



IMMORAL TRAFFICKING OF WOMEN AND CHILDREN FOR SEXUAL EXPLOITATION

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Abstract:



In India and around the world, human trafficking constitutes the third largest form of organized crime in the society. Though no: of victims cannot be ascertained, millions of people are trafficked globally. As per the reports, India ranks largely in all three rudiments of trafficking i.e., source, transit, and destination. By each passing year, millions of people are being trafficked in India, both domestically and internationally. To deal with this cause, several laws were enacted by the government and one among them was Article 23 of The Indian Constitution which explicitly “prohibits traffic in human beings”, and imposes responsibility on the states to address the menace of trafficking and provide support to the victims. Despite indigenous guarantees and a plethora of laws, trafficking continues to thrive in the country. The domestic law dealing with trafficking isn't streamlined to effectively combat this ultramodern slavery. lately, the government invited suggestions for the “Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021”. still, this bill is yet to be brought into reality. This article attempts to evaluate the law that redresses human trafficking and exploitation. . The core objective of this study is to analyze the trends of trafficking in India and the problem of combating the human trafficking specially women and children with the existing national legal mechanism and international legal instruments. Therefore, this study is to examine the effectiveness of the present legislative and administrative policies and practices in India in combating problem of trafficking of women and children.

INTRODUCTION & METHODOLOGY:

1.1 AN OVERVIEW

Human trafficking is one of the worst forms of exploitation in the world. Men, women and children are bought, sold and forced to cross international borders for prostitution (in case of women and girl child), forced labour (in case of men) etc. for commercial exploitation and to procure economic gain. Cross-border trafficking of women, and minor girls for commercial sexual exploitation has emerged as one of the most formidable challenges of the new millennium. It has threatened the basic dignity of women besides exploiting them in the most despicable manner destroying them physically, psychologically, socio-economically and in many other respects.

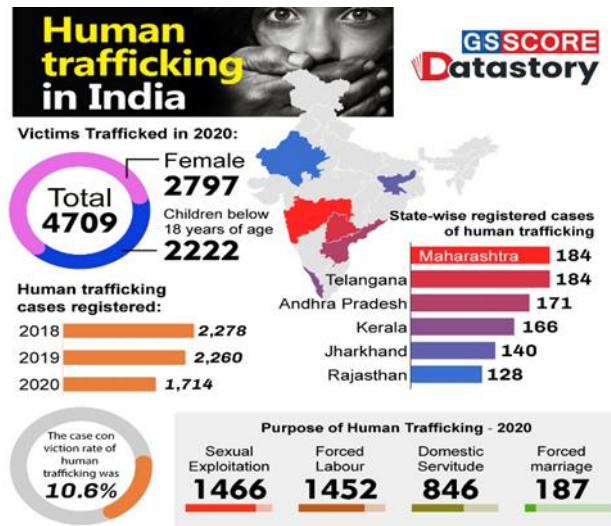
Among these, prostitution is the worst form of exploitation of women and children wherein a women is looked down as a sex object and an outlet for man's sexual desires. Prostitution is commonly referred as the world's oldest profession, its nature, character and way of operating has changed over the years. Now prostitutes operate either solely through advancement of social media or they associate with others of their kind in order to find common housing called as Brothels. Trafficking of women and children has become an intonational problem. A strong organized mafia rules this industry and crores of rupees are involved in it so it is difficult

to stop these activities. Trafficking in person constitutes third largest source of earnings for the traffickers, only next to narcotics and arms. It has severely affected each region of the world including SAARC countries.

1.2 STATISTICAL REALITY

1.2.1 The U.S. Trafficking Victims Protection Act, 2000, reported that at least 7,00,000 persons annually, primarily women and children are trafficked within or across international borders. Approximately 50,000 women and children are trafficked into United States each year. In the last 10 years an estimated 2,00,000 women have been trafficked, including girls as young as 9 years from Bangladesh.

1.2.2 An estimated 1,00,000 Nepali girls under 16 years of age are to be found in Indian brothels. About 5,000 to 7,000 girls are trafficked each year from Nepal. The major contributions of the anti-trafficking movement in Nepal, Bangladesh and India over the past decade have been to project the problem of trafficking in women and children into a high profile and high priority issue on national and regional agendas of all the key stake holders, as well as creating increased awareness on trafficking at all level.



1.3 LITERATURE REVIEW

Diwan and Diwan have critically examined the human rights development in perspectives of the constitution of India, as expounded by the Supreme Court which includes 'Right Against Exploitation: Abolition of Slavery, Traffic in Human Beings, Forced Labour (Beggars), Bonded Labour, Child Labour, Illegitimate Child'. According to the Supreme Court the worst form of exploitation of human being is traffic in human being in slavery.¹

Sastry has pointed out that prostitution is considered as an alternative to redeem the economic liberty of women. He has shown all the time women do not join sex industry by their own consent, trafficking is one of the main reasons behind women coming to this dirty world. He has discussed causes for prostitution where he has highlighted poverty and illiteracy as fundamental reasons that women and girls enter into the profession. He has also dealt with social, cultural, economic and policy aspects of the prostitution, where he has written the position of the sex workers in the ancient and middle India. Further he has discussed states responsibility and obligation to implement the various provisions of Human Rights under various international instruments relating to the trafficked women who are used in the sex market.²

1. Diwan and Diwan, Human Rights and The Law, Deep and Deep, New Delhi 1998

2. Sastry T.S.N. Sex Workers and Human Rights: Indian Scenario, Conference Papers, The Indian Society Of International Law, 2001 Vol-H, P 525.

LEGAL REGULATIONS**THE CONSTITUTIONAL MANDATE AGAINST HUMAN TRAFFICKING**

The Indian Constitution, 1950 directly or implicitly forbids human trafficking, and several basic rights are inscribed within four corners, negative as well as positive duties on the state to fight the issue of human trafficking and give assistance to victims.

Article 23 “prohibits traffic in human beings and forced labour”.

Article 24 forbids the “engagement of minors in any dangerous occupation or in any plant or mine that is unsuitable for their age”.

The terminology of Articles 23 and 24 imposes a clear mandate on the government to take decisive actions to eliminate trafficking as a violation of fundamental rights.

Article 14 provides for “equality in general”, whereas,

Article 15(3) provides for “special safeguards for women and children”. It states that “Nothing in this article shall prevent the State from making any special provision for women and children”.

Article 16(1) addresses “equal opportunity in public employment”. It simply directs the government to give chances for equitable results.

Article 38 requires states to “establish and maintain, as efficiently as possible, a social order in which social, economic, and political justice informs all institutions of national life”.

Article 39 enjoins that “states should direct their policies toward ensuring, among other things, the equal right to adequate means of livelihood for men and women, as well as equal pay for equal labour, regardless of their age or strength”.

Article 39(f) provides that children should be “given opportunities and facilities to develop in a healthy manner and conditions of freedom and dignity and that childhood should be protected against exploitation”.

Article 45 guarantees “children's right to free and compulsory education”, now widely recognized as a basic right.

Furthermore, Article 46 instructs the state to “promote the educational and economic interests of women and weaker sections of the people and that it shall protect them from social injustice and forms of exploitation”

Thus, a set of constitutional mandates place affirmative responsibilities on governments to engage constructively in support of fighting human trafficking, ensuring that no one's human rights are infringed.

IMMORAL TRAFFIC (PREVENTION) ACT, 1956: A CRITICAL ANALYSIS

In 1950, 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 1956, India passed the Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA). The Act was further amended and changed in 1986, resulting in the Immoral Traffic Prevention Act (PITA).

The Act only discusses trafficking in relation to prostitution and not in relation to other purposes of trafficking such as domestic work, child labour, organ harvesting, etc. The Act aims to combat trafficking and sexual exploitation only for commercial purposes. While prostitution is not an offence, practicing it in a brothel or within 200 m of any public place is illegal. The basic deficiency of ITPA's is that it lacks a definition of trafficking, even though it is a specialized piece of legislation dealing only with trafficking. Furthermore, rather than defining commercial sexual exploitation precisely, the act focuses on identifying brothels as a location of commercial sexual exploitation and prosecuting those who assist it.

The legislation is unclear as to whether prostitution or prostitution for trafficking is prohibited. This ambiguity allows the criminals involved in the transportation and sheltering of prospective victims to go unpunished.

One of the important changes brought about by the Act was the definition of the term “prostitution”. By using the term “person”, it brings within its purview not only women but boys, men, transgenders etc., which widens the scope of the Act,

The Act outlines the illegality of prostitution and the punishment for owning a brothel or a similar establishment, or for living off earnings of prostitution as is in the case of a pimp.

Sec 5 of the act punishes a person if they procure, induce or take away a child under the age of 18 years for the purpose of prostitution.

For the purpose of bringing in the whole chain of trafficking within its purview, the Act punishes all the stages of trafficking such as recruiting, transporting, transferring, harbouring, or receiving of persons for the purpose of prostitution. However, it punishes trafficking only for the purpose of prostitution and not when it is done for bonded labour, organ trade, domestic work, slavery, etc. There is a need for a comprehensive legislation to tackle the issue of trafficking for all purposes and not just prostitution. Also, the terms “sexual exploitation” and “commercial purposes” have not been defined leaving them open to interpretation. It legalizes prostitution for a person's own profit but declares it illegal if carried on in a brothel or from any public place within 200 metres of an educational institution, place of religious worship, hotel, hospital, nursing home or any public place which technically makes it impossible to operate as a prostitute.

Therefore, the commercial aspect of prostitution is declared illegal but it lacks clarity on whether prostitution ought to be a legitimate way of earning a living if the person enters or stays in the profession out of choice.

The Act penalizes any person who visits a brothel for the purpose of sexual exploitation of a trafficked victim. It would be difficult for a person visiting a brothel to distinguish between a trafficked person and a non-trafficked person.

The Andhra Pradesh High Court has quashed criminal proceedings initiated against brothel customer under the Immoral Traffic (Prevention) Act, 1958.

In the case of **Korada Subrahmanyam V State of Andhra Pradesh Crlp No. 6182/2022** a bench led by **Justice Ninala Jayasurya** held that it is a settled legal proposition that a customer who visits a brothel for the purpose of having sexual intercourse with a prostitute for cash is not liable for prosecution for the offences listed in sec 3,4 and 5 of the ITP Act.

A "brothel" is defined in Section 2(a) of the ITPA as a location where two or more prostitutes collaborate for the advantage of another person. The term "brothel" is too broad to encompass places where such exploitation takes place, such as massage parlours and hotel rooms.

PITA, The Immoral Traffic (Prevention) Act also expands police power to prevent trafficking, but at the same time attempts to curb the potential abuse of power by the police during raids— such as verbal, physical and sexual harassment. Whereas SITA, the Immoral Traffic (Suppression) Act empowered a special police officer to conduct a search of any premises without a warrant, PITA extends these powers to the accompanying trafficking police officers who enter the premises.

However, PITA prohibits male police officers from conducting a search unless accompanied by two female police officers. Interrogation of women and girls also has to be undertaken by female police officers. If this is not possible, the women and girls can be questioned only in the presence of a female member of a recognized welfare organization. Additionally, the act mandates rehabilitation of prostitutes in "protective homes," shelters or reformatories where education and living facilities are to be provided. Girls and women are treated differently under SITA, although their exploiters are not. SITA had defined adulthood as twenty-one years. Accordingly, an adult woman prosecuted for soliciting or prostituting in a public place would be tried in court and, if convicted, sent to a protective home or institution, whereas a girl would be immediately referred for rehabilitation.

However, the punishments for exploiters of women and girls are the same. Now, PITA makes distinctions between "major," "minor," and "child." "The act defines as a "child" anyone who is under sixteen years of age. Persons between sixteen and eighteen years are considered "minors," and anyone eighteen or older is an adult or "major." Those who exploit minors or children are subject to prison terms of not less than seven years and not more than ten years.

In **Gaurav Jain v. Union of India (1997) 8 SCC 114**, the Apex Court observed that "children of prostitutes should, however, not be permitted to live in the inferno and the undesirable surroundings of prostitute homes" and there was a need to rescue and rehabilitate prostitutes and their children so that they can break out of this vicious cycle. The court legitimized the children of prostitutes so that they wouldn't face the social stigma which would prevent them from progressing and living a dignified life. On the basis of the directions of the court, "Committee on Prostitution, Child Prostitutes and Children of Prostitutes and Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children" was constituted to tackle the problem of prostitution.

The Act regularized prostitution and provides assistance to all women and children who have been forced into the same. The provisions of the Act clearly state that it is an offence to force any child for flesh trade or trafficking of a child for various other purposes. It provides for the rehabilitation of children rescued from brothels in the form of protective homes and corrective institutions, and to be placed in an institution for their safety by a magistrate. Also, landlords, leasers, owners, agents of the owner who unknowingly previously rented their property to a person found guilty of prostituting a child, must get approval from a magistrate before re-leasing their property for three years after the order is passed.

CONCLUSION

An evaluation of the ITPA and its attempt to amend it reveals that the substance of the law has not changed. Rather than being protective, the law remains punitive. Although the law has prescribed the punishment for those who live "off the earnings of prostitutes", it inadvertently brings their children within its purview, robbing them of their sole source of sustenance.

PITA is profoundly slanted in punishing the crime of sexual exploitation and does not cover any other form of trafficking. Besides, it focuses on the issue of prostitution, per se, and not exclusively trafficking. Furthermore, victims' rights are also not clearly defined in the act. This is also a fundamental flaw in the statute, as welfare measures were set without first identifying how they would be implemented.

This gap contributes to poor implementation of the rehabilitation process. Moreover, cross border dimension of trafficking remains neglected in the Act. Trafficking of persons is a multifaceted phenomenon. There is no dearth of doubt that the gravity of the issue is intensifying every passing day.

BIBLIOGRAPHY:

1. <https://shodhganga.inflibnet.ac.in/handle/10603/174284>.
2. [file:///C:/Users/Srihari%20Alla/Downloads/1500031646QUAD-1-Female Prostitution and the Law.pdf](file:///C:/Users/Srihari%20Alla/Downloads/1500031646QUAD-1-Female%20Prostitution%20and%20the%20Law.pdf)
3. <https://www.ijlmh.com/paper/a-critical-analysis-of-immoral-traffic-prevention-act-1956-with-special-reference-to-criminal-amendment-act-2013/>
4. https://www.indiacode.nic.in/bitstream/123456789/15378/1/the_immoral_traffic_%28prevention%29_act%2C_1956.pdf
5. <https://www.lawfinderlive.com/Articles-1/Article8.htm?AspxAutoDetectCookieSupport=1>
6. <https://blog.ipleaders.in/need-know-immoral-traffic-prevention-act-1956/>
7. <https://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1002437>
8. <https://www.legalserviceindia.com/legal/article-12-immoral-trafficking-of-minor-girl-child-in-india-laws-to-protect-them.html>
9. Constitutional Law of India by Dr. J N Pandey
10. <https://www.iilsindia.com/blogs/immoral-trafficking/>