

TRAFFICKING IN WOMEN: CAUSES AND CONCERN

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Abstract

The trafficking of women describes various activities which exploit them for their commercial value such as prostitution, labour, forced marriages etc. The term implies that these women are not only sexually abused but that there is a profit arising from the transaction where they are considered as a sexual and commercial commodity¹. The Trafficking in women for commercial sexual exploitation (CSE) in India denies human rights to women and is gearing up due to rapid industrialization and commercialization concentrated in few metropolitan centers. It is an organized crime, involving mafias, recruitment agencies, members from community/ family, peers, tourists, law enforcement officials and many others.

The Present article is based on the findings of the research conducted with the help secondary sources. It gives a detailed analysis of the actual picture of prostitution and human trafficking including its meaning, definitions, forms of prostitution, magnitude of the problem, legislative framework to control this menace and the factors behind the mortifying crime and its impact on progress and development of women.

Key Words: Human Rights, Trafficking, Prostitution, Women, Sexual Exploitation, Brothel, Prevention, Rehabilitation

Introduction

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¹ Action Research, National Human Rights Commission, 2004

The United Nations statistics on the roles and relationship of men and women in society and the inequalities in that relationship is²:

- Women perform two-third (2/3rd) of the world's work.
- Women earn 1/10th of the world's income.
- Women are 2/3rd of the world's illiterate.
- Women own less than 1/100th of the world's property.

The census figures for population of women per 1000 men is alarmingly decreasing in various states of India and most other nations and the plight of women, rural or urban, literate or illiterate, educated or uneducated, working or home-makers is on the rise , though the role of women in human life is of equal status and equal importance.

To protect and conserve the rights of the whole human society, the first and foremost step of every human being is to follow scrupulously the natural duties bestowed upon him/her. Rights and Duties are two sides of a coin. And these play a major role and it is internally connected with the social and political activities of human being. Thus every human being has a right of his life, liberty and personal safety³.

Since time immemorial, women, the half of the population of the world, the better halves of the men in the world, the mothers, sisters and daughters, by whom a house is a home of love and affection and not mere a building of cement ,sand and steel, are subjugated to secondary position and are subjected to cruelty and harassment, torture for no fault of theirs, but mainly for lust, greed and to show power of masculinity.

Human trafficking of women through its various aspects and manifold edges is retained in India in blatant violations of the rights of women. The constitutional validity of equality of law and equal protection of law has been categorically upheld by the Indian judiciary in numerous cases by giving wider connotations to the term equality, equal status and discrimination etc. The social, political and legal issues involved in the trafficking of women constitute it as an area of national concern.

² UN Declaration of Human Rights

³ Art.1, Human Rights declaration of America

Female yearn for their purity and dignity. They always try to protect not only their body but also the dignity by all means. Any assault on their person or dignity mars the womanhood; from which she cannot take out herself easily. Molestation, rape, adultery, prostitution, human trafficking, slavery and flesh trade are some of the crimes which involve. The very basic value of life i.e. the dignity of women. The trauma, the stigma cast upon the life can never be washed out, brushed aside and the whole society looks down upon such victim, instead of punishing the offender. Thus the psychological crimes shatters the faith of women hood from the moral values and the society at large; which way result into revolt. As women were accorded secondary status by the religion. The patriarchal male dominated society bought into fashion such rituals and customs, that are derogatory and degrading the sanctity of women. The Devdasi⁴ i.e. offering of a young girl to village deity, the Jogin⁵, The Nagnapuja⁶ were prevalent in almost all over India since time immemorial. Thus the women were thrown into a heinous flesh trade and a vicious circle of prostitution. And this is nothing but human trafficking, i.e. displacing a person from its house, vicinity and even locality to exploit it sexually.

Human Trafficking is an age old practice and the patriarchal dominance in society has kept it always running for their rush for and frolic. After independence, India is a signatory to the various conventions for the protection of women and children from discrimination and human trafficking, torture and violence and has also formulated local law in accordance with these International connections and brought into force the policies and administrative actions in order to tackle increasing problem of human trafficking leading to prostitution. Women and young children are oppressed section of the society, forced by in human men to leave the comfort of their respective homes and love & affection of the family and throw them to a whirlpool of flesh trade, from where, it always remains impossible for them to come out or rescue themselves.

The problem of human trafficking, particularly in women and children has emerged as grave social issue which is one of the most serious affronts to the dignity and human rights of them. It is a gross commercialization and commodification of innocent human lives. Though it is a

⁴ Devdasi, a practice of dedicating a young girl to village temple

⁵ Jogin, Tradition in Andhra Pradesh of dedicating young girls to village deities

⁶ Kamble Uttam, Nagnapuja,

borderless crime, India among many South-Asian countries is rapidly used as a source, transit point as well as destination for the traffickers. It is just not about the violation of human rights, but it is the defeat of human rights. It is not only the human rights which are failing but the society and institutions are also to share the blame. In the context of increasing violence and deep-seated patriarchal values the traffickers' jobs becomes easy. Hence trafficking in women and children, which is the most vulnerable group, is the sordid tale of violation of human rights and dignity.⁷

The protection of women victims of human trafficking is to be seen differently as it affects them very drastically and differently and should be seen in the broader context of the protection of their human rights. Human trafficking is a lucrative illegal business which has, not only gained worldwide platform, because of immense monetary profit and easy availability of poor, illiterate women and children, but also perforated into the fabric of local life of people, in general. Nowadays everyday daily newspapers flash more occurrences of human trafficking leading the victims to prostitution, forced bonded labour, organ theft and transplant etc.

Meaning and Definitions of Human Trafficking

As the crime of Human Trafficking was spreading its tentacles world over and was engulfing millions of innocent lives of children and women of very younger and tender age, the need was felt at the International level to address the issue by defining and assimilating the gravity of the term and its connotations and boundaries.

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children⁸, which entered into force in 2002 and supplements the United Nations Convention against Transnational Organized Crime, defines trafficking thus:

“Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of the abuse of power or of the 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 purposes of exploitation. Exploitation shall include, at a minimum, the exploitation of

¹ Roy S, Chaman C. Human rights and trafficking in women and children in India. *J His Arch & Anthropol Sci.* 2017;1(5):162–170.

⁸ the Palermo Protocol on Trafficking 2002

the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

Article 3 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking in Persons Protocol) defines trafficking in persons as constituting three elements:

(i) an “action”, being recruitment, transportation, transfer, harbouring or receipt of persons; (ii) a “means” by which that action is achieved (threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability, and the giving or receiving of payments or benefits to achieve consent of a person having control over another person); and (iii) a “purpose” (of the intended action/means): namely, exploitation. All three elements must be present to constitute “trafficking in persons” in international law. The only exception is when the victim is a child; in such cases it is not necessary to prove that one of the acts was accomplished through the use of any of the listed “means”.⁹

This definition clarifies a number of issues that were previously unsettled or disputed: For example, it confirms that:

- The concept of trafficking does not just refer to the *process* by which an individual is moved into a situation of exploitation. It extends to include the *maintenance* of that person in a situation of exploitation;
- Trafficking can take place within as well as between countries, and for a range of exploitative purposes including, but not limited to sexual exploitation and exploitative labour;
- Women, men and children can be victims of trafficking.

'Trafficking' means moving, selling or buying women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking¹⁰.

⁹ Trafficking in Persons Protocol, Article 3(c).

¹⁰ SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002

The Constitution of India prohibits trafficking in human beings for any type of exploitation, including forced labour and any contravention is a punishable offence.¹¹

The offence of trafficking also finds an explanation in **Section 5 of ITPA**¹² which speaks about procuring, taking and / or inducing a person for the sake of prostitution. According to this section, even an attempt to procure and take or cause a person to carry on prostitution amounts to trafficking. Therefore, 'trafficking' has been given a broad scope and meaning under ITPA.

The Goa Children's Act, 2003 defined the term keeping in view its wide angles, though it is focused on child trafficking, the definition is comprehensive. "Child trafficking means the procurement, recruitment, transportation, transfer, harbouring or receipt of persons, legally or illegally, within or across borders, by means of 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 giving or receiving payments or benefits to achieve the consent of a person having control over another person, for monetary gain or otherwise"¹³.

Classification of Human Trafficking

Based on the activities involved, human trafficking can be classified as trafficking for sexual exploitation; trafficking for labour exploitation and trafficking for other types of exploitation¹⁴. The primary purpose of trafficking for sexual exploitation is sexual assault of the victim. It could be male or female, though as per the Asian scenario more women and girls are subjected to sexual exploitation. Based on the place of exploitation, and as per the existing public perception, this could be further classified into brothel¹⁵ based and non-brothel based.

Brothel-based sexual exploitation means commercial sexual activity taking place in brothels. Brothels may be situated in a colour of brothels, usually referred to as '**Red Light Area**' or they may exist independently. As per the Indian law¹⁶ brothel includes any place or part thereof or any conveyance used for CSE¹⁷. Therefore, even a massage parlour where sexual

¹¹ Article 23 of Constitution of India

¹² (Immoral Traffic [Prevention] Act, 1956)

¹³ Section 2(z), Goa Children's Act, 2003

¹⁴ P.M.Nair: Human Trafficking , Konark Publishers, 2011

¹⁵ sec.2(a), A place promiscuously used by persons of both sexes for the purpose of prostitution.

¹⁶ Section 2 ITPA

¹⁷ Commercial Sexual Exploitation.

exploitation takes place under the facade of massage, or a car hired by the exploiters to carry on CSE, will also be legally construed as brothels.

Non-brothel-based sexual exploitation usually takes place in those places where commercial exploitation takes place under the facade of some other genuine activity. In the common parlance this could include massage parlours, beer bars, friendship clubs, tourist circuit, beauty parlour, etc. where sexual favours are made to be provided to the exploiters by the trafficked victims. As mentioned earlier, under the Indian law all such places will be covered under the definition of brothel if the female indulges in the act of offering her body for promiscuous sexual intercourse for hire and element of sexual exploitation could be established.¹⁸ Therefore, it is misnomer to call such activities as 'non-brothel-based prostitution'. Nevertheless, the common perspective remains the same and, therefore this nomenclature stays.

Home based or part time sex workers: They operate from their houses, mostly in slums. Sometime even their family members manage their business and husbands/brothers solicit customers. Nowadays, there seems an increasing trend amongst urban area people for such type of activities to earn easy money. The apt network of informers, customers and probable

Street based workers: They are generally drawn from the lower socio-economic stratum of society. They solicit customers themselves and work independently. These are largely concentrated around railway stations and bus stands, some work along highways to serve truck drivers.

Call Girls: They are drawn from middle and upper strata. They either work independently or through trusted agents or brokers including beauty parlours, hotels and guesthouses. They are generally young and attractive falling in the age group of 20-30 years. In this category young women are sometimes forcefully introduced by blackmail¹⁹. The number of call girls composed of unmarried working women and girls, college and school girls, housewives, divorcees and young widows is rising steadily in all metropolitan cities, and Nagpur is no exception to it.

¹⁸ Gaurav Jain v. UOI, AIR 1997SC 3021

¹⁹ Hunny Matiyani, B N Chatteraj, Prostitution and Trafficking for the purpose of Commercial Sexual Exploitation in Delhi, Indian Journal of Criminology and Criminalistics, July-Dec, 2010 Vol XXXI No.2

FACTORS RESPONSIBLE FOR HUMAN TRAFFICKING

Human trafficking is a roaring business, as it involves the mute and helpless victims, who do neither have a voice nor the courage to fight against the exploitation. Therefore situations which compels a human being to be the victim of human trafficking and its torture, when looked into, gives the following factors:

1. **Economic Factors:** Economic Factors are significant in trafficking status of a nation, when combined with poor border control, it is easy to see how it became popular destination for human trafficking. Political Climates and civil unrest further exacerbate the issue. Displacement creates vulnerability to a variety of exploitations, including human trafficking. Guerrilla and rebel forces also force and lure children to join their groups. People migrate in search of work and easily land into the nets of traffickers.

2. **Geographic Location:** Geographic location is also essential to the trafficking scenario, porous borders in countries that are surrounded by many other nations, are ideal for cross-border and transnational trafficking. India is surrounded by many of the under-developed Asian countries. Nepal, Bangladesh, Pakistan, Shrilanka, Burma ,Malaysia have always provided as source nations of trafficking in women to India and through India to other nations.

Persons from Nepal and Bangladesh are trafficked through India for commercial sexual exploitation and forced labour in the Middle East. In 2008 over 500 girls from Nepal in transit to the Gulf region were jailed in India on charges of using false documents²⁰. Although it is unknown whether they were trafficking victims, the number involved indicates the high volume of migration through India. According to a report by the then-solicitor general Gopal Subramaniam, the estimated number of women and girls entering prostitution every day is 200—of whom 20 percent are under the age of 15. The report went on to state that somewhere between 5,000 and 7,000 girls from Nepal are trafficked into India each year. The ages of girls trafficked has dropped from 14-16 years of age to 10-14 years of age²¹.

3. **Gender Bias:** Gender bias is also a factor in the trafficking calculus. In nations where women are not on equal footing with men, they are particularly vulnerable to exploitation,

²⁰ U.S. Department of State, 2009

²¹ Hindus Times, 2010; U.S. Department of State, 2010

including human trafficking. Not surprisingly in the post trafficking experiences women often continue unequal treatment. Women are subjugated and have been placed in secondary position. Though women are working and earning, they do not have control over the money earned, and therefore cannot spend the money as per their wish.

4. **Psychological Factor:** Girls with psychological causes join the trade voluntarily²². The urbane girls are mostly exposed to and influenced by media and films. They are young aspirants who want to be rich and fulfil their ambitions within a short span of time. They are driven by desire for physical pleasure and a luxurious life. They have increasing craze for money which they want to earn by easy means. Such girls fall prey to bad company at an early age.

5. **Human Factors:** While the above mentioned factors are being discussed it is pertinent to study about the persons responsible for Trafficking i.e. The Traffickers and the other Exploiters. Trafficking is an organized crime. There are several persons involved at several places, starting with (a) place of recruitment, (b) places of transit and (c) places of exploitation.

Traffickers can be men or women. The roles played by women in trafficking-related criminal groups vary. In some criminal groups, women play a significant role in the trafficking process. Recruiters of victims are often selected for their ability to quickly establish trust with victims they are recruiting. A UNODC study found that female traffickers were often used to recruit victims who would quickly perceive them as credible and authoritative. Studies have suggested that, in some countries, traffickers who sexually abuse their women and child victims are almost always male²³.

Traffickers are as diverse as the countries in which they operate. Some are poorly educated individuals, while others are respected members of the community as well as clandestine members of well resourced, highly sophisticated crime syndicates²⁴.

Root Causes of Trafficking in Persons

²² Ibid, P-37-38

²³ Nair, PM., 'A Report on Trafficking in Women and Children in India' 2002 – 2003, p.148

²⁴ Council of Europe document EG-S-NT (2002) 9, "Group of Specialists on the Impact of the Use of New Information Technologies on Trafficking in Human Beings for the Purpose of Sexual Exploitation", Strasbourg, 17 February 2003

The root causes of trafficking in humans are essential ingredients while studying the subject. It has two aspects, one is the Supply side and the other is the Demand side²⁵. The reasons for **supply side** could be summarized as follows:

Poverty: India is a developing country and the exploding population is creating huge pressure on the available natural resources. The dearth of opportunities of decent employment or even earning a dignified livelihood, the people have resorted to various other means of earning easy money²⁶. Thus poverty has been observed as the basic cause for people being trafficked, within and out of the country.

Ignorance and illiteracy also contributes towards the people being trafficked. Middle men and pimps entice young girls to earn easy money. Non-availability of proper and dignified jobs for skilled and un-skilled workers lead them to prostitution.

Natural disasters: Annual floods, earth quakes, internal insurgencies, successive droughts are wreaking havoc on the livelihood of the local farmers and citizens. Loan sharks take advantage of this situation and force people into indentured servitude of labour and sexual exploitation of the women and children. Each year during the monsoon rains, thousands of people in India die while others face displacement and a complete upheaval of their lives. This instability and movement creates circumstances ripe for human trafficking, in such settings many children become prey to traffickers²⁷: It is not only the annual floods that create a suitable atmosphere for human trafficking but also the successive droughts that are wreaking havoc mainly on the livelihood of local farmers, apparently as a result of climate change and environmental abuse. Often human trafficking occurs as a result of these debts, Singh said. "Powerful people give loans backed by clothes, tools, land and sometimes women as collateral, figuring they can sleep with them if they're not repaid. It's a completely feudal thought process" On account of insurmountable debt and interest rates, many farmers have no choice but to forfeit their land and in some cases have been forced into indentured servitude in order to work off their debts²⁸

²⁵Victim Interface with Courts, Justice and Care, Adv. Michelle Mendonca

²⁶ Asian Development Bank Study (2002)

²⁷ Vijay Kumar, activist and former child labourer

²⁸ Magnier, 2009

Domestic Violence: Marriage is a sacred institution however in a country like India women are always given a secondary status²⁹. The subjugation of the wife, battering, adultery and divorce throw the women into a situation of uncertainty. The traffickers take advantage of these situations and force women into trafficking and prostitution.

Gender Imbalance: The ratio of women in the human population is decreasing which leads them into forced and deceptive marriages. These fake marriages are used as a disguise for trafficking and prostitution. Women are trafficked from one part of the country to other State in disguise of marriage. After marriage, these helpless women are forced and thrown into prostitution by the husband and his family to earn their livelihood.

The reasons for the **Demand side** are as follows:

Visible links of Criminal Networks: Brothel Owners and Managers, Pimps

Hidden links of Criminal Networks³⁰: Recruiters, transporters, Buyers/Sellers, Financiers, Corrupt Public officials.

Generally speaking, persons from the most disadvantaged socio-economic strata are most vulnerable to exploitation, including human trafficking. In India these differences are exacerbated by a strict caste system, leaving many persons born into indentured servitude and slavery. According to Dr. Joseph D'souza of the Dalit Freedom Network, India;

“trafficking is a huge problem, both in terms of its negative impact on communities and in terms of the massive size of slavery today: With all the general information coming from the UN, the U.S. State Department, and various non-profit organizations, I know it is easy to miss a particular issue like the nexus of caste and slavery. India may appear to be simply another poor country. But it is a very complex culture with a root issue of caste discrimination behind some of our social ills”³¹

Statistics of Crimes of trafficking of Women

²⁹ Dr. Suresh Misra, *Women, Violence and the Law*, Ashish Publ House, New Delhi (1994)

³⁰ Ariyapala Perera, *Human Trafficking, A Crime that Shame Humanity*, Global Vision PH, 2nd Ed : 2017

³¹ Human Trafficking Project, 2010.

The crime against women are ever increasing. The data gathered from the National Crime Records Bureau reveals alarming scenario. The offences many a time are not reported due to various reasons such as lack of awareness, illiteracy, poverty, lack of resources, and apathy from the government agencies. The offences under the Immoral Traffic Prevention Act 1956 are reproduced here, as the researcher finds it relevant with the subject of the study.

Table No. 1.01 : SLL Crimes Against Women in 2016

No	S L L Acts	Maharashtra			India		
		I	V	R	I	V	R
1	ITP Act (Total)	303	559	0.5	2214	3189	0.4
2	Procuring / inducing a person for prostitution (Sec 5)	99	150	0.2	1170	1653	0.2
3	Detaining a person in place where prostitution is carried out (Sec 6)	3	10	0.0	102	177	0.0
4	Prostitution in Public place (Sec 7)	36	118	0.1	134	241	0.0
5	Seducing or soliciting for Prostitution (Sec 8)	125	223	0.2	246	353	0.0
6	Other Sections of ITP Act	40	58	0.1	562	765	0.1

Source: NCRB ³²

Note: (I) – Incidents; (V) – Victims; R - Crime Rate; SLL–Special and Local Laws

Effects and Impacts on Women Victims and Society.

³² National Crime Records Bureau Report India, 2016.

The trafficked women have a miserable life. Mostly girls of tender age of six to seven are seen as sex objects and are body-abused since then. Thus, their childhood is marred without any rights and privileges guaranteed by the Constitution. The girls and women are sold and put into horrific situations of lifelong servitude and sexual exploitation. They are prone to health hazards and incurable sexually transmitted diseases. The pimps, brokers and brothel owners earn their livelihood from the earnings of prostitutes and these women are left with no penny for their own selves.

The women in prostitution struggle to access even their most basic needs i.e.- Food, clothing, shelter and protection from violence. These women live and die in debt bondage, whereas the pimps and brothel keepers make huge profits out of these women. As customers constantly demand “fresh meat” the women in their early thirties are thrown out from their brothels because they no more remain commercially viable, but before that they are chewed up completely and their energy is drained out. Girls of 7 to 13 years of age are pulled into prostitution, ice is used to physically break pre-pubescent girls and make them amenable to exploitation. They are put through a process known as ‘seasoning’, in which they are beaten, starved, drugged and made to believe that they are repaying the small loans which their fathers have taken. These girls are raped by 8 to 10 customers every night. They are made forcibly available to customers at any time, day or night. They have to stand on the streets for long hours to attract customers for themselves or for older women. They suffer from sleep deprivation, insomnia and aching legs. The ultimate resultant is the possibility of sexually transmitted dreadful diseases. Many suffer from ‘Stockholm Syndrome’, and remain grateful for small act of kindness shown by their kidnappers. Such physical and mental consequences of repeated body invasion that prostituted women face is so extreme that these girls and women suffer from higher rates of psycho-social trauma than even war veterans.

Women in prostitution are prone to all types of diseases, mostly the sexually transmitted venereal diseases, such as HIV/AIDS, Syphilis, Gonorrhoea etc. They are unable to take proper treatment and medical assistance. Even Government hospitals show apathy towards their treatment. They are the worst hit and most vulnerable members of the society. Trafficking victims may suffer from an array of physical and psychological health issues stemming from inhumane living conditions, poor sanitation, inadequate nutrition, and poor personal hygiene,

brutal physical and emotional attacks at the hands of their traffickers, dangerous workplace conditions, occupational hazards and general lack of quality health care³³.

Preventive health care is virtually non-existent for these individuals. Health issues are typically not treated in their early stages, but tend to fester until they become critical, even life-endangering situations.

In many cases, health care is administered at least initially by an unqualified individual hired by the trafficker with little, if any, regard for the well-being of their 'patients' - and even less regard for disease, infection or contamination control.

Measures against Trafficking of Women

Trafficking in persons has taken a toll of human race and spread its tentacles word over. The most vulnerable sections of the society, the children and women are easy targets of the traffickers. A sharp increase is seen in the illegal trade of human trafficking which included gross violation of human rights of these trafficked persons. To combat this situation, the United Nations had to move forward and formulate policy to tackle the increasing crime. The United Nations has convened conventions and treaties and the state parties have ratified and incorporated these principles into their local laws. These Conventions are enumerated as under;

International Instruments Concerning Trafficking in Persons³⁴

“Over the past decade, human trafficking has moved from the margins to the mainstream of international concern... We have witnessed the rapid development of a comprehensive legal framework that comprises international and regional treaties, as well as a broad range of soft-law instruments relating to trafficking. These changes confirm that a fundamental shift has taken place in how the international community thinks about human exploitation.”³⁵

³³ Details taken from National Symposium on the Health Needs of Human Trafficking Victims - Post-Symposium Brief - US Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation.

³⁴ United Nations human Rights, Office of the High Commissioner, Aug 2014

³⁵ Navi Pillay, UNHC for Human Rights. Foreword to the Commentary on the Recommended Principles and Guidelines on Human Rights and Human Trafficking

Palermo Protocol, a supplement to the UN Convention against Transnational Organized Crime (2000). The most important international instrument to combat trafficking is this treaty. Article 5 of the Protocol requires States to criminalize trafficking, attempted trafficking, and any other intentional participation or organization in a trafficking scheme.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children entered on 25 December 2003. It is the first global legally binding instrument with an agreed definition on trafficking in persons. The intention behind this definition is to facilitate convergence in national approaches with regard to the establishment of domestic criminal offences that would support efficient international cooperation in investigating and prosecuting cases of trafficking in persons. An additional objective of the Protocol is to protect and assist the victims of trafficking in persons with full respect for their human rights.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) requires States to take all appropriate measures to suppress all forms of trafficking in women and exploitation of prostitution of women. General recommendation No. 19 identifies trafficking as a form of violence against women because it puts women at special risk of violence and abuse. Trafficking is incompatible with the equal enjoyment of rights by women and with the respect for their rights and dignity. Some international instruments have specific provisions concerning the trafficking of children.

The United Nations Convention against Transnational Organized Crime³⁶, adopted by General Assembly on 15 November 2000, is the main international instrument in the fight against transnational organized crime. The Convention represents a major step forward in the fight against transnational organized crime and signifies the recognition by Member States of the seriousness of the problems posed by it, as well as the need to foster and enhance close international cooperation in order to tackle those problems. States that ratify this instrument commit themselves to taking a series of measures against transnational organized crime, including the creation of domestic criminal offences (participation in an organized criminal group, money laundering, corruption and obstruction of justice); the adoption of new and sweeping frameworks for extradition, mutual legal assistance and law enforcement

³⁶UNODC, <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>

cooperation; and the promotion of training and technical assistance for building or upgrading the necessary capacity of national authorities.

In consonance with these international efforts and to deal effectively with the ever increasing crime of human rights violations and human trafficking, India has ratified these International Convention and to keep the promise, the principles were included in the local law. Thereafter Central Government of India brought in the enactment which is discussed below. It is also necessary to explore the evolution of this law preventing the traffic in persons.

Constitution of India

RIGHT AGAINST EXPLOITATION

Arts. 23 and 24, though Fundamental Rights, lay dormant for almost thirty-two years after the Constitution came into force and there was hardly any significant judicial pronouncement concerning these constitutional provisions. Since 1982, however, these Articles have assumed great significance and have become potent instruments in the hands of the Supreme Court to ameliorate the pitiable condition of the poor in the country.

According to Art. 23(1), traffic in human beings, beggar, and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. Art. 23(1) proscribes three unsocial practices, viz.,

- (1) Beggar; (2) traffic in human beings; and (3) forced labour.

A significant feature of Art. 23 is that it protects the individual not only against the State but also against private citizens.³⁷ Most of the Fundamental Rights operate as limitations on the power of the state and impose negative obligations on the state not to encroach on individual liberty and the rights are only enforceable against the State.³⁸ But there are certain Fundamental Rights which are enforceable against the whole world, e.g., Arts. 17, 23 and 24. Art. 23 is not limited in its application against the State, but strikes at such practices wherever they are found, and, thus, the sweep of Art. 23 is wide and unlimited.

TRAFFIC IN HUMAN BEINGS

³⁷ Also see, *infra*, 1397.

³⁸ See. Ch. XX, *supra*.

The expression 'traffic in human being,' commonly known as slavery, implies the buying and selling of human beings as if they are chattels, and such a practice is constitutionally abolished. Traffic in women for immoral purposes is also covered by this expression.³⁹

Immoral Traffic (Prevention) Act, 1956.

Human trafficking is modern day slave-trade, which has gone global and is posing a serious threat to society. Young girls, boys and women in their prime age are victims of this; they have no freedom of choice, they are forced to lead a life of indignity and social stigma with health hazards. It has been taken into consideration and international conventions were ratified to wash out the flesh trade. The state members are asked to enact local laws to tackle the problem. India brought into force the Act which was corrected and amended to deter the perpetrators. The Act in force protects the victim and provides for rescue and rehabilitation by the police with the help of NGO. Punishment for the brothel keepers, kidnappers and whoever abets the crime, the pimps, agents is prescribed; however, the law, the enforcement agencies, the efforts of Govt. and NGO fall short before the organized crime gangs and the ever-increasing lust for fresh flesh and the vicious huge financial gain out of the business.

Relevant Provisions of the ITP Act 1956

The section 3 of the Act prescribes punishment for keeping a brothel or allowing premises to be used as a brothel. In this context it is necessary to see what constitutes the term 'Brothel'.

Brothel is defined in the Act which includes a house, room, conveyance or place or a portion thereof which is used for the purposes of prostitution for the gain of another person or for the mutual gain of two or more prostitutes. To constitute a brothel there must be a person who lets on hire a person for prostitution or there must be two or more prostitutes carrying on prostitution there for their mutual gain. Brothel is same as a bawdy house. It legally applies to a place resorted to persons of both sexes for the purpose of prostitution. Any person, who keeps or maintains or acts or assists in the keeping and management of a brothel, is liable to be punished under Section 3 of the Act.—State of Rajasthan ..v.. Wahida⁴⁰.

³⁹ Raj Bahadur v. Legal Remembrancer, Govt. of West Bengal, AIR 1953 Cal. 522; Shama Bai v. State of Uttar Pradesh, AIR 1959 ALL. 57.

⁴⁰ State of Rajasthan ..v.. Wahida⁴⁰, 1981 Raj Cr. C. 42 at 43 (Raj.).

Meaning of word "keeping" in Section 3 (1) - It may be true that a place used once for the purpose of prostitution may not be a brothel, but a place where a person goes and freely asks for girls, where the person is shown girls to select from them and where he does engage a girl for the purpose of prostitution. The conclusion to be drawn from these circumstances about the place and the person "**keeping it**" can be nothing else than that the place was being used as a brothel and the person in charge was so keeping it. *Krishnamurthy ..v.. Public Prosecutor, Madras.*⁴¹

Meaning of word "punishable" used in Section 3 - By using the expression "shall be punishable" the Legislature has made it clear that the offender shall not escape the penal consequences. The punishment is rigorous imprisonment for a period not less than one year and not more than three years and also a fine which may extend to Rs. 2,000. By saying that a person convicted of the offence shall be sentenced to imprisonment of not less than one year the Legislature has made it clear that its command is to award a sentence of imprisonment in every case of conviction. It is difficult to conceive of clearer language for couching such command.—*State of Maharashtra ..v.. Jagminder Lal.*⁴²

Section 4 of the Act provides punishment for any person over the age of eighteen years knowingly lives, wholly or in part, on the earnings of prostitution of a woman or girl, The provisions of Section 4 are justifiable on the ground that to allow a person over the age of eighteen years to live on the earnings of a prostitute is not only to encourage parasitism but also to offer inducement to the prostitute to carry on her profession or trade which she may not be inclined to carry on otherwise. Similarly the presumption against touts and pimps or persons who exercise control, direction or influence over a prostitute or aid, abet or compel her to carry on the trade or profession of a prostitute is a reasonable presumption and is in the interests of the public at large.—*Shama Bai ..v.. State of UP.*⁴³

⁴¹ *Krishnamurthy ..v.. Public Prosecutor, Madras*⁴¹, AIR 1967 SC 567 at 568 : 1967 Cr. L.J. 544

⁴² *State of Maharashtra ..v.. Jagminder Lal*⁴², AIR 1966 SC 940 at 941, 942: 1966 Cr. L.J. 707

⁴³ *Shama Bai ..v.. State of UP.*, AIR 1959 All 57 at 62: 1959 All. Cr. R. 427 (All.)

Accused forced minor into prostitution, allowed her house to be used by customers for having sexual intercourse with minor on payment of money. Accused was guilty of offence under Section 4.—Yuvraj Chintaman Selokar ..v.. State of Maharashtra.⁴⁴

Section 5 - prescribes punishment for procuring, inducing or taking person for the sake of prostitution. Taking or inducing the person to go from one place to another with a view to carrying on prostitution or becoming an inmate of a brothel has also been made punishable under this Section.—Hasina ..vs.. State.⁴⁵

Section 6 - specifies that detaining a 1[person] in premises where prostitution is carried on is punishable. Where any person is found with a child in a brothel it shall be presumed, unless the contrary is proved, that he has committed an offence under sub-section (1) and where a child or minor found in a brothel, is on medical examination, detected to have been sexually abused, it shall be presumed, unless the contrary is proved, that the child or minor has been detained for purposes of prostitution or, as the case may be, has been sexually exploited for commercial purposes.

Section 7 - emphasizes that the atmosphere of places of public religious worship or educational institutions or hostels or hospitals or nursing homes or other such institutions should be kept pure and free from the contaminated atmosphere of a place where prostitution is being carried on. It cannot be denied that this is a reasonable restriction. The prohibition against such activity in the neighbourhood of a public institution which is so detrimental to a public interest is therefore, intelligible as decided in State of Mysore ..v.. Susheela.⁴⁶

Section 8 - (a) which is a different offence, refers to the temptation of a person, or to attracting a person for the purpose of prostitution. Presumably, the word "solicits" conveys something more, and has the essential import of an oral entreaty or persuasion, used to achieve the object of prostitution. The most satisfactory definition seems to be this: "to importune, entreat, implore, ask, attempt, try to obtain. In re: Kamala⁴⁷.

⁴⁴ Yuvraj Chintaman Selokar ..v.. State of Maharashtra, 2013 Cr1 U (NOC) 308.(Bom.)

⁴⁵ Hasina ..vs.. State, 1994 (2) Crimes 593 at 594.

⁴⁶ State of Mysore ..v.. Susheela, AIR 1966 Mys. 194 at 197.

⁴⁷ Kamala, AIR 1966 Mad. 312 at 313 1966 (1) MLJ 278

Section 9 - enumerates the punishment for seduction of a person in custody. The punishment is imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine. Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term, of less than seven years].

Section 10-A. - Detention in corrective institution: The court is empowered to pass an order of detention if a female offender is found guilty of an offence under Section 7 or Section 8, and should keep in view the character, state of health and mental condition of the offender and, the other circumstances of the case, as are conducive to her correction.

The Court shall give an opportunity to the offender to be heard and shall also consider any representation which the offender may make to the Court as to the suitability of the case for treatment in such an institution, as also the report of the probation officer appointed under the Probation of Offenders Act, 1958 (20 of 1958) ; and the Court shall record that it is satisfied that the character, state of health and mental condition of the offender and the other circumstances of the case are such that the offender is likely to benefit by such instruction and discipline as aforesaid.

Section 13 - there shall be, a special police officer appointed by or on behalf of State Government for dealing with offences under the Act in that area. The expression 'dealing with offences' is of wide import and will include any act which the police has to do in connection with the offences under the Act.

Section 14 - speaks about the cognizability of all the sections and empowers the special police officer (i) arrest without warrant (ii) delegating his powers to any officer subordinate to him to arrest without warrant otherwise than in his presence, Therefore, Section 14 enables a Special Officer to authorise any other officer to arrest a person.—Muhammed Ali ..v.. S.I. of Police.⁴⁸

Section 15 - lays down that a search without warrant can be made in certain instances by the special police officer after recording the grounds of his belief and shall search the premises without warrant and shall call upon two or more respectable inhabitants (at least one of whom

⁴⁸ Muhammed Ali ..v.. S.I. of Police, 2005 (35) AIC 505 at 507 (Ker).

shall be a woman) of the locality in which the place is to be searched is situated, to attend and witness the search. Section 15 (6-A) of the Act says that Special Police Officer or the Trafficking Police Officer as case may be, making a search under this section shall be accompanied by at least two women police officers.

Section 16 - empowers a Magistrate to direct a police officer not below the rank of a sub-inspector to enter such brothel, and to remove a person and produce him before him, if he has reason to believe from information received that any person is living, or is carrying on, or is being made to carry on, prostitution in a brothel. It is duty of the Court to take into account all the circumstances of the case and decide what course is most suited to the facts of the case. The Court should not overlook the fact that parent of a child is the person who will be most interested in its welfare and when he or she moves the Court for the custody of the child, his or her request deserves most serious consideration, and should not be discarded lightly.—
Manakutty ..vs.. Ayyapan.⁴⁹

Section 17 - provides the procedure to be followed by the special police officer and the Magistrate when a person is rescued after a search and produced before the court. The Magistrate is enjoined to pass such order as he deems fit for the safe custody of the woman or the person who has been produced before him by the police officer. The said section puts a restriction that detention cannot be allowed for a period exceeding ten days. Sub-section (2) provides that appropriate Magistrate shall hear the person and enquire about the age, character and antecedents of the person and the suitability of said person's parents, guardian or husband for taking charge of the person. He may direct a Probation Officer, to enquire into, the above circumstances. Sub-section (3) authorise the Magistrate to pass an order for safe custody of the person pending the enquiry under sub-section (2). Proviso of sub-section 3 lays that no person shall be in custody for the period exceeding three weeks from the date of such order. Sub-section (4) deals with the power of the Magistrate after enquiry is completed under sub-section (2). If the learned Magistrate is satisfied that the information is correct and the person is in need of care and protection, he may authorise the detention of such person for such period being not less than one year and not more than three years in Protective Home or in such other custody. Sub-section (5) provides that while discharging function under sub-section (2) the

⁴⁹ Manakutty ..vs.. Ayyapan, 1980 Ker. L.T. 448 at 449, 450.

learned Magistrate may summon five respectable persons, three of whom wherever practicable, be women to assist him. Order under sub-section (4) is made in appealable order by virtue of sub-section 6.--*Khushi Harkishan Maihotra ..v... State of Maharashtra*.⁵⁰

Section 18 - is intended to minimise the chances of a brothel being run or prostitution being carried on in premises near about public places and provides for the closure of brothel and eviction of the offender therefrom. The enquiry contemplated by Section 18 is summary in character. The attachment contemplated by this section can ensure only for a period of one year. It is quick-acting defensive mechanism, calculated to extinguish the brothel and promote immediate moral sanitation having regard to the social susceptibility of places like shrines, schools, hostels, hospitals and the like. Section 18 (2) on the other hand, operates only where persons have been convicted of offences under Section 3 or Section 7. Section 18 (2) operates not merely on places within the offending distance of 200 meters but in all places where the activity of prostitution has been conducted.

Section 19 is a provision for a person who is carrying on prostitution or is being made to carry on prostitution may apply to the Magistrate concerned for an order that he/she may be kept in a protective home or be provided care and protection by the Court.

The Magistrate after hearing the applicant and making such enquiries through a Probation Officer regarding the personality, conditions of home and prospects of rehabilitation of the applicant and after due satisfaction, he shall record his reasons and order the applicant to be kept in a protective home or corrective institution or under the supervision of a person appointed by the Magistrate for such period as may be specified in the order.

Section 20 - empowers a Magistrate to remove a prostitute from place/brothel after receiving information about it may record the substance of the information and issue a notice to such person to show cause and to prohibit from re-entering it.

These specific directions for enquiring into the welfare of the women in the Protective Homes are being made because this Court finds that as in the present case, while action is hardly ever taken against the keepers of brothels and the pimps and other exploiters of the women, the

⁵⁰ *Khushi Harkishan Maihotra ..v... State of Maharashtra*, 2006 Cri. L.J. 612 at 616-17 (Born).

women languish in Protective Homes for long periods of time in oppressive conditions thirsting for freedom

Section 22 provides that no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of first class, shall try any offence under Section 3, 4, 5, 6, 7 or 8. It follows as an inference that all other offences under the Act or the rules, made thereunder can be tried by other Magistrates of competent jurisdiction.

Policies of Government for Tackling Human Trafficking

To support the legislation, the prevention, protection and rehabilitation policies are also brought into force by the Government of India and also the State Governments, which are mentioned below:

The Ministry of Women and Child Development issued an advisory to States/UTs in the year 2011, emphasizing on gender sensitization of the police personnel, minimizing delays in investigation of crimes against women, setting up “Crime against Women’s Cells” at district level, adopting a victim centric approach in Human Trafficking cases and conducting regular meetings of the State Advisory Committees for Preventing and combating trafficking of women and children for commercial, sexual exploitation. The Ministry of Home Affairs(MHA) also issued advisories on measures for preventing the crime of human trafficking.

Ministry of Labour and Employment displays full-page advertisements against [child labour](#) in national newspapers at periodic intervals. A dream of better future ahead often lures the people abroad and hence trafficking cannot entirely be prevented. India ratified the [2000 UN TIP Protocol 2011](#).

In 2014 the [Government of India](#) launched a web-portal on Anti Human Trafficking. The web portal is expected to serve as a vital IT tool for sharing of information across all stakeholders, States/UTs and civil society organizations for effective implementation of Anti Human Trafficking measures.

The Indian Government set up a scheme last year called '*Strengthening the law enforcement response in India against Trafficking in Persons through Training and Capacity Building*'. The Scheme has two components: establishing integrated Anti-Human Trafficking Units (AHTUs) and training trainers for the police courses on trafficking. Since the scheme began

110 units have been set up at a cost of £1.2 million. In an attempt to combat India's increasing human trafficking problem, over 300 anti-human trafficking units are being set up throughout the country and 10,000 police officers trained specifically to handle cases of human trafficking.

Under national and state law, certified victims of forced and bonded labour are entitled to receive benefits, including compensation. Yet implementation of protection programs and compensation laws remains unsatisfactory⁵¹. Without the help of NGOs, victims typically have no idea that compensation exists. "When an NGO is involved it helps the victims to exit their trafficking situation, and the victims are given guidance on how to manoeuvre through the system. Kailash Satyarthi, the founder of the NGO Bachpan Bachao Andolan (BBA) helps rescue children trafficked, brings police when they conduct raids⁵². They immediately take the rescued children to the police station to obtain statements and certificates while they are there so that they don't have to go back and follow up with the police, which is difficult in India."

Under the **Swadhar Scheme**, which has an annual budget of \$1 million, the government grants support to more than 13,000 women and girls in distress who are without social and economic support. They are provided with shelter, food, clothing and counselling, as well as legal and clinical support. The program also provides rehabilitation through education, awareness, and behavioural training⁵³. Among those benefiting from the program are victims of trafficking for commercial sexual exploitation, victims of sex crimes, widows, prisoners, persons who are mentally challenged, persons with HIV/AIDS, survivors of natural disaster, and victims of terrorist/extremist violence⁵⁴.

The government, through the Ministry of Women and Child Development's **Ujjawala comprehensive program**, has taken measures to address prevention, rescue, rehabilitation, reintegration, and repatriation of victims trafficked for commercial sexual exploitation by providing funding for state projects that address these specific issues. The ministry allocated \$118 million for the year 2011-2012 to fund 153 projects in 17 states under the Ujjawala

⁵¹U.S. Department of State, 2009

⁵²Hepburn S, Simon R, Human Trafficking Around the World, Columbia Uni. Press, New York 1977

⁵³U.S. Department of State, 2009; Government of India, Ministry of Human Resource Development, 2010

⁵⁴ibid

program⁵⁵. Despite these positive steps, the standard of care for victims of commercial sexual exploitation is inconsistent. Many victims simply do not receive comprehensive services⁵⁶. Also, there appears to be no shelter that is geared for adult victims of forced or bonded labour, and no shelters that focus on male adult trafficking victims.

Conclusion

In spite of all these international efforts by way of various instruments, covenants, convention, mechanisms the women are not secure and safe. Every day they are under threat of violence, subjugation, cruelty and harassment. The sordid business of prostitution is flourishing, booming and expanding, in different forms making the life of victims nasty, helpless and short. In spite of all this plethora of rights and protection at each and every level through legislation, positive action and intention, the women are not safe in this world. Every now and then we hear the news of violence against women in vast multitudes. The crimes against women mar their progress and development and thereby the society loses the actual development of the mankind. To prevent and protect women from trafficking and prostitution, a comprehensive anti-human trafficking strategy enclosing human rights is essential to be formulated. All policies, programs and projects should be based on human rights perspective.

Promotion of gender equality in the family, community and society at large, the facilitation of women's economic empowerment through various efforts are needed to curb this menace. Proper and effective implementation of the existing provisions of the law, sensitization of the officers, NGO members is also the need of the hour.

At all the levels coordination, cooperation, and support from government agencies is essential for effectively preventing and rescuing trafficked children. Conducting research on the issue of child trafficking one can discover more efficient intervention programs and policy development with significant information and understanding regarding trafficking in women and children. A thorough research on a number of aspects connected with trafficking of children such as the detailed information regarding the number of children trafficked, factors contributing towards the trafficking, trafficking networks and impacts on individual victims

⁵⁵ Government of India, Ministry of Women and Child Development, 2007; U.S. Department of State, 2009, 2010, 2012)

⁵⁶ U.S. Department of State, 2009, 2012

have to be undertaken for the trafficking intervention strategies to work effectively. Continuous research and well informed intervention programs and implementations are, therefore, craved for.

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