

PROSTITUTION- A REASON FOR HUMAN TRAFFICKING

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Every one of us has an urge to grow. To be what, we dream to be. A dream, which extracts all the possible potential out of us so as to see that dream take the shape of reality. For accomplishing such goals many often people lose their natural judgement skills of what is right and what is wrong. People tend to become more vulnerable to the menace which exists in a society. And traffickers exploit these highly vulnerable sections of a society. They create a world of deception wherein people are guaranteed of better education, status and high pay scale. Hence, human trafficking deals with trading of humans. This includes sexual slavery, forced labour, commercial sexual exploitation, and forced surrogacy. Human trafficking is a global crime as it completely violates the personal rights along with restraining freedom by coercion. Hence, human trafficking is a system based on greed, control and power. It is one of the most serious crimes which affect every continent and every country at all possible levels. Society doesn't listen to this, business doesn't see this and government refuses to talk about it. People who are trapped in this vicious circle of trafficking are often invisible, always powerless and are put to work.

Article 3, paragraph (a) of **the Protocol to Prevent, Suppress and Punish Trafficking in Persons** defines Trafficking in Persons as 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 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.⁹⁷

Prostitution is one of the major catalysts in human trafficking in the global scenario. Not just the developing or under-developed countries are aggrieved by this, but, also highly developed countries are also caught within this circle. Prostitution in India is a Rs. 40,000 crores annual business and thirty per cent of the sex workers are children whose exploiters earn a whopping Rs. 11,000 crores.⁹⁸

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⁹⁷ What is Human Trafficking, available at <https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html> retrieved on September 3, 2014

⁹⁸ S. Sridevi Goel, Girl Child Prostitution, Society's Responsibility – Indian Scenario, 7 CBI BULLETIN 14 (1999).

According to the Immoral Traffic (Prevention) Act, 1956, 'prostitution' means the sexual exploitation or abuse of persons for commercial purposes⁹⁹. The word Prostitution is derived from Latin word "prostituere", meaning to expose publically, and as a word it may be well defined as promiscuous chastity for gain¹⁰⁰.

Prostitution is not something which has suddenly been planted into our society due to the modern thinking or as a cause of globalisation. Existence of prostitution as a profession can be traced back since inception. In Indian context, prostitution was linked not only with money, but, also religion. The Indian mythology has given references to prostitutes like Menaka, Ramba, Uruvashi, and Tilothama. The Vedas even proved that their existed a system of guest prostitution. In 1500 BC, concubines became an integral part of the Bramanical society. Devadasi system marked the beginning of institutionalising religious prostitution into pure prostitution. Devadasi literally mean "god's servant".

In ancient India, young Indians were married to deities. They were forbidden from entering into real marriages, as they were already married to deities. However, this system was later misused by immoral priests and it was used to satisfy their personal desires. Another system which existed during the same time was the Tawaif system, wherein prostitutes were classified into three classes namely; Kumbhadasi, Rupajiva and Ganika. The Ganikas were the most respected and state laws fixed prostitution as a profession.

In the medieval period, all the Muslim leaders except Aurangzeb recognised prostitution as a profession and it was allowed to flourish with royal patronage. Even after the decline of Muslim empire, this profession continues to flourish across the country.

In the British period, due to shift of employment from indigenous sector to urban sector many more women were forced to take up prostitution as a profession for livelihood. Hidden concubines were now transferred to government run brothels or chaklas and were subject to high degree of physical and sexual abuse.

In the current scenario, around 90% of trafficking takes places within the country and there were some 3 million prostitutes of which 40% were children. Mumbai and Kolkata have the largest brothel based sex industry. The Asia's largest and best-known red-light districts are Sonagachi in Kolkata, Kamathipura in Mumbai and G. B.

⁹⁹ Section 2(f), Immoral Traffic (Prevention) Act, 1956

¹⁰⁰ Rajendra Kumar Sharma, Atlantic Publishers & Dist, Criminology and Penalogy, Pg no: 45-46.

Road in New Delhi host thousands of sex workers. Earlier, there were centres such as Naqqasa Bazaar in Saharanpur, Chaturbhuj Sthan in Muzaffarpur, Meerganj in Allahabad and Kabadi bazar of Meerut.

Hence, tracking back to the history of prostitution it is very clear that Indian society tells a long tale of sufferings of women who have been either force or voluntarily entered this profession. From the traditional brothels to, highly developed brothels in modern era in the world which are increasingly a dreadful place for every day for a woman to live in.

Since time immemorial, the need for tackling the menace has been recognised by the lawmakers in India. The Indian legal framework is designed in a fashion so as to give effect to the same.

The provisions of life and personal liberty¹⁰¹, equality¹⁰² and association¹⁰³ entailed in the Constitution guarantee protection against human trafficking and forced labour.¹⁰⁴ The Directive Principles of State Policy in Article 39(a) provides that the State shall direct its policy towards securing that all the citizens, men and women equally, have the right to adequate means of livelihood. It further provides for- health and strength of workers, men, women, and the tender age of children not be abused and are not forced by necessity to enter avocations unsuited for their age and strength¹⁰⁵, promotion of the educational and economic interests of weaker sections of the society and protecting them from social injustice and exploitation¹⁰⁶, duty of the state to raise the standard of living of its people and the improvement of public health¹⁰⁷, requirement of fostering respect for international law and treaty obligations¹⁰⁸, and the renunciation of practices by citizens that are derogatory to the dignity of women.¹⁰⁹

Trafficking and prostitution are dealt under many provisions of the Indian Penal Code as well. For instance-

- Section 317- Exposure and abandonment of child under twelve years, by parent or person having care of it.
- Section 339- Wrongful restraint
- Section 340- Wrongful confinement
- Section 354- Assault or criminal force to woman with intent to outrage her modesty

¹⁰¹ Article 21, Constitution of India, 1950

¹⁰² Article 14, Constitution of India, 1950

¹⁰³ Article 19(1), Constitution of India, 1950

¹⁰⁴ Article 23, Constitution of India, 1950

¹⁰⁵ Article 39(e), Constitution of India, 1950

¹⁰⁶ Article 46, Constitution of India, 1950

¹⁰⁷ Article 47, Constitution of India, 1950

¹⁰⁸ Article 51, Constitution of India, 1950

¹⁰⁹ Article 51 A, Constitution of India, 1950

- Section 361- Kidnapping from lawful guardianship
- Section 362- Abduction
- Section 365- Kidnapping or abducting with intent secretly and wrongfully to confine person.
- Section 366- Kidnapping, abducting or inducing woman to compel her marriage, etc.
- Section 366 A- Procurement of minor girl
- Section 370- Buying or disposing of any person as a slave
- Section 371- Habitual dealing in slaves
- Section 372- Selling minor for purposes of prostitution, etc.
- Section 373- Buying minor for purposes of prostitution, etc.
- Section 375- Rape
- Section 496- Marriage ceremony fraudulently gone through without lawful marriage.
- Section 498- Enticing or taking away or detaining with criminal intent a married woman.
- Section 506- Punishment for criminal intimidation.
- Section 509- Word, gesture or act intended to insult the modesty of a woman.

Finally, a legislation dealing with sex work in India, the Suppression of Immoral Trafficking in Women and Girls Act, 1956 was built on the aforementioned lines. The Act was renamed by virtue of an amendment in the year 1986 and is now known as Immoral Traffic Prevention Act, 1956 (hereinafter ITPA). The Act does not criminalize the profession of Prostitution per se, it prohibits the practice of forced prostitution. It runs counter to the commercialization of the profession which exploits the person of the prostitute¹¹⁰.

The ITPA defines a trafficker as a person who recruits, transports, transfers, harbours, or receives a person for the purpose of prostitution by means of—

- (a) Threat or use of force or coercion, abduction, fraud, deception; or
- (b) Abuse of power or a position of vulnerability; or
- (c) Giving or receiving of payments or benefits to achieve the consent of such person having control over another person.

A ban on prostitution is impractical. Such a thing is impossible to achieve unless women are rehabilitated and the issues relating to gender inequality and poverty are addressed. The Act penalizes activities incidental to

¹¹⁰ Manoj Wad and Sharayu Yadav, The legal framework of prostitution in India, *Prostitution and beyond: an Analysis of Sex Work in India* (SAGE Publishers, New Delhi, 2008).

prostitution.

The offences and punishments for the same as specified under this Act are-

- Keeping a brothel or allowing premises to be used as a brothel- Section 3
- Living on the earnings of prostitution- Section 4
- Procuring, including or taking persons for prostitution- Section 5
- Detaining a person in premises where prostitution is carried on- Section 6
- Prostitution in or in the vicinity of public places- Section 7
- Seducing or soliciting for prostitution- Section 8
- Seduction of a person in custody- Section 9

The punishment for trafficking varies from seven to fourteen years of imprisonment, or, in the case of child trafficking, from seven years to life.

Furthermore, the Immoral Traffic Amendment Bill, 2006 was introduced by the Ministry of Women and Child Development in the Parliament on May 22, 2006 to provide an expansive meaning to prostitution and widens its ambit. The Bill sought to undo some features of the existent ITPA and its highlights are enumerated below¹¹¹-

- Deletes the provisions related to prosecution of prostitutes soliciting for customers. (section 7 and 8 ITPA)
- Provides for prosecution of clients.
- Defines the term "trafficking in persons" and provides for penalties.
- Increases penalties for some offences and
- Constitutes authorities at the central and state level to combat trafficking.

This Amendment succumbed to large scale protests by sex workers. Despite having laws to combat trafficking and prostitution, the current legal framework needs reforms. The prime set of laws dealing with prostitution, the ITPA, can itself be perceived to be flawed. The legislation meant to protect the exploitation of sex workers operates against them because the customer, without whom the act of prostitution cannot be committed, also goes scot-free.¹¹²

¹¹¹The Immoral Traffic (Prevention) Amendment Bill, 2006, available at <http://www.prsindia.org/billtrack/the-immoral-traffic-prevention-amendment-bill-2006-143/> on October 3, 2014 at 7:30am

¹¹² Poonam Pradhan Saxena, "Immoral Traffic in Women and Girls: Need for Tougher Laws and Sincere Implementation", 44 JILI 504, 523 (2002).

The Supreme Court in the case of *Gaurav Jain v Union of India*¹¹³ held that “women found in flesh trade should be viewed more as victims of socio-economic circumstances and not offender of the society, some police authorities have already set out the process of sensitization towards the sex workers and their treatment.” The ITPA runs inadequate as far as rehabilitative measures for sex workers convicted under it is concerned. The rules for protective homes must compulsorily provide for literacy and a range of vocational and occupational training based on the woman's aptitude and market value of the job; counselling which helps in redefining inmates as surviving human beings must be provided; and subsidized hostels and care homes must also be set up to house inmates discharged from homes.¹¹⁴

The international organization for migration estimates that the global trafficking industry generates up to \$ 8 billion each year from what may be described as “trade in human misery”. Both the factors of increasing demand and supply ruthlessly drive the trafficking industry. Some key factors behind the trade are inadequate employment opportunities, lack of a social safety net, globalization, feminization of poverty, and rise in sex tourism and so on¹¹⁵.

There has been a considerable spurt in trafficking and prostitution in India as it is extremely lucrative a profession with low risks involved. Some factors that attribute for the low risk of prosecution as far as such crimes are concerned are a weak legal framework governing them and corruption at all levels.

According to a report published by the United States Department of State in the year 2009, “The Government of India does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. Despite these significant efforts, India has not demonstrated sufficient progress in its law enforcement efforts to address human trafficking”.¹¹⁶

In the year 2011, India signed the UN TIP, thus reaffirming the country's desire to combat sex trafficking within the country. The goals of this protocol are to “prevent and combat trafficking” and “protect and assist the victims of such trafficking,” especially women and children.¹¹⁷ The government of India is making moderate efforts to

¹¹³ *Gaurav Jain v Union of India*, AIR 1997 SC 3021

¹¹⁴ Jean D'Cunha, “Prostitution in a Patriarchal Society: A Critical Review of the SIT Act.” *ECONOMIC AND POLITICAL WEEKLY* 1919-1925 (1987).

¹¹⁵ Dr. Barindra N. Chattoraj, *Sex Related Offenses and Their Prevention and Control Measures: An Indian Perspective* Annual Report for 2006, 82.

¹¹⁶ *Trafficking in Persons Report 2009 - India*, available at: <http://www.unhcr.org/refworld/docid/4a4214b4c.html> (Visited on September 25, 2014).

¹¹⁷ *Anti-Trafficking Legislation Inadequately Combating Sex- Trafficking in India*, available at <http://hrbrief.org/2013/03/anti->

curb the menace of trafficking and prostitution but a more robust approach is to be adopted to take the issue in its entirety.

Prostitution related laws can be classified into three systems- Prohibitionist system, Tolerationist system and Legalized Prostitution.¹¹⁸

The Prohibitionist system perceives prostitution as an immoral act. It aims at the eradication of this evil by imposing a blanket ban on it and all related activities. It also charges criminal sanctions on all categories of people involved in it. The Tolerationist system regards it as a voluntary activity between two consenting adults and assumes the role of the state to be limited to the eradication of forced prostitution. The system of Legalized prostitution endeavours to regulate and license brothels, prostitutes and other related activities so as to keep a check on them, hence ensuring public health.

Prostitution is a profession deep rooted in India. Notwithstanding the efforts of the State, the menace of prostitution could not be curbed. It has survived in one form or the other and will subsist even in future. A complete ban on this profession is not viable as it will continue to survive in some form or the other and the miseries of the victims of prostitution will go unaddressed.

Decriminalization will enable sex workers to practice their work without police harassment; a major issue with many sex workers in India.¹¹⁹ This approach in a way protects the rights of the victims of forced prostitution and imposes liability on the brothel keepers. This system provides a partial solution to the miseries of the ones caught in this vicious circle. Making laws on the basis of this system for a country like India is not feasible as it would lead to a spurt in prostitution which would mean more number of people forced to join the profession.

The third system of Prostitution made laws, legalized prostitution, is the most controversial of them all. The issue pertains to the legalisation of Prostitution in India alike some other developed countries. This proposition musters a group of people who stand in support of such a legalisation whereas the other which vehemently opposes it.

The ones in favour of legalized prostitution are of the opinion that as this profession is impossible to eradicate,

trafficking-legislation-inadequately-combating-sex-trafficking-in-india/ (Visited on October 1, 2014)

¹¹⁸ Jean D' Cunha, Prostitution Laws: Ideological Dimensions and Enforcement Practices, 27(17) ECONOMIC AND POLITICAL WEEKLY WS-34 (1992)

¹¹⁹ Geetanjali Gangoli, Prostitution, Legalisation and Decriminalisation: Recent Debates, 33(10) ECONOMIC AND POLITICAL WEEKLY 504,505 (1998)

the only equally efficacious remedy is to regulate it. According to them, legalisation would enable keeping track records of sex workers in the country. This can have manifold benefits for both the people involved in prostitution and the state as well. Legalisation of the profession would save the prostitutes from the oppressive hands of their pimps, brothel keepers, criminals, and even the police officers. A legal recognition to this profession would ensure them dignified lives. Furthermore, if the state is allowed to monitor sex workers, they would be subjected to regular medical tests which would not just ensure their health but would also help combat the epidemic of sexually transmitted diseases. Specific zones for prostitution can be demarcated and norms could be made accordingly. This will lead to an environment conducive to the well-being of the parties involved. Legalisation of the profession creates an amiable relationship between the authorities and the parties, thereby, giving the latter the opportunity to rehabilitate if desired by them. These arguments are put forth by the ones in support of such legalisation and are hopeful of the same in the coming days in India.

Those against the proposition contend that ours is a cultural legacy and successful legitimizing of prostitution as in the case of countries like Denmark, Netherlands, Canada, England is not a plausible enough measure for a country like India. In our country there is a very meagre portion of women who voluntarily opt for prostitution while the majority are forcefully driven into it either being trafficked or being compelled by extreme poverty and despair. Hence prostitution is less a profession and more a form of slavery in our country and therefore it is not justifiable to give a legal status to slavery¹²⁰. Also taking the rampant corruption in our society into consideration, legalizing prostitution would mean a tacit approval to trafficking.

There is a lot of criticism of the system of legalisation. “It has been suggested by some feminists that licensing and monitoring may not help sex workers to live and work with dignity. They feel that regulation leads to a division between legal and illegal sex workers, leading to further marginalization of the latter. Many sex workers would not desire regulation as it may mean they will be publicly seen as prostitutes and an increase in control over the lives of these prostitutes would be demeaning to them and also the aspect of compulsory medical testing.”

¹²¹ Many feel that legalizing prostitution is akin to legalizing child labour ¹²² and tantamount to slavery.¹²³

In addition to these points of criticism, legalisation of prostitution is a gift to pimps, traffickers and the sex industry

¹²⁰ Amitabh Singh, The Menace of Female Prostitution in India Today: A Socio- Legal Study ;International Journal of Humanities and Religion, Vol 1, No 2 (2012)

¹²¹ Geetanjali Gangoli, Prostitution, Legalisation and Decriminalisation: Recent Debates, 33(10) economic and Political weekly 504,505 (1998).

¹²² Frances M. Shaver, Prostitution: A Critical Analysis of Three Policy Approaches, 11(3) Canadian public policy 493 (1985).

¹²³ Mellissa Farley, “Bad for the Body, Bad for the Heart”: Prostitution Harms Women Even if Legalized or Decriminalized, 10(10) violence against women 1087, 1090 (2004).

as a whole. This does not control the sex industry rather expands it. Legalisation of prostitution increases child prostitution as research shows that after sex work was legalized in Netherlands and Victoria, Australia, child prostitution has grown exorbitantly and this leads to various forms of commercial sexual exploitation of children¹²⁴. Legalisation further leads to an increase in the demand for prostitution. It encourages trafficking of prostitutes in a society where such activities are acceptable as the absence of legal barriers lead to the depletion of ethical and social barriers as well.

Legalisation of prostitution is not the best way to go forward in tackling the job of homo dealings and eradicate this social evil of harlotry. In India, with such diverse societal ingredients, sexual urge has survived in parallel with the society where it is looked down upon due to the degrading aspects of the profession. Sex Workers across the country, especially in major cities, have been largely located to a particular area where they live as a community. Provisions such as licensing, enrolment with local police and local municipal bodies will not be possible until the brand attached with sex work is done away with¹²⁵. For this, the police need to be further sensitized to the field of sex work and they need to respect the man right to live the kind of life they wish to live, provided no harm is caused to public at large. The legislative body first needs to provide all the basic human rights of these sex proletarian that are guaranteed under international law and municipal law. Their social atmospheric condition need to be uplifted; they have to be rehabilitated and trained to transferral to better paying jobs where they are given self-respect and reasonable financial support. Without proper implantation of legalisation, the sex doer's trouble will just worsen and prostitution will be further entrenched into our society without a way of getting out of it. A distinction needs to be made between sex workers who have taken up the profession voluntarily and sex workers who have been or are being forced into this profession. Both sections are to be looked after with the latter requiring immediate proactive support. They need to be given life insurance and voter's rights. Only when the complicity of the policemen and the brothel owners is broken off and the nexus between them is annihilated, will the sex workers have a say in their own matters¹²⁶. The best way to go ahead for India will be decriminalization of prostitutes and criminalization of brothel-owners along with penalizing demand in form of the consumer of sexual services¹²⁷.

In contemporary times, traffic has become one of the most leading reasons for the flourishing of prostitution as a profession. Although government has taken strict steps for combating such perils it is growing in a vigorous rate

¹²⁴ Janice G. Raymond, *Prostitution, Trafficking and Traumatic Stress* (Mellissa Farley ed., Binghamton: Haworth Press, 2003)

¹²⁵ Dharmendra Chatur, *Legalisation of Prostitution in India* (2009).

¹²⁶ Prabha Kotishwaran, *Preparing for Civil Disobedience: Indian Sex Workers and the Law*, 21(2) *Boston college third world journal* 161, 170 (2001).

¹²⁷ Janice G. Raymond, *Prostitution, Trafficking and Traumatic Stress* (Mellissa Farley ed., Binghamton: Haworth Press, 2003)

in the society. It must be clearly noted that not only proper laws need to be brought about, but, efficient enforcement of these laws is equally important. Efficient enforcement of laws covers those people who are already in this profession and also those who are being forced to enter. Hence, there is an urgent need to provide basic amenities for such affected people. They need to be assured that they will have a better life and above all a dignified one. Once all these policies are implemented the government should make sure that people lead a healthy life and the society will never be affected by this menace. In this regard, the government must make necessary system to make choice employment opportunity accessible to them.

And most importantly, along with such constructive measures, it would be the utmost province of the government to keep a vigilant watch that the rescued victims are not re-trafficked and re-trapped into this bonded bondage again. The sex worker needs to be rehabilitated with State protection and care and has to be relocated to another sector of the industry with proper training. Protection is to be ensured to the existing sex workers. The policy should aim at rehabilitation, counselling and reintegration of millions of sex workers who would like to come out from this job and lead healthy and dignified life like other respectable members of the society. In this regard, the government must make necessary arrangements to make alternative employment opportunities accessible to them. And most importantly, along with such constructive measures, it would be the utmost responsibility of the government to keep a vigilant watch that the rescued victims are not re-trafficked and re-trapped into this bonded slavery again.¹²⁸ The governments of various countries should come together and share information to bring forth programmes to prevent trafficking on a global level.

Measures should be directed towards the classes vulnerable to trafficking and prostitution, which are, children and women. They should be provided with greater protection and support to curtail the risks of getting caught into the oppressive hands these crimes. Moreover, speedier and even more comprehensive redressal system is required to look into the grievances of these depressed souls. The rehabilitation policy should endow them with an access to formal education along with vocational training and recreational facilities. Also, steps should be taken to generate consciousness in the society about these evils prevalent in the country. People should be made aware of their rights so that they know the recourse available to them against any abridgements.

As a society what we can do is acceptance. We have to have a broad mind-set. Being a prostitute or being dragged into sexual exploitation is no one's choice. It is purely a play of circumstances. We should stop judging others and based on the resources which exists in the society we as good citizen of the country should try our maximum in order to put an end to this. Yes, admitted that it is the most difficult job, but, for the sake of future generations

¹²⁸ Amitabh Singh, The Menace of Female Prostitution in India Today: A Socio- Legal Study ;International Journal of Humanities and Religion, Vol 1, No 2 (2012)

it is our responsibility to take care of that.

Human trafficking and prostitution are embedded in our society. Starting from the most elite group to the most backward group make equal amount of contribution to this menace. Hence, we should also keep in our mind that, making law is definitely the job of judiciary and the proper implementation of law is that of the government. But, if those laws have to be efficiently implemented then each one of us has to take strong steps. First thing that all of us have to realise is that it is high time this blame-game was continued. The government, the citizens and each one of us have played enough and more of this blame game.

Therefore, the role of government and the society is at the same level. Both should try and work for the betterment of people. And it is all of us who have to understand that the society comprises of us. And we elect and run the government. Hence, we should take the onus of this menace and remove it from grass root level.



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