

CRITICAL ANALYSIS OF THE IMMORAL TRAFFIC (PREVENTION) ACT, 1986

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Abstract

Prostitution has been regarded as one of the oldest profession in the world. If we look into Indian mythology and scriptures we can understand that at that time also, prostitutes exist and the society accepts them and there is no stigma attached to this work. With the passage of time, the work which has earlier been seen as a profession turns into the forced exploitation of young girls and the society started looking the prostitutes and sex work particularly as evil to the society. The Constitution of India prohibits trafficking in human beings and forced labour and also being a party to the international convention related to the exploitation of prostitutes, India came up with the legislation that deals with the prostitution. The particular legislation i.e., Suppression of Immoral Traffic in Women and Girls Act, 1956 amended various times and in the year 1986 its name has been changed to Immoral Traffic (Prevention) Act, 1986 (ITPA). The ITPA did not per se prohibits the prostitution in the country but only curbs its open manifestation. So far as Act is concerned, many times, many academicians, as well as social activists, put up the demand that the Act needs to be repealed as the Act used to exploit the prostitutes by the various authorities. The Act gives a wide range of power to Magistrate and Police which they can use to exploit the prostitutes any time they want. So far as rehabilitation of the prostitutes is concerned, the Act seems to be inadequate as still, it follows the earlier detaining method of rehabilitation. The Act, indeed of looking prostitutes as victims of trafficking, criminalizes various activities of prostitutes which are very common for any person when he/she is engaged in the sex work. Therefore, the paper is an attempt to look into the Act critically and pointed out the lacunas that are present in the Act. The author also put forward various suggestions that are based on the various judgements given by the Supreme Court of India.

The paper is based on secondary data.

Introduction

India signed¹ and ratified² the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others³, to implement the terms of the convention the ‘Suppression of Immoral Traffic in Women and Girls Act, 1956’ was passed which later amended in the year 1986 and was renamed as ‘The Immoral Traffic (Prevention) Act’ (ITPA). ITPA is the principle legislation that deals with prostitution in the country.

The Constitution of India under its Article 23 also prohibits the “trafficking in human beings and forced labour”. Article 23 reads as follows:-

“Prohibition of traffic in human beings and forced labour

(1) Traffic in human beings and 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

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.”

However, neither the Constitution of India nor the ITPA defines what “trafficking in person” is? The term ‘trafficking of person’ as defined under,

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime is - “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 deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall

¹ On 9th May 1950.

² 9th January 1953.

³ Available at <https://www.ohchr.org/en/professionalinterest/pages/traffickinginpersons.aspx>

include, at a minimum, the exploitation of 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.”⁴

Section 370⁵ of the Indian Penal Code, describes Trafficking of persons as-

Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by— using threats, or using force, or any other form of coercion, or by abduction, or by practising fraud, or deception, or by abuse of power, or by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanations

1. The expression “exploitation” shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.
2. The consent of the victim is immaterial in the determination of the offense of trafficking.

However, the Justice Verma Committee⁶ (2013) gave concern to the sex work as exploitation and the original definition of “trafficking in person” in its explanation includes prostitution and other forms of sexual exploitation as exploitation. But, due to the concern raised by various NGO’s and civil societies, the Verma Committee looks after the definition again, because they gave a very wide meaning to the ‘exploitation’ which also includes the voluntary sex work. Prohibition on voluntary sex work simply results in one thing and that is more exploitation of the prostitutes by the law enforcement agencies. Therefore, the term “prostitution” has been removed from the definition.

⁴ Article 3 paragraph (a).

⁵ Added by Criminal Law Amendment Act, 2013.

⁶ Report of the Committee on Amendments to Criminal Law available at <http://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20report.pdf> (last accessed on 23-01-2019 at 12:30 P.M.).

However, the IPC under Section 370A provides a rigorous punishment to those who exploit the minors and persons sexually.

So far as ITPA is concerned, Section 5 (Procuring, Inducing or Taking a Person for the Sake of Prostitution) and Section 6 ((Detaining a Person in Premises Where Prostitution is Carried On) deals directly with the issue of trafficking. While the other penal sections of the Act cannot directly deal with the issue of trafficking.

Since India is surrounded by many under developing countries trafficking of women for sexual exploitation from these regions is more and quite easy in India, and India is also used as a hub to transfer the girls from Nepal, Bangladesh, and Myanmar etc. to the other parts of the world.

Within India, trafficking from States like West Bengal and Assam are very common for sexual exploitation. One of the biggest brothel of Asia i.e., 'Sonagachi' is situated in Bengal (more than 10,000 prostitutes). So far as Assam is concerned it's a politically disturbed as well as hazard-prone area, floods and other natural hazards are very common in Assam which in result becomes the "paradise for the traffickers."

As per the data of National Crime Record Bureau (NCRB) in 2016 around 8,137 cases of human trafficking were reported and West Bengal with 3,579 cases, had a share of over 44.01 per cent of the total cases.⁷ So far as ITPA is concerned it does not prohibits prostitution per se it was aimed more at traffickers and brothel keepers. But, so far as its implementation is concerned we can say that the Act needs to be more stringent.

The law made by the United States government i.e., The Victims of Trafficking and Violence Protection Act, 2000 under which the US department releases the report based on the performance of the government of the various States who received US aid. The three main areas to combat trafficking are- (a) prevention of trafficking (b) prosecution of traffickers and (c) protection of a victim of trafficking.

⁷ NCRB Data Reveals Surge in Human Trafficking Cases available at <https://www.dnaindia.com/sexuality/report-ncrb-data-reveals-surge-in-human-trafficking-cases-2564601> (last accessed on 23-01-2019 at 12:27 P.M.).

India has been placed in the tier 2 watch list of the United States Trafficking in Persons Report⁸ for “its failure to show increasing effort to tackle this large and multidimensional problem.” The Government of India has set up Anti-Human Trafficking Units in order to control the trafficking but still, the effort seems to be inadequate because of the fact that till now only 85 Anti-Human Trafficking Cells has been set up.

No doubt, the Indian government trying hard to control the trafficking in the country but the issue of trafficking is not that simple to tackle as the government thinks of. We have laws that deal with the issue of trafficking and also provides stringent punishment of the same as well. But, at the same time, if we look into the conviction rate of the offenders, the rate is very low and the reporting of the crime of trafficking is also very less, which is commonly called as the “dark side of the crime”. According to NCRB data of 2016, there were 4764 cases has been registered against the government officials and out of that only 1071 has been convicted and the rest will result into an acquittal.

Objectives

1. To critically look into the Immoral Traffic (Prevention) Act, 1986 and to find out the lacunas in the same.
2. To look into the impact of the Immoral Traffic (Prevention) Act, 1986 on the prostitutes and their children.
3. To look into the ‘right of self-determination’ of prostitutes.
4. To propose various recommendation and suggestions based on the reports of various civil societies and judgements of the Supreme Court of India.

Critical Analysis of the Act

The 25 sections Act deals mainly with the prostitution and prohibits prostitution in the brothels for commercial purpose and also at the public places. The Act identified sixteen offences mostly related with the perpetrators of trafficking and two of the offences that are, Prostitution in or in the vicinity of public places (section 7) and Seducing or soliciting for purpose of

⁸ United States Trafficking in Persons Report available at <https://www.state.gov/j/tip/rls/tiprpt/countries/2018/282672.htm> (last accessed on 23-01-2019 at 12:30 P.M.)

prostitution (section 8) aimed at the prostitutes. Originally, the Act was passed by the Parliament as Suppression of Immoral Traffic in Women and Children, 1956, later on the Act was amended twice first in the year 1978, in which punishment for certain offences has been enhanced and second in the year 1986, which renamed the Act as the Immoral Traffic (Prevention) Act, 1986. The amendment also changed the definition of the “prostitution” and most importantly made the law gender neutral and includes and recognised the male prostitution and male child trafficking.

Section 2(f) of the Act defines prostitution⁹ as, “prostitution” means the sexual exploitation or abuse of persons for commercial purpose, and the expression “prostitute” shall be construed accordingly. Earlier under SITA, the definition of ‘prostitution’ has been defined as- ‘act of a female who offers her body for promiscuous sexual intercourse for hire, whether in money or in kind, and whether offered immediately or otherwise, and the expression prostitute shall be construed accordingly.’ Under SITA, the main components to establish prostitution are- there must be sexual intercourse and that sexual intercourse is for hire. However, the newer definition removes the terms “female”, “promiscuous” and “for hire” and most importantly makes the definition gender neutral. The new definition also changes its tone in the sense that earlier under SITA female offering her body would look as criminal and immoral while the new definition shows the person as a victim of “sexual exploitation” who is being exploited by others.

The Act is mainly concerned and deals with six categories of people who are in any way involved with the prostitution. These six categories are as follows-

- i. Seducer
- ii. Brothel keeper/ Malkin/ manager (commission wali)
- iii. Any person who allows or lets premises to be used for prostitution
- iv. Any person who lives on the earning of a prostitute
- v. Children of prostitutes.

Section 2 (a) of the Act defines ‘brothels’ as “brothel” includes any house, room, conveyance or place or any portion of any house, room, conveyance or place, which is used for purposes

⁹ Added in 1986 Amendment.

of sexual exploitation or abuse for the gain of another person or for the mutual gain of two or more prostitutes.

Earlier under SITA, the prior requirement to prove any premises as a brothel two people of opposite sex are required to have illicit intercourse on the premises but, the 1986 amendment has changed the position and now it extends to homosexuals as well. Madras High Court in *In re Dhanalakshmi*¹⁰ held that “absent evidence of two or more women practising prostitution for their mutual gain or evidence that the prostitution of a woman is for the gain for another, the premises in question is cannot be said to be a brothel.”

The Act does not prohibit prostitution per se but only curbs the open manifestation of prostitution. As per section 7 of the Act, any person carries on prostitution within the public places can be punished with the imprisonment of three months. And, if the girl is minor than the client can also be punished with the imprisonment of seven years or more.

Similarly, section 8 makes seducing or soliciting an offence under the Act, which is punishable with imprisonment up to six months or fine up to Rs. 500 in first conviction. In subsequent conviction, the imprisonment can be extended up to one year with a fine of Rs. 500. After the 1986 amendment, if the offence is committed by a man than he shall be imprisoned for a period not less than seven days which may extend to three months.

So it is clear from the above-said provisions of the Act that prostitution is not prohibited and is not an offence unless it is in contravention with Section 7 and 8 of the Act.

In *Shanta vs State*¹¹, the Gujarat High Court held that, “the Act does not aim at abolishment of prostitutes and prostitution as such and makes it per se a criminal offence or punish a woman because she prostitutes herself, but its purpose is to inhibit or abolish commercialised vice.”

According to the report published by the Centre for Feminist Legal Research¹², “The ITPA provisions operate against the women in prostitution in many ways. The Act contains several

¹⁰ 1974 (80) CrLJ 61

¹¹ AIR 1967 Guj 211

¹² Centre for Feminist Legal Research Report available at www.cflr.org/form.htm (last accessed on 23-01-2019 at 12:32 P.M.)

provisions that directly target the women in prostitution such as those that prohibit prostitution in the vicinity of a public place and soliciting for the purpose of the prostitution.”

So far as Section 7 and 8 are concerned it gives a very wide range of power to police to exploit the prostitutes and to demand bribes. The Act looks very concern about the public places but, in reality, these provisions will result into more exploitation of the prostitutes and these poor women and girls were exploited by both their customers as well as the police. If we look into some of the famous brothels of the country they all are run at the public places. For example, GB road at the National Capital Delhi was located at the very heart of the city besides the New Delhi railway station (Ajmeri Gate). Another important point to be noted here is that the person who responds to the solicitation must also be made an accomplice and held equally responsible for the helpless women who, on account of circumstances, are driven to hire by this degrading trade while, on the other hand, man is not punished.¹³

If any woman found guilty under Section 7 and 8 of the Act instead of going to prison she will be sent to the correctional home for a minimum period of two years which may extend up to five years provided after the period of six months the State government can order for her release if satisfied that she will lead a ‘useful and industrious life’. (Section 10A).

Similarly, section 18 of the Act gives enormous power to the magistrate, as per the section, a magistrate can order for the closure of the place (that is being used for the prostitution) which is within the 200 meters of the public place and also direct the eviction of the prostitute from the place where she is carrying out the prostitution. The section also states that, a magistrate after receiving the information from the police or otherwise if satisfied issued the show cause notice to the concerned person to answer why the concerned premises should not be shut down.

The abovementioned section is one of the widely misused section of the Act by the authorities and is a direct encroachment on ones’ right to freedom of occupation and privacy. The police widely misused this section to harass the prostitutes and to exploit them.

¹³ Flavia Agnes, ‘*Protecting Women Against Violence? Review of a Decade of Legislation, 1980-1989*’, *Economic and Political Weekly*, April 25, 1992, p 27.

Section 18 of the Act was challenged in the Supreme Court in *A.C Agarwal v. Ram Kali*¹⁴, on the ground that, the section violates Article 14 of the Constitution. The court rejecting the plea held that Section 18 does not violate Article 14 of the Constitution as the object of section 18 is preventive and is in no sense amounts to unnecessary prosecution.

Section 20 of the Act states that magistrate, if satisfied that a prostitute is residing in his jurisdiction he can order for her eviction from the place in the larger public interest and if the person violates the order issued by the magistrate, the person shall be liable to pay fine.

As per the section, the woman has to prove that she is not a prostitute and also there is no limit how many times a woman can be shifted from one place to another. The Allahabad High Court in this regard held that “where a married woman carried on prostitution not in a brothel, or for the benefit of another, it was not an offence and the order issued by the magistrate of her detention in a protective home is without his jurisdiction.”

It is quite easy for the law enforcement agencies to prosecute the family members of the sex worker as the Gujarat High Court held that, a husband allowing her wife to prostitute will be held liable under section 4(2) as he is living on the earnings of the prostitution and the said premises would be declared as brothel.

Section 20 of the Act, which is the most controversial section of the Act was challenged on the ground that, the section is violates Article 19 (d), (e) and (g) of the Constitution of India in the case of *State of Uttar Pradesh v. Kaushalya*¹⁵, the court while upholding the validity of the Act held that “the section neither conferred on the magistrate unguided power so as to enable him to act arbitrarily, nor did it in anyway put unreasonable restraints on the rights. A magistrate is required to act judicially and to consider the questions such as (i) whether she is a prostitute, (ii) whether in the interest in the general public she should be required to remove herself from the place where she is residing or which she is frequenting. The power of the magistrate is not ‘unchannelised’ and ‘uncontrolled’. His actions are subject to revisional jurisdiction under section 397 of the Code of Criminal Procedure. And that there must be a ‘real’ and ‘obvious’ differential between a prostitute who is a public nuisance and who is not”.

¹⁴ AIR 1968 SC 1.

¹⁵ AIR 1964 SC 416.

The Supreme Court in *Gurudev Kaur v. State of Punjab*¹⁶, shows some sensitivity towards the prostitutes, and held that, “where a prostitute who is a major and had not applied for admission in the protective home, under S. 19(1) of the Act, she could not be detained against her wishes in the protective home”. The Court further held that “an order under Section 19(1) could not be made only on an application made by the concerned”.

Section 15 of the Act, talks about the search of the premises by the Special Police Officer or the Traffic Police Officer as the case may be without warrant, and that, Section 15 (6) gives them immunity from being held liable in any civil or criminal proceedings.

The Madras High Court in *In re Ratnamala*¹⁷ held that “the exceptions granted to a special police officer under Section 15 (6) of the Act cannot be utilised to conduct a search in disregard of elementary decencies even if the decencies are related to prostitute”.

In *Kamala Bai v. State of Maharashtra*¹⁸, the police in order to conduct a raid engaged an old man to go to the brothel and also deputed a student of under-age to be a witness of the act. The Supreme Court held that “What is more reprehensible and a matter of greater concern is the sending of a young student who was reading for his matriculation. To use students in this manner should not be allowed by any government authority in the country like ours. It is no justification to say that in order to suppress immoral traffic in women and to stop prostitution somebody has to be used and the only class of people that can be employed is person like (one) who is confessedly a police agent and (other) who is a young man willing to be employed by the police”.

The legal frame work of prostitution can be broadly classified into four main categories-

- (i) **Total prohibition-** under this category, prostitution is criminalised per se and every activity related to the prostitution is prohibited and shall be penalised.
- (ii) **Regulation-** under this prostitution is legalised through licence and total prohibition is not there.

¹⁶ AIR 1963 Pun 369.

¹⁷ AIR 1962 Mad 34.

¹⁸ 1962 Supp (2) SCR 632.

- (iii) **Repression-** under this blatant manifestation is forbidden and that no total prohibition is there.
- (iv) **Total Toleration-** under this no prohibition on prostitution is present and the same is carried on without any restrictions.

India, somehow falls under category (iii), because as per the Act, prostitution carried on in private and only for one's own purpose is not prohibited, but, when is carried on in a brothel and in public, it is prohibited and is penalised.

According to The Law Commission of India- Sixty-Fourth Report (The Suppression of Immoral Traffic in Women and Girls Act, 1956), prostitution is the social evil and is a threat to the institution of marriage and is meant to exploit the women who are engaged in the prostitution. The Commission also pointed out that, when there is two consenting adults in private engaged in any kind of sexual activity that need not be penalised. Although, such kind of activities are disapproved by the society, at the same time it did not attracts any kind of penal sanction if it is being done without any exploitation and with the consent of both the parties. The Commission also pointed out that, no law can prohibit this kind of social evil and such kind of social evil can only be prohibited through the collective effort of the law and society together. The commission quoted the Report of the Street Offences Committee (1928), "Firstly, as a general proposition, it is universally accepted that the law is not concerned with private morals or with ethical sanctions. The law is plainly concerned with the outward conduct of citizens in so far as that conduct injuriously affects the rights of other citizens. Certain forms of conduct it has always been thought right to bring within the scope of the criminal law on account of the injury which they occasion to the public in general. It is within this category of offences, if anywhere, that public solicitation for immoral purposes finds an appropriate place."

"Secondly, the immorality of an act should never be the decisive factor in making it illegal, since the appropriateness of a moral sanction does not entail the appropriateness of a legal sanction. What is grist to the fine mill of morality, may well escape the clumsy engine of the law, or be mangled by it; but any attempt to exclude the immorality of an act as a relevant factor in deciding whether to make it illegal, is both dangerous and futile. It is dangerous because it leads to the illusion that a legal system can function without the foundation and the

frame of reference of a moral system, and it is futile because moral values have a way of infiltrating into even the most anti-septic legal system.”

The overall debate regarding the prostitution has been revolved around the term “morality”, which in itself is a very ambiguous term, what is moral to me may be immoral to another and imposing penal sanctions based on morality is very dangerous for society because society is changing at every moment and also the morality with the time.

Right to Self-Determination and Prostitution¹⁹

Part III of the Constitution of India provides some inalienable rights to the citizens of the country. Whereas, the Preamble talks about the socio-economic justice, equality of status and opportunity but, unfortunately, the prostitutes of the country are the biggest exceptions to these fundamental rights and right to self-determination. Mostly, the prostitutes are the victims of socio-economic inequalities and are from the poor socio-economic background. Prostitutes have to compromise many of their basic rights and has to face societal hatred and discrimination at every moment of their lives. Many a times prostitutes has been raped and has to keep silent because, society would always look at them as a woman of “easy virtue” and “habitual to sex”. However, the Supreme Court of India, in *State of Maharashtra v. Madhukar Narain Madhikar*, pointed out that, “...even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. So also, it is not open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to violate it against her wish. She is equally entitled to the protection of the law. Therefore, merely because she is a woman of easy virtue, her evidence cannot be thrown overboard.”

Prostitutes and their Children

¹⁹Prostitution and the Law: Charting the Indian Course by Shivam Goel available at <https://tilakmarg.com/opinion/prostitution-and-the-law-charting-the-indian-course/> (last accessed on 23-01-2019 at 12:35 P.M.)

As per Section 2(14) (viii) of the Juvenile Justice (Care and Protection of Children) Act, 2015 “child in need of care and protection means a child, who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts”.

Children of prostitutes would be treated as a child in need of care and protection and have been sent to the children homes and various other shelter homes set up by the registered NGO's. As per the law, the law enforcement agencies can intrude into the privacy of the woman and can take away her child from her and send it to any shelter home.

The threat of exploitation of children of prostitution is more in comparison to other children. According to the Stockholm Declaration²⁰, the commercial sexual exploitation is a violation of fundamental right of the children. So far as the law is concerned, IPC, POCSO and JJ Act, recognises child sexual abuse and imposes rigorous penal action as well.

The Supreme Court of India, in *Gaurav Jain v. Union of India*²¹, pointed out the issue of children of prostitutes and said, separate schools and homes for the children of a prostitute would not be in the interest of the children of the prostitutes. The court further stated that these children should be segregated from their mothers and should mingle with the society so that they can become part of society. It would not be in the interest of the children to live in the homes of the prostitutes as the environment there would not be in the interest of the child. The court did not accept the plea of separate hostels and homes for the children of the prostitutes and held that segregating children from their mother is enough and the children should be allowed to live in the society as a member of this society and accommodation at the protective homes and shelters are available to them.

So far as rehabilitation of prostitutes is concerned, section 21 of the Act provides that, the State government shall establish protective homes or correctional institutions for the rehabilitation of the prostitutes. However, in reality, these protective homes prove to be the failure on the part of the State, as, no corrective measures have been taken there and women were forcefully detained there and were told to learn sewing and such other kinds of things. As pointed out in

²⁰ Declaration and Agenda for Action from the World Congress against the Commercial Exploitation of Children

²¹ 1990 Supp SCC 709.

the book named “raided”²², an empirical study has been done on the prostitutes who left the correctional homes and again come back to the brothels. As per the study, these women were not treated well in the correctional homes and also were forced to do work which has a very minimal amount of earning like sewing, cooking etc. According to these women, they earn much more in the brothels, and for the betterment of their own as well as for their children they again come back to the brothels, while some women also stated that, they actually want to do the sex work, and that is why they came back to the brothels again.

The Supreme Court in *Budhdev Karmaskar v. State of West Bengal*²³, made its observation relating to the rehabilitation of the prostitutes and requested the youth to come forward for the protection of the prostitutes and their children. The Court stated, “We are fully conscious of the fact that simply by our orders the prostitutes in our country will not be rehabilitated immediately. It will take a long time, but we have to work patiently in this direction. What we have done in this case is to present the situation of prostitutes in the country in the correct light, so as to educate the public. It is ultimately the people of the country, particularly the young people, who by their idealism and patriotism can solve the massive problems of prostitutes. We, therefore, particularly appeal to the youth of the country to contact the members of the panel and to offer their services in a manner which the panel may require so that the sex-workers can be uplifted from their present degraded condition. They may contact the panel at the email address: panelonsexworkers@gmail.com.”

The Way Forward

The law needs to be very clear regarding the sex work in the country, as per the present legislation i.e., Immoral Traffic (Prevention) Act, 1986, the Act itself seems to be very confusing and gives enormous powers to the law enforcement agencies. The Act needs to be amended so that a clear definition of ‘sex worker’ will come out. Most importantly, for the betterment of the prostitutes and their children, the sex work needs to be included in the occupation schedule of the Ministry of Labour and Employment, so that, prostitutes would be counted as workers and would be treated as workers and will receive all the benefits

²² Raided available at

<https://www.sangram.org/resources/RAIDED-E-Book.pdf> (last accessed on 23-01-2019 at 12:36 P.M.)

²³ (2011) 10 SCR 577.

which have been provided to the labours. The sex work needs to be regulated by the government, so that, they can record the number of prostitutes and will also control the Sexually Transmitted Diseases.

At the same time, the government would also need to check on the issue of trafficking in the country which has been increasing every day. India, which has recognised as the hub of trafficking needs to check trafficking not only within the country but, also from the neighbouring countries especially, Nepal and Bangladesh.

The available laws in the country are silent on the very common issue which would result in the huge amount of trafficking and that is, trafficking at the time of disasters. In India, still, there is a need of a law that addresses the issue of trafficking during the disasters. The Disaster Management Act, 2005 (DM Act) did not contain any provision that deals with the special needs of women and children during the disasters. The Immoral Traffic (Prevention) Act, 1956 deals with trafficking of persons for the purpose of commercial sexual exploitation and it does not recognise trafficking of persons for the purpose of physical and other forms of exploitation.

The ITPA needs to be amended and should be linked with the DM Act so that the issues of trafficking should be addressed during the disasters. The ITPA needs to be a self-sufficient Act that prohibits trafficking per se. The Act should be amended in a way that, the role of National Disaster Relief Force should be extended to prevent the trafficking during disasters.

So far as children of prostitutes are concerned, as rightly pointed out by the Supreme Court, they need to mingle with the society, so that, they can also enjoy their lives and will also make contributions in the growth and progress of the country.

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