annual natural disasters like floods leading to virtual destitution of some people, lack of education, skill and income opportunities for women (and for their family members) in rural areas, absence of awareness about the activities of traffickers, pressure to collect money for dowries which leads to sending daughters to

distant places for work, dysfunctional family life, domestic violence against women, low status of girl children, etc. It appears from the case studies that extreme poverty and other causes of deprivation not only push people to fall in the tripod the traffickers, they also create for some an incentive for trafficking. Often the prostitutes, who have no option to come out of the exploitative environment, gradually develop intimate connections with the traffickers and follow in their footsteps.

The pull factors are: lucrative employment propositions in big cities, easy money, promise of better pay and a comfortable life by the trafficking touts and agents, demand of young girls for marriage in other regions, demand for low-paid and underage sweat shop labor, growing demand of young kids for adoption, rise in demand for women in the rapidly expanding sex industry, demand for young girls in places of military concentration like Kashmir in India in recent times, demand for young girls for sexual exploitation as a result of the misconception that physical intimacy with young girls reduces men's chances of contracting HIV / AIDS, or of the myth that sex with a virgin can cure HIV / AIDS and impotence. The rampant practice of female feticide in the northern states of Haryana and Punjab has also fueled internal trafficking. Since there is a shortage of women in these states having a low female to male ratio, they have become fertile ground for the operation of traffickers. Traffickers procure girls from faraway states like Assam and Orissa; trick their families into believing they are to be married, only to later push them into prostitution.

The causes of human trafficking are multi-fold also because of the fact that we so far have made inadequate progress in addressing the issue. Thus, weak enforcement machinery and inordinate delay in justice delivery helps the traffickers to recruit or re-traffic women and children from the districts and send them to distant destinations with relative ease. Rare conviction of the real traffickers encourages the operators of the trade to continue the lucrative trade and earn huge margins without any investment. Moreover, unwillingness of the victims to seek legal redress due to absence of support from the police and the community members is also contributing to the spread of this crime.

Human rights most relevant to trafficking

The prohibition of discrimination on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status, the right to life;

(a) The right to liberty and security

(b) The right not to be submitted to slavery, servitude, forced labor or bonded labor

(c) The right not to be subjected to torture and/or cruel, inhuman, degrading treatment or punishment

- (d) The right to be free from gendered violence
- (e) The right to freedom of association
- (f) The right to freedom of movement
- (g) The right to the highest attainable standard of physical and mental health
- (h) The right to just and favorable conditions of work
- (i) The right to an adequate standard of living
- (j) The right to social security
- (k) The right of children to special protection.

Different human rights will be relevant at different points in the trafficking cycle. Some will be especially relevant to the causes of trafficking (for example, the right to an adequate standard of living); others to the actual process of trafficking (for example, the right to be free from slavery); and still others to the response to trafficking (for example, the right of suspects to a fair trial). Some rights are broadly applicable to each of these aspects.

Legal Frameworks to Counter Human Trafficking in India

Indian penal code 1860

Interestingly the Indian Penal Code which came into existence in 1860 addresses the problem of human trafficking in human beings. It is addressed in Section 370 and 370 A of the Indian Penal Code. It prohibited trafficking of women and girls and prescribed ruthless punishments for the criminals. It lays down that anyone who buys or sells the person under the age of 18 years for the purpose of prostitution and for sexual exploitation and for other immoral purposes shall be liable to imprisonment for up to 10 years and also be liable to fine. It also recognizes cross border trafficking into prostitution and whoever imports into India from any country outside India any girl under the age of twenty one years with the intent that she may International Journal of Pure and Applied Mathematics Special Issue 46 be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

Constitution of India, 1945

The Indian Constitution of India prohibits trafficking in persons and guarantees many of the internationally acknowledged various human rights norms such as the right to life and personal liberty, the right to equality, right to freedom, the right to constitutional remedies. The right to be free from exploitation is also assured as one of the fundamental rights of any person living in India.

The juvenile justice (care and protection of children) act, 2000

According to this Act there is no difference between a minor and a child. All the persons under the age of eighteen years are considered children. A child who is a child in need of care and protection (NATIONAL LEGAL RESEARCH DESK 2016).

The scheduled castes and the scheduled tribes (prevention of atrocities) act, 1989

Many victims of trafficking belong to marginalized groups. Traffickers target only such area which is backward in social and literacy sense. This gives an additional tool to safeguard women and young girls belonging to scheduled Caste and scheduled Tribes and also to create a greater burden on the trafficker or offender to prove his lack of connivance in the matter. If the offender has the knowledge that victim belongs to these communities then this act can be effectively used to counter the offence of trafficking. Section 3 of this act deals with atrocities committed against people belonging to Scheduled Caste and Scheduled Tribes. It covers some forms of trafficking such as forced or bonded labors and sexual exploitation of women. A minimum punishment of ix months is provided which may extend to five years if the offence is covered under section 3.

Immoral traffic prevention act 1986

The government of India ratified the International Convention for the Suppression of Immoral Traffic in persons and the exploitation of the Prostitution of others in 1950. As an

International Journal of Pure and Applied Mathematics Special Issue 47 consequence of this ratification of the convention the Government of India passed the Suppression of Immoral Traffic in Women and Girls Act (SITA) in the year 1956. In the year 1986 the act was further amended and changed which was known as the Immoral Traffic Prevention Act, 1986 (PITA). This is an interesting law because according to its preamble the purpose of this Act is to give effect to the Trafficking Convention and to prohibit the immoral human trafficking. This act deals with trafficking and it has its objective as to abolish traffic in women and girls for the purpose of sexual exploitation. The offences included are taking persons for prostitution, detaining persons in premises where prostitution is carried on, seducing or soliciting for prostitution, making life on the earnings of prostitution, seduction of a person in custody, keeping a brothel or allowing premises to be used as a brothel, prohibits employment of children in certain conditions of work of children.

The Immoral traffic (prevention) act, 2018

This amendment is enacted for the purpose of investigation of all types of trafficking, and rescue protection and rehabilitation of trafficked victims. The act classifies certain aggravated forms of trafficking such as forced labor, bearing children, begging or for inducing early sexual maturity. These cases classified as aggravated trafficking attracts higher punishment than the other form. The punishments provided for the cases under this amendment are higher than the previously prevailing laws.

Cases Related to Human Trafficking

The most of the cases of trade are referred to decisions of Supreme Court of India or to the ones of the High Court. These cases are mostly not reported unlike those of the High Court and Supreme Court cases. Most of the convicts have been abysmally low and that very often victims have been re-victimized in the process.

There are various principles laid down by the Hon'ble Supreme and High Courts which have positive impact on the approach of the judiciary to cases of trafficking.

1. Victim's Rights

In *Prajwal v Union of India*, the implementation of a victim protocol was demanded. There have been cases where compensation has been ordered to be paid by a perpetrator of crimes to victims of the crime. This principle was applied in trafficking too in *Pucci v Union of India* where compensation was ordered to be paid where children were trafficked/bonded for labor.

2. Directions to state functionaries

Directions are made to the state functionaries to tackle the problems of trafficking. In the case *Gaurav Jain v Union of India*, the court affirmed that the state had a duty to rescue, rehabilitate and enable women to lead a life of dignity. Further, the court has also taken serious notes on what it referred to as the indifferent and callous attitude of the state administration in identifying and rehabilitating bonded laborer's in the country.

In *Neeraj Chaudhary v State of Madhya Pradesh* it was shown that a laborer is made to provide forced labor, the court would raise a presumption that he is required to do so in consideration of an advance received by him and is, therefore, a bonded laborer the burden of rebutting this presumption is upon the employer.

3. Special Protection to Children

These children are categories into two types firstly, those who are been trafficked themselves and the children who are in need of care and protection (those vulnerable to being trafficked).

In *Lakshmi Kant Pandey v Union of India*, they have examined vulnerability of children being trafficked in adoption rackets due to the lack of an effective protection mechanism. The court went to create an appropriate mechanism to fill the gap, especially in the context of inter country adoptions.

In the case *Prerenal v State of Maharashtra*, it is clearly stated that children who have been trafficked themselves should also be considered as children in need of care and protection and not as children in conflict with the law.

Prevention

The Immoral Trafficking Prevention Act only combats against the Human Trafficking but it is done only for the purpose of sexual exploitation. Thus, the legal provisions related to trafficking must be strengthened as a whole in order to prevent human trafficking in India. New stringent provisions need to be enacted.

Human Trafficking can neither be countered through penal laws alone nor by only forming Non-Governmental Organizations but only by implementing them wisely.

Conclusion and suggestion

Human trafficking is the illegal trade of human beings mainly for the purposes of commercial sexual exploitation and forced labor. Recently, human trafficking is especially popular for the purpose of extraction of organs. Trafficking is a lucrative industry. It is second only to drug trafficking as the most profitable illegal industry in the world. Thousands of people suffer from various forms of human trafficking and this problem needs effective solutions. The most popular form of human trafficking is for the purpose of sexual exploitation. Fake job offers are a common way to obtain women in India.

In general, sex trafficking victims are found in horrible circumstances and easily targeted by human traffickers. Individuals, circumstances, situations defenseless to traffickers comprise homeless persons, runaway teenagers, refugees, displaced homemakers, job seekers, kidnap victims, tourists, and drug/alcohol addicts. Such people are often extremely vulnerable and cannot protect themselves. It is far more difficult to attract grown up men to the forced labor but traffickers manage to recruit men using various threats and forced debts.

An important aspect of prevention of Human Trafficking is education: making sure people are aware of the existence, as well as the nature of human trafficking. Education further helps empowerment of women by developing "Intrinsic Capacity, inner transformation of one's consciousness to overcome barriers, access resources and traditional ideologies". Education is crucial in halting the flow of women, children and men into forced bondage. It is through education that we can elicit the most direct influence in the fight against human trafficking.

Promotion of Technical Education also helps to reduce the problem of human trafficking. Technical education emphasizes on the acquisition of employable skills and therefore well placed to train the skilled and entrepreneurial workforce that developing countries needs to create wealth and emerge out of poverty.

Human trafficking jeopardizes the dignity and security of trafficked individuals, and severely violates their human rights. Constitutions of India guarantee the equal rights of men and women, but they are often merely rhetoric when it comes to the question of practical implementation. In order to combat trafficking and thus to protect the human rights of the vulnerable people, strong political will of the government is vital in implementing their antitrafficking mandates. Thus, we can say any crime which can be used as business one day becomes a big social evil as in the case of human trafficking. The problem is still in our hands to be solved if the strong steps are taken deliberately and policies are made and implemented strictly. If timely steps are not taken then in very short time it will remain late but too late.

Chapter 11

Chernobyl And Bhopal Gas Tragedy

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Abstract

Few calamities leave indelible marks on our minds and the environment, which take ages to recover from. Two such significant incidents in the history of mankind are Chernobyl and the Bhopal Gas Tragedy. Though they took place at different places and at different times, they are connected. The damage done by both the incidents is almost the same. However, the steps taken by the governments to deal with the after effects of the incident were strikingly different. The concept of sustainable development has been rife for many years but has never been seriously implemented by any of the countries because the principal reason stands- they don't understand it. In order to ensure that sustainable development is a long-term goal in polity as well as policy, knowledge about the subject would do wonders to help implement the concept. If anything should compel us to understand how sustainable development works, it is these two incidents which highlight the very need for it.

In this paper, we will be primarily outlining the tragic incidents which occurred and distinguishing between the two on the basis of the steps taken to move forward from the damage done. We will then offer a comparative analysis of the two incidents to highlight the dire need for sustainable development connected with law. Only when it is complied with the law and strictly implanted, it will be viewed as far more than a mere concept which dies out in discussions and more as a tool one can use in securing the planet which was left to us by our ancestors. Throughout this paper, we will establish the link that is present between the two incidents and how sustainable development should play a crucial part in the policy making of any nation.

Towards the end, we will be focusing on how India as a developing country, must take the required steps which are in concurrence with the international treaties and policies for

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ensuring that in pursuit of development we don't end up destroying our vast natural resources.

A Brief History - Bhopal Gas Tragedy

On the unfaithful night of December 2, 1984 one of the worst industrial disasters in the history of mankind took place in Bhopal, the capital city of Madhya Pradesh. The incident happened due to the leakage of highly toxic gas, Methyl Isocyanate (MIC) from the premises of Union Carbide India Limited, a pesticide plant set up in the center of the city.¹⁴⁴ MIC leaked out due to the malfunctioning of the safety valve as a result of which water seeped into the storage tank reacting with nitrogen and resulting in the removal of the blanket.¹⁴⁵ The gas after its leak quickly spread over the entire city claiming the life of the innocent individuals who slept with the hope of getting back to work on the next day. Within few hours an estimate of 3,800 people died immediately and even more were seriously injured.¹⁴⁶ The incident not only impacted the lives of the people then but has its impacts till now.

Chernobyl Disaster

On April 1986, a nuclear accident took place in the No.4 Nuclear reactor in Chernobyl Nuclear Power Plant, in the north of Ukraine, erstwhile USSR. In the history of commercial nuclear power to cause fatalities from radiation, Chernobyl happens to be the only accident.¹⁴⁷ The incident took place due to flawed soviet rector design and negligence of the operators and the owners. According to NEA, the graphite fueled fire took about 10 days and 250 firefighters to extinguish. Also, there was the largest uncontrolled radioactive release in the environment which existed for about ten days as the plant, unlike most nuclear power plants elsewhere in the world, didn't have the fortified containment structure.¹⁴⁸ As a result, evacuation process began, in 1986, 115,000 people were evacuated. The government subsequently resettled another 220,000 people.

¹⁴⁴ Malini Nair, *Bhopal Gas Tragedy- A Social, Economical, Legal and Environmental Analysis*, MPRA (December 10th, 2005), https://mpr.ub.uni-muenchen.de/37856/1/MPRA_paper_37856.pdf.

¹⁴⁵ *Ibid.*

¹⁴⁶ Edward Broughton, *The Bhopal Disaster and its Aftermath: A Review*, *Environmental Health* (May 10th, 2005), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1142333/>.

¹⁴⁷ *Chernobyl Accident and Its Consequences*, NEI, (May 2019), <https://www.nei.org/resources/fact-sheets/chernobyl-accident-and-its-consequences>.

¹⁴⁸ *Ib.*

The Concept Of Sustainable Development

The United Nations define Sustainable Development as “*development that meets the needs of the present without compromising the ability of future generations to meet their own needs*”. It essentially aims at integration of environment policies and development strategies¹⁴⁹. To achieve sustainable development efforts, need to be put into the three interconnected elements, which are; economic growth, social inclusion and lastly environmental protection.

Over a period of time, human beings’ relation with the environment has shifted from environmental determinism to possibilism. Environmental determinism refers to naturalization of humans, wherein the humans were dictated by the nature and its force due to low level of technology during the earliest stage of human social development. Gradually, with development in technology and increased understanding of the humans regarding their surroundings they started creating possibilities with the resources obtained from nature. This is referred as humanization of nature. It is in between this transition that the need of sustainable development arose. Every country has had its own way of harmonizing with the nature while moving ahead on the path of development, though the term explicitly wouldn’t have been used.

It was in the year 1972 that the term “sustainable” was used in the modern sense as a part of Club of Rome. After this another large step forward in this movement, when the World Commission on Environment and Development (WCED) was tasked by the Secretary General of the UN, in 1983, to “re-examine critical environmental and development problems around the world and formulate realistic proposals to address them.” This culminated in the 1987 Brundtland Report’s publication of “Our Common Future”, which established a suggested path for sustainable development on a global level and served to bring the concept of sustainability into the foreground on an international level. Followed by this in the year 1992, the first UN Conference on Environment and Development (UNCED) took place in Rio de Janeiro, Brazil. At this conference, an agenda called Agenda 21 was adopted, which “recognized each nation’s right to pursue social and economic progress and assigned to States the responsibility of adopting a model of sustainable development.” The Secretary General of UNCED regarded Agenda 21 as a “program of action for a tolerable future for the human family and an initial step toward making sure the world will change into a more just, secure and wealthy habitat for all humanity.” Kyoto climate Agreement in 1997 is also one of the notable international protocols designed to guide the international community towards sustainable development. The goal was to reduce the emissions of its signatories, with special emphasis placed on developed countries.

¹⁴⁹ UN General Assembly, 1987.

Fast forward to 2015, when the general assembly began the negotiation process on the post-2015 development agenda. The process culminated in the subsequent adoption of the 2030 Agenda for Sustainable Development, with 17 SDGs at its core, at the UN Sustainable Development Summit in September 2015.

Aftermath Chernobyl

United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR) in the year 2018 reported that the accident was responsible for nearly 20,000 documented cases of thyroid cancer among individuals who were under 18 years of age at the time of the accident in the three affected countries including Belarus, Ukraine and the Russian Federation. This was due to the high levels of radioactive iodine released from the Chernobyl reactor in the early days after the accident. Radioactive iodine was deposited in pastures eaten by cows who then concentrated it in their milk which was subsequently ingested by children.¹⁵⁰ The United Nation study found considerable shortcomings in the Soviet Union's implementation of Countermeasures. "In the first few weeks, management of animal fodder and milk production (including prohibiting the consumption of fresh milk) would have helped significantly to reduce doses to the thyroid due to radioiodine," according to the study. "There is no doubt that a substantial contributor to the excess incidence of thyroid cancer has been exposure to radioiodine released during the Chernobyl accident."

Soviet authorities started evacuating people from the area around Chernobyl within 36 hours of the accident. In 1986, 115,000 people were evacuated. The government subsequently resettled another 220,000 people. But for last two decades resettlement projects have been going on.

In the year 2011 Chernobyl was officially declared as a tourist attraction with many visitors.

One of the most astonishing things to observe about this whole incident is the "wildlife's resilience in the face of chronic radiation stress." The exclusion zone area which is uninhabited by the people has become a refuge for all kinds of animals from moose, deer, beaver and owls to more exotic species like brown bear, lynx and wolves.¹⁵¹

¹⁵⁰ *Supra* note 4.

¹⁵¹ *Supra* note 4.

¹⁵¹ John Wendle, *Animals Rule Chernobyl Three Decades after Disaster*, *National Geographic* (April 18, 2016),

Aftermath: Bhopal Gas Tragedy

The first law suit which was filed was filed in the US Court., which was eventually taken out of the US jurisdiction and placed under Indian courts. In March 1985, the Indian government enacted the Bhopal Gas Leak Disaster Act as a way of ensuring that claims arising from the accident would be dealt with speedily and equitably. The Act made the government the sole representative of the victims in legal proceedings both within and outside India.¹⁵²

In a settlement mediated by the Indian Supreme Court, UCC accepted moral responsibility and agreed to pay \$470 million to the Indian government to be distributed to claimants as a full and final settlement. The figure was partly based on the disputed claim that only 3000 people died and 102,000 suffered permanent disabilities. As further insult, UCC discontinued operation at its Bhopal plant following the disaster but failed to clean up the industrial site completely. The plant continues to leak several toxic chemicals and heavy metals that have found their way into local aquifers. Dangerously contaminated water has now been added to the legacy left by the company for the people of Bhopal.

A Comparison

These incidents both lead to complications and deaths and even today, a few decades after the incidents, we still feel the effects of these incidents. The Chernobyl reactor incident can be attributed to the fact that the USSR at the time had no nuclear legislation concerning the use of nuclear energy and safety. Unlike countries like the USA or the UK.¹⁵³

Nuclear legislation had been drafted about two years prior to the incident at Chernobyl but it wasn't implemented. However, after the Chernobyl incident, the scale of the incident itself was so grave that it was impossible for authorities not to take legal action for the gross violations that had occurred during the event and the many who had suffered. These two incidents showcase a very common problem here. A lack of proper legislation. Both Chernobyl and Bhopal, lacked legislation in these matters. In the case of Chernobyl, there was no proper legislation at the time, which is why, hardly any action was taken at all in regards to the incident. People were simply asked to evacuate the region but despite this evacuation, the fumes from the fire had managed to reach countries which were further away and affected their residents as well, although indirectly. However, even after the incident, the fact remains that the location of the tragedy has become a tourist spot. Instead

¹⁵² *Supra* note 3.

¹⁵³ Milan Zgorsky, *Legal Regime of the Chernobyl Problems in the USSR, Belarus, Russia and the Ukraine*, NSRG, <http://www.rri.kyoto-u.ac.jp/NSRG/reports/kr21/kr21pdf/Zgorsky.pdf>.

of showing people the scale of the tragedy, it showcases a more marketable way of capitalizing on the tragedy. A recent TV series by HBO, aptly named “*Chernobyl*”, has gained a lot of traction recently and now several residents of Chernobyl who still have houses there, have taken painstaking measures to remodel their houses to resemble those of a 1980’s era Soviet house, complete with appliances of the era, which rake in far more tourists who are fans of the show.

Even the Bhopal Gas tragedy for that matter, became the subject of many small indie flicks which garnered some attention but it didn’t draw any amount of significant attention. The movies mainly tried to focus on the victims and how they were affected by the tragedy and tried to draw the audience’s attention towards the tragedy but the movies did well at the film festivals but didn’t garner any large reaction from the masses.

It is rather interesting to note how entertainment draws the masses towards pressing issues. Had it not been for the several movies and television series talking about these incidents, bar a few, no one would have bothered to look up or have known about these incidents.

Laws Applicable In Chernobyl And Laws Applicable In Bhopal

In relation to Chernobyl, the first law that came out was “On the Legal Regime of the Territories Exposed to Radioactive Contamination in Consequence of the Catastrophe at the Chernobyl NPP”. It was adopted in the Ukraine on the 27th of February, 1991. This law gave definitions to the territories affected by the radioactive contamination that occurred after the explosion of Chernobyl NPP for the first time. The territories affected by Chernobyl were further divided into Zones such as Restricted Zone, Zone of Unconditional Resettlement, Zone of Guaranteed Voluntary Resettlement and Zone of Intensified Radio-Ecological Control. Following in the footsteps of Ukraine, the republic of Belarus was next with the adoption of a special Law, “On Legal Regime of Territories Exposed to Radioactive Contamination in Consequence of the Catastrophe at the Chernobyl NPP” on the 12th of November, 1991. This law regulates the regime of the contaminated territories, conditions of residence, economic and scientific-research activity in these territories. A special law which was based on the status of the territories affected by the radiation was not adopted, despite being drafted in 1993. Furthermore, the ecological problems of the contaminated territories are regaled by a special article of the Law, “On Social Protection of Citizens Exposed to Radiation Effects in Consequence of the Accident at the Chernobyl NPP” which was adopted by the Supreme Soviet of the Russian Federation on the 15th of May, 1991.¹⁵⁴

¹⁵⁴ *Ibid.*

With regards to Bhopal, apart from the civil proceedings mentioned before, there were also criminal proceedings which took place were initiated before the Chief Judicial Magistrate in Bhopal. It was initiated in the year, 1987. The clause in the settlement order which had quashed criminal proceedings had been held invalid and unjustifiable, the criminal proceedings could continue. The proceedings were initiated under Sections 304 A, 336, 337, 338 read along with Section 35 of the Indian Penal Code. One of the main questions that remains to this day however is the issue of absolute liability which arose in this case. The issue was discussed elaborately in *M.C. Mehta v Union of India*.

Soon after the tragedy, the Government proposed and passed a series of laws regulating the environment, prescribing safeguards and specifying penalties. These laws filled the legislative lacunae that existed at the time of the incident. The tragedy was also in a way responsible for the passing of the Public Liability Insurance Act, 1991 which provided for compulsory insurance of any unit or factory undertaking a hazardous activity.

Conclusion: Need For Sustainable Development In India

After drawing the parallels between the two incidents and understanding the similarities between them, we come to a common objective: The need for sustainable development in India. Corporations seem to come to India with the notion of expanding at an alarming rate, without caring about the harm they cause to our country's environment.

Furthermore, India as a whole should move towards a far more rigid stance on Sustainable Development as we slowly move into an era where future generations are being made aware of the importance of it, amid a global warming crisis. The country needs to continue placing liability on corporations as well as individuals whose acts impact lives for generations. We can still see the effect of the Gas tragedy on victims today who suffer from various ailments as a consequence to their contact with the hazardous gas. All citizens must be made aware of the repercussions of not adhering to sustainable development and how their actions, if not checked now, could lead to the extinction of several natural resources at a rapid pace, which would inevitably lead to the extinction of the human race in no time.

This comparison was meant to show as an example of how India should learn from the Chernobyl incident and how after the incident, the laws became far more stringent for many countries, so as to prevent an incident like that ever occurring today. India needs to preserve

its environment and it give it as much importance as it gives it defense or government, otherwise soon, we'll be left with nothing to preserve.