



**AN ANALYTICAL STUDY OF SEX TRAFFICKING AND ITS RELATIONSHIP
TO PROSTITUTION: POSITION IN INDIA AND THE ASIAN IMPACT**

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IMPACT**

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ABSTRACT

The United Nations Office on Drugs and Crime (UNODC) defines human trafficking as, “any form of recruiting, transporting, transferring, harboring, or receiving a person by means of threat or use of force or other forms of coercion, abduction, fraud, or deception.” Sex trafficking is a branch of human trafficking which involves some or the other form of forced or coerced sexual exploitation which may not be limited to prostitution, and that has become a

prevalent and ever-expanding problem in both India and the global community. The approximate number of cases of sexual trafficking that are registered range up to 800,000 annually, throughout the world, out of which 80% are women and 50% of which are minors. The obvious effects to the victims as well as the society at large would include the degradation of not only women’s rights, but also of human rights in general. Other significant effects relate to poor public health, disrupted communities, and diminished social development. Sex trafficking victims often acquire adverse and immense physical as well as psychological health conditions, which harbors the first step of putting them at a social disadvantage. The issue of sex trafficking and the ones affected by the same has to be treated as a critical health issue with broader social implications that would require sufficient medical and legal attention. The Immoral Traffic (Prevention) Act, 1956, (ITPA), is the primary legislation, established by the Indian legislature to address this specific issue in the country. This paper aims to describe and analyze the current scenario of this heinous

branch of organized crime, providing an overview of the statistics, comparing the steps that have been, and ought to be taken to adequately combat exploitation against sex trafficking, especially in India and briefly throughout the globe. We will also try to address a few areas of interest that may be raised in concern with this subject topic.

INTRODUCTION

Sexual trafficking, particularly in cases of women, as a concern of crime was first observed as late as in the late 19th and early 20th century, but remained unrecognized and unaddressed for an excruciatingly long period before that. It initially developed as an anxiety over migration, by capturing women, for purposes of enslavement, which would further escalate to the position of prostitution. In the earlier days, there lacked a distinction as to when a woman was trafficked as compared to someone who had voluntarily migrated, and hence would eventually work as a prostitute in the eyes of society. This denied these women to be thought of as in need of any sort of relief but only to be scrutinized either way, and looked down upon.

The Constitution of India, provides for the prohibition of Trafficking in Human Beings or of Persons, as a fundamental right, enshrined in Part III, under 'Right against

Exploitation', described under provision of Article 23(1), which reads as follows;

“23. (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.”

The Indian Constitution also provides that no person shall be deprived of his or her life, of personal liberty except according to procedure established by Law, under the ambit of Article 21. In the landmark judgement of Chandrabhan v. State of Maharashtra, it was observed by the Supreme Court that the right to life, as enshrined under Article 21, was applicable to more than just survival or animal existence. It further elaborated on the right of women and girls employed in the sex industry to be rescued and rehabilitated.

The Directive Principles of State Policy, enshrined under Part IV of the Constitution, also provide for measures to protect individuals and help them uphold their rights. In the case of Bandua Mukti Morcha V/S the Union of India, the Supreme Court confirmed that the right to live with human dignity, free from exploitation in the light of the directive principles, was contained in Article 39 (e) & (f).

The practice of trafficking in human beings is the broader umbrella under which lies the heinous crime of sex trafficking. Under its ambit, it may include commercial sex work

such as prostitution, along with, pornography, exotic dancing, stripping, live sex shows, mail-order brides, military prostitution, and even sexual tourism. Majority of the victims employed in this industry happen to be women and adolescent girls.

STAGGERING STATISTICS

The global sex trading industry happens to be the fastest growing form of commerce, internationally. It is estimated to generate approximately \$32 billion in revenues, annually, across the globe. As a matter of fact, human trafficking in general, for all sorts of purposes ranging from use for sexual exploitation to organ trafficking, is considered to be the fastest growing form of organized crime and the third largest income revenue generator for organized crime, after the likes of narcotics and arms sales. Child prostitution consists of the highest supply of trafficked children, and according to one of the latest studies, 1.2 million children are trafficked worldwide, annually.

India, is considered to be the hub of human and sex trafficking in Asia. A child is reported missing every 8 minutes in the country. According to a report published by the Ministry of Women and Child Development in 2015, 15,488 women and children were reported of being trafficked. The following year, the numbers grew up to

19,233. The state of West Bengal happens to be the most notorious among all the Indian states and has recorded the highest number of trafficking cases. These, however, were only the reported number of cases, whereas, we have observed that even in today's day and age, majority of the crimes that occur in our country go unreported.

Throughout the world, the numbers and figures vary from country to country. The numbers might be astronomically high in some areas while the number might be quite low in others, which does not always mean an accurate assessment, but rather, a neglectful behavior towards victims and the offence of sexual trafficking. This poses two kinds of dangers, one of false assumptions. In this situation, women are denied any form of relief or respite, where every and any victim of illegal immigration or of voluntary prostitution may be accommodated to that bracket, in cases of the former statistics provided. However, when the latter statistics are portrayed, it often runs a risk of not helping the victims who might actually be in danger on non-account of consideration or identification of the crimes committed.

A study carried out found that 28% of trafficked women saw a healthcare professional while still in captivity, which further indicates that proper and sufficient training has to be provided to such

professionals, so that they are able to identify and help rescue these victims without raising any red flags.

POSITION AT THE INTERNATIONAL LEVEL

At a global international level, the formation of the International Convention for the Suppression of Immoral Traffic in Persons and the Exploitation of the Prostitution of Others, which came to be approved by the General Assembly of the United Nations Resolution 317(IV) on 2nd December, 1949, was the first of its kind at addressing the issues related to human trafficking as a whole, and was ratified by the Government of India in 1950. It quite boldly held that the exploitation of prostitution was a punishable offence, and consent to such practices remained irrelevant to its contention. Arguably, one of the most controversial aspects of this convention was that although it technically did not criminalize prostitution, it possessed certain attributes that would hint towards it and henceforth, ending up contradicting any piece of national legislation that would suggest otherwise. Moreover, the convention failed to produce any clear demarcation between forms of voluntary and forced prostitution.

This further called for a clear distinction to be made between any forms of voluntary and forced prostitution, to provide a wider

context to the combat against sex trafficking and how the sex industry must not be equated to trafficking. This was hoped to be achieved with the help of the Global Alliance against Trafficking in Women (GAATW), with Coalition against Trafficking in Women (CATW), who form an important class of transnational NGOs, in the fight against trafficking. These developments became quite influential during the drafting of the United Nations Additional Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which was more famously known as the 'Palermo Protocol'. This Protocol held a unanimous position in terms of definitions that it provided but it failed to assume any stance of relationship between trafficking and prostitution, neither did it clearly provide for any definitions for the terms 'sexual exploitation' and 'prostitution'.

However, both of the abovementioned NGOs have varied approaches to achieving the same objective. The latter agrees with the beliefs that were expressed through the 1949 Convention, pressing on the idea that prostitution and trafficking were incompatible with human dignity and that the concept of consent was irrelevant with respect to trafficking for purposes of sexual exploitation. The former, on the other hand, considers that the Protocol had failed in its objective and only covered enforced

prostitution, and hence did not demand that governments treat all prostitution as trafficking.

The United Nations Convention on Transnational Organized Crime (UNTOC), which primarily aims at the prevention, suppression and punishment related to crimes of trafficking, has also been ratified by India. Ratification of the UNTOC convention has resulted in significant law reforms in the country, in the form of enactment of Criminal Law (Amendment) Act, 2013.

The SAARC Convention on Preventing and Combating Trafficking in Women and Children for prostitution has also been ratified by India.

Issues related to cross border trafficking between India and Bangladesh was dealt through an MoU on 'Bi-lateral Cooperation for Prevention of Human Trafficking in Women and Children, Rescue, Recovery, Repatriation and Reintegration of Victims of Trafficking', which was signed in 2015. A special task force was constituted as per this MoU that was responsible to prevent trafficking between the countries and for identification of victim of the crime.

POSITION OF THE CRIME IN THE ASIAN SUBCONTINENT

At the international level, the haphazard and ill-managed functioning of the global sex industry is mainly responsible for the

facilitation of crimes of sexual trafficking. Often, women and minors from third world countries migrate, either voluntarily or are forced to do so, in search of work to suffice their needs, and end up in the industry, with the help of predators who pounce at the opportunity of recruitment of the underprivileged. This class of people happen to be the easiest to manipulate and are easier to control, and hence, become their primary targets. This creates a general flowchart of how things end up working when people are forced to migrate to richer countries for recreational and sex tourism, often fueled by foreign investment. India happens to be the primary destination for trafficked women and girls that are brought in from neighboring countries of Nepal and Bangladesh. It is estimated that approximately 12,000 to 50,000 women and children are trafficked into the country annually, to be employed in the sex industry.

A significantly large number of Indian females happen to be trafficked to the Middle East for sexual exploitation every year, who often migrate to countries in the region as domestic help or low skilled labourers, and often end up in the trafficking industry. 40% of these females happen to be young girls and children. The U.S. State Department's Office to Monitor and Combat Trafficking in Persons placed India in 'Tier 2' in 2017.

PROVISIONS IN PLACE TO COMBAT THE ISSUE

The Immoral Traffic (Prevention) Act, 1956, (ITPA), is the primary piece of legislation deployed to combat issues related to sex trafficking in the country. The ITPA replaced the pre-existing statute, known as the Suppression of Immoral Traffic in Women and Girls Act, 1956, (SITA), as a result of an amendment in 1986. This amendment came into force due to certain questions that were raised regarding the previous Act. One of its drawbacks was that the punishment prescribed was discriminatory on the basis of sex. A prostitute, as defined under the Act, was always a woman, and who was arrested for soliciting could potentially be imprisoned for up to one year, however, her pimp, could only potentially be faced with three months of imprisonment, that too, only if the person 'knowingly' or 'willingly', induced a woman to engage in prostitution. The client too, could not be prosecuted under the pre-existing statute. Another drawback was observed when it was realized that provisions for release on probation had to be made more stringent, since it was being abused under the Act

Sex trafficking has been defined throughout the ITPA, in various sections. Section 5, in particular, envisages 'procurement and inducement of a person for the sake of

prostitution.' Even an attempt to such activities would amount to practice of sex trafficking.

Section 2 of the ITPA provides for the definition clause of the statute. Section 2 (f) describes the word 'prostitution', as the 'means to sexual exploitation or abuse of persons for commercial purposes.' This definition is often misinterpreted and ends up classifying prostitution as synonymous to sex trafficking. Although, sex trafficking can include prostitution, but not all prostitution has evolved from or resulted in sex trafficking. The Venn diagram that the provision portrays is hence, responsible for not being able to differentiate between the two, and hence causes misinformation.

Sex trafficking is an organized branch of crime. Long chains of exploiters are required to carry out every stage of the crime. The ITPA, therefore, aims at identifying all these individuals involved at the various phases of the crime, and hold all of them as equal accountable. Anybody living on the earnings of a sexually exploited victim, either wholly or partly, is held liable under section 4 of the Act. This would include the person in charge of a brothel or any vehicle that may be used as a brothel (Section 3(1)), persons allowing the functioning of the brothel (Section 3(2)), persons responsible of detaining the victims (Section 6), persons allowing activity in public places (Section 7(2)), to mention a

few amongst many others. It was observed in *Susheela v. State*, the solitary instance of use of a place did not make it a brothel, and should be distinguished to an actual brothel that would be used on more than one occasion for the purposes of carrying out prostitution. It was hence, found, essential to follow the intricacies of law, while establishing a brothel being used to carry out the activity of prostitution. However, repeated visits must not be the only criteria for defining a brothel, as stated in *Krishnamurthy v. Public Prosecutor, Madras*, a single instance coupled with the surrounding environment of a place was sufficient to establish it as a brothel.

The clientele, however, who happens to be the main abuser in the chain, frequently, goes unrecognized and hence, unpunished. In *Chandru S v. State*, a petition was filed under section 482 of the Code of Criminal Procedure, 1973, to quash proceedings under the ITPA. The Single Judge Bench found that neither the ITPA, nor section 370 of IPC attracted any liability on the customer receiving any service in a brothel house. The Court pointed out the fact that although the client was the primary reason that encouraged running of a brothel house, however, in absence of any specific penal provision, they could not be prosecuted.

Since the ITPA is a penal statute, as observed in *Tolaram Relumal v. The State*, if two possible constructions of a penal

statute could be put forward, the Court must lean towards the one that exempts the subject from the liability of penalty. This makes it even tougher for Courts to interpret and hold the clientele accountable for their actions and punish them.

Section 2 (i) along with section 13 of the ITPA provide for the special police forces deployed and in charge, for the purposes of carrying out duties laid down in the Act. Both these provisions deal with 'Police duties' and 'dealing with offences', respectively. It basically connotes all that the police are expected to do under the Act, which includes detection, prevention and investigation. Only Special Police Officers appointed under the Act are competent to investigate offences committed, which was further strengthened by decision laid down by a three Judge Bench of the Supreme Court in the case of *Delhi Administration v. Ram Singh*.

Section 370 of the Indian Penal Code, 1860, was substituted through the Criminal Law (Amendment) Act, 2013, by Section 370 and 370A of the IPC, which aimed at providing measures made comprehensively to deal with the issue of trafficking of humans, which also included within its ambit, trafficking of children for any kind of physical or sexual exploitation. The above-mentioned provision of Section 370A, deals with the punishment of person engaged in sexual exploitation of trafficked

persons. Section 372 and 373 of IPC deal with the selling and buying of minors for purposes of prostitution.

Apart from the abovementioned, some of the other provisions laid down in the IPC to combat sex trafficking are, kidnapping, abducting or inducing women to compel her for marriage (section 366), wrongful restraint (section 339), wrongful confinement (section 340), mental torture/harassment/assault (section 351), outraged of her modesty (section 354) and provision of rape (section 375), to name a few.

The Protection of Children from Sexual Offences (POCSO) Act, 2012, is a legislation drafted specially, keeping in mind, offences related to sexual abuse and exploitation against minors.

Other legislations which may indirectly influence and prohibit offences related to sexual trafficking consist the likes of Prohibition of Child Marriage Act, 2006; Bonded Labour System (Abolition) Act, 1976 and Child Labour (Prohibition and Regulation) Act, 1986.

STATE AND ADMINISTRATIVE EFFORT TO INTERVENE

The state has, to some extent, duly acknowledged this problem and has put in efforts in order to curb this immoral practice. One such example was the introduction of the Anti-Trafficking Nodal

Cell, which was set up by the Ministry of Home Affairs. The purpose of the cell was to relay decisions and follow actions taken by State Governments to combat crimes related to trafficking.

The Government of India, launched an Anti-Human Trafficking web portal back in February of 2014, hoping that this would help create awareness and share information for relevant parties.

Another such example of intervention is through appropriate Judicial Colloquium, which basically aims to train judicial officers employed at the trial courts to be more sensitive towards issues of trafficking and that these courts ensure and adopt a speedy procedure. As of 2018, eleven such Judicial Colloquiums had been held throughout various states in the country.

The various law enforcement institutions, like the police, often treat victims who are subjected to trafficking as informers to bring in their traffickers, who at times may well be family or friends of the victim. Although this might be helpful in bringing in the bigger fish in the pond, this often puts the victim in a difficult position, since they still remain under the impression that if they do not cooperate, they would be as treated as criminals, immigrants or instruments of threat to national security.

REALTIONSHIP AND DISTINCTION BETWVEN SEX TRAFFICKING AND PROSTITUTION

Probably the most interlinked term to sex trafficking would be that of prostitution. Numerous debates on the credibility of prostitution as a viable profession have been raised in the modern century, with both parties strongly dissenting to views of the other. However, it was in the 1980s, with the rise of a wave of a fairly new feminist movement, that it began to raise questions interrelated to prostitution and trafficking. 'Abolitionist feminists', as they identified themselves, were of the opinion that prostitution only managed to reduce women to be identified and treated as objects available for purchase, which would only render them at a disadvantage of being exploited. However, during the 1990s, the other side of the spectrum, led by an idea of a transnational feminist movement and the sex workers movement, was strong critiques of their former associates. According to the latter, prostitution could not be seen as a degrading activity or as an instance of extreme sexual oppression of women, but rather, as quite an empowering movement, that allowed women to have sole and authoritative control over their own bodies, even if it meant indulging in providing sexual services, but at their own beck and call. It was not particularly to deny the fact that sex trafficking was a form of

discrimination against women, but an attempt at addressing that multiple perspectives needed to be taken into account. It was necessary to adopt this system of functioning because it provided a dimension to understand the aspects and dynamics of how an individual would identify themselves, either as a victim or as an agent, whilst avoiding any logic of criminalization.

Capitalism is the new norm of the century. It has added various degrees and layers to the practice of a form of modern-day slavery, which is that one should be free to sell their labour. This extends to the notion that amongst many progressive thinkers that even women should be able to sell their sexuality availability at their own will, in the form of labour. However, there persists a thinnest of lines here, which separates voluntary form of labour from coerced labour. The main dilemma that arises through this notion is that the line separating these aforementioned forms of labour is quite blurred, and often overlap, which in turn is quite a hassle in the process of proper identification for classification of a crime from someone simply exercising their right to carry out any profession of their choice.

However, like any other ever-lasting debate, another school of thought opposes this notion, which states that if one was to sell their sexual availability as labour, it

would also comprise of surrendering their freedom and personal identity, which would eventually result in over-exploitation.

The word 'prostitute', results in evoking a negative connotation, although someone, who happens to be above the age of 18 years and self-employed without any coercion in the industry, is subjected to the same category as victims of sex trafficking. This affects the level of attention given to both the distinct categories of individuals and hence needs to be differentiated at the most fundamental level.

Although, not an offence in India, and still considered a legally valid form of profession, the practice of prostitution in a brothel or within 200m of any public place is considered as illegal, under section 7(1) of the ITPA. It was observed in *Begum d/o Hudsain Saheb Kalawat v. State*, the intention of the legislation was not only to eradicate trafficking in women and girls, but to also suppress the activities of prostitutes. It was thought that they possessed a tendency to tempt the youth or cause annoyance to even grown men who visited places of worship, hospitals, Nursing homes and educational institutions, hence affecting their susceptibilities.

Hence, this provision creates a lot of difficulty in understanding the minute distinctions and provide clarity on whether,

in real sense, prostitution could be called as a legitimate way of earning a livelihood.

EFFECTS TO THE SOCIETY AND THE VICTIMS

The most adverse effects that society faces on accounts of growing numbers of such crimes are degradation of not only women's rights, but human rights as a whole. An array of human rights violations is observed, for instance, denial of privacy, denial of justice, denial of access to justice, deprivation of basis of rights and dignity, amongst many others. Other adverse effects include poor public health, disrupted communities, and diminished social development.

Apart from societal effects that are felt, the impact on an individual level is several times more grievous and extreme. Victims often acquire extreme adverse physical and psychological health conditions, putting them at a higher social disadvantage, of being abused and tortured, both physically and emotionally.

Arguably, a certain section of the society happens to be more susceptible to be the prey of such crimes than the rest. Usually, females stricken by poverty, societal isolation, drug addiction, and violence in the family, a history with child sexual abuse, family dysfunction, school failure, or having a history of criminal behavior are at higher risks. Along with the

abovementioned, orphans, women with physical disabilities, and those who happen to be homeless and illiterate, are frequently targeted.

The victims are often highly susceptible to be exposed to a wide array of sexually transmitted diseases such as gonorrhea, syphilis, urinary tract infection, and pubic lice. AIDS, caused by the Human Immunodeficiency Virus (HIV), happens to be the most prevalent amongst all of the STDs. Victims may even pick up several other adverse health conditions that may lead to unwanted pregnancies, sterility, miscarriages, menstrual problems, genital mutilations and coerced abortions. Infectious diseases due to unsanitary living conditions, inadequate access to health care and forced use of needles are also prevalent. The Supreme Court, has established this view of providing humane living conditions, be available to victims in protective homes, in the case of *L'pendra Bales hi v. State of Uttar Pradesh*.

More than often, it is the countries that have quite an unstable political climate and tend to be at a disadvantage economically, individuals belonging to such regions become more susceptible to be victims of trafficking.

Traffickers gain undue advantage over these classes of individuals by employing several manipulation techniques. One such technique, known as 'Finesse pimping', is

where traffickers use compassion, kindness, and psychological games, such as luring victims through small gifts of cash, clothes, shelter, food, and drugs, that invoke a sense of obligation or a feeling of being indebted to the pimp. Another example would be that of 'Guerrilla pimping' which involves use of violence, threats, intimidation, or any such form of aggression, in order to enslave the victims to recruit them.

SUGGESTIONS

The most relevant problem that exists when it comes to dealing with the issue of sex trafficking, nationally or internationally, is the root of its origination and how policies are developed around the inconsistencies of the design. The first and foremost step would be to reinforce rights of such immigrants and employees in the sex industry, beyond criminalization of traffickers.

Another issue that would require a lot more delving into would be the fact that the uniformity and extent of applicability of these conventions to various countries. The provisions leave a lot of room for controversy, which leads to the individual states to decide upon the fate of the provisions. It often opposes national legislations of countries, which allow for them to prevail over conventions that would be ratified by assemblies of the respective

state. It ends up portraying a wide array of outcomes and possibilities for the victims and offenders involved in trafficking. For example, Sweden has criminalized any procurement of sexual services provided by trafficked women and has made it a punishable against clients that seek to do so. However, in other European countries, like the Netherlands and Germany, prostitution is decriminalized, and establishes it as an important industry for state revenue and has established its own rules and regulations to regulate employment in the particular sector.

It has been argued that the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, that displayed unmatched levels of cooperation and integration amongst several states and NGOs, has remained centered, on the issue of migration and border control. Even though supplemented by a set of important provisions, do not remain binding, and contribute far less than they were intended for to prevent women and children, who were victims, from being deported or being criminalized.

The ultimate goal should not be one of punishing prostitution itself, but to penalize the demeanor of ones who, by violent or deceptive means, are responsible for thrusting individuals into prostitution, against their will.

Specialized care for dealing with the severe psychological trauma experienced by the victims in the form of 'Post-Traumatic Stress Disorder', acute anxiety, and depression, need to be addressed and given priority care as a part of the rehabilitation process.

Section 8 of the ITPA allows for the arrest of women in prostitution. However, the government and various NGOs have often emphasized that this provision of law is hardly in use through sensitization and training of law enforcement officers, although it is hard to confirm so since no such statistics about arrest under this section are available.

Traffickers, often generate decent amount of revenue, by exploiting the victims. A share of such revenue may also be distributed within the victims. In the process, the victim ends up being 'branded' as an accomplice and hence arrested/charge-sheeted and even convicted. The victim, who does not possess the power of judgement at the time, being psychologically traumatized, is dictated by actions of the exploiters. This should not be a basis of labelling the victims as an accomplice, as it does not alter her status as a victim.

CONCLUSION

It has become important and fundamental to believe that any law or policy, aimed to

address any issues of trafficking of women for purposes of sexual exploitation, ought to produce transformatory measures towards strengthening awareness and sensitizing these issues, combating forms of oppression. Priority has to be served so that they are not reduced to a mere category of passive victims, which naturally allows them to be stigmatized or excluded from the society. Adequate help and relief for victims must be ensured by fighting our own preconceptions and stereotypes. Thus, broader social implications have to be dealt with at the earliest, by paying equal attention to both medical and legal aspects.

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