



Immoral trafficking in women

Dr. Prativa Panda, Reader, University Law College, Utkal University. BBSR-4

Abstract: Trafficking in women and children particularly is one of the worst and most blatant abuses of human rights. The victims are subjected to mental, physical, and social torture. A trafficked person is not only traumatized; they are stigmatized as outcasts by the society as a result that they face moral and legal isolation has developed as an important social subject matter of concern in many parts of the world. Although trafficking is largely a borderless structured offence, India is becoming a source, transit point as well as a destination for the traffickers. This paper has analyzed an analytical legal framework for effective laws against human trafficking in women. The objectives of this research paper is to understand the problem and perspective of Human Trafficking, and attempt to analyze its impact on society, preventive measures, legal aspects for human trafficking in India, role of judiciary and also awareness.

Key Words: Human trafficking, Legal Provisions, Judiciary NGO's, Education, Awareness.

Introduction:

Trafficking in persons is a serious crime and a grave violation of human rights. Every year, thousands of men, women and children fall into the hands of traffickers, in their own countries and abroad. Almost every country in the world is affected by trafficking, whether as a country of origin, transit or destination for victims.

¹Human trafficking is a multidimensional and complex phenomenon and requires multidisciplinary approach.

Women and children are generally trafficked for begging, organ trade and drug smuggling, bonded labour, domestic work, agricultural labour, construction work, carpet industry, forced prostitution, sex tourism, pornography and also for entertainment and sports which include beer bars, camel jockey, circus troops²

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and Part-IV which deal with Fundamental Rights and Directives Principles of State Policy (DPSP) Article 23 of the Constitution of India is a Fundamental Right which prohibits trafficking in human beings and forms of forced labour and Article 39(e) and 39(f) which are DPSPs directed at ensuring that health and strength of individuals are not abused and that no one is forced by economic necessity to do work unsuited to their age or strength and also states that childhood and youth should be protected against exploitation.

Legislative framework on human trafficking:

Constitutional provision for trafficking:

There are three articles spread over the Constitution of India in Part-III



Universal Declaration of Human Rights Provides that (Article 5): No one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment. The fallen/trapped victims of flesh trade are subjected to cruel, inhuman and degrading treatment which are obnoxious, abominable and an affront to Article 5 of the said declaration and also Article 21 of Indian Constitution.

Other Legislations: There are some more legislations which directly or indirectly deal with human trafficking like: Indian Penal Code, 1860; Bonded labour system (Abolition) Act, 1976; Child labour (Prohibition and Regulation) Act, 1986; Juvenile Justice Act, 2000; Goa children Act, 2002; Prohibition of Child Marriage Act, 2006 and Protection of Children from Sexual offences (POCSO) Act, 2012

Provision under the Criminal Law (Amendment) Act 2013:

The Criminal Law (Amendment) Act 2013 has come into force wherein Section 370 of the Indian Penal Code has been substituted with Section 370 and 370A (IPC) which provide for comprehensive to counter the menace of human trafficking measures including trafficking of children for exploitation in any form including physical exploitation or any form of sexual exploitation, slavery, servitude or the forced removal of organs.

The Immoral Traffic (Prevention) Act, 1956: This Act prohibits trafficking in women and girls for purposes of prostitution as an organized means of living. The Act was amended in 1978 and further amended in September 1986 with the objective of making the penal provisions in the Act more stringent and effective. The amendment Act is re-titled as "The Immoral Traffic (Prevention)

Act, 1986" and the salient features of this Act are widening the scope of Act to cover all persons, whether male or female, who are sexually exploited for commercial purposes, enhancement of period of imprisonment where offences are committed against minors and children, appointment of Trafficking.

Objectives of the Act:

1. Punishment for immoral trafficking.
2. Punishment for traffickers.
3. Punishment for living on the earnings of prostitution.
4. Welfare measures directed towards rehabilitation of sex workers.

Meaning and Definition of Prostitution:

Section 2(f) defines the sexual exploitation or abuse of persons for commercial purposes, and the expression "prostitute" shall be construed accordingly.

Section 2 (f) of the old Act states that: Prostitution means the act of a female offering her body for promiscuous sexual intercourse for hire, whether in money or in kind and whether offered immediately or otherwise and the expression prostitute will be construed accordingly.

For the efficient discharge of his functions in relation to offences under this Act:

The special police officer of an area shall be assisted by such number of subordinate police officers (including women police officers where practicable) as the state Government may think fit to advise him on questions of general importance regarding the working of this Act.



Punishment:

for keeping a brothel or allowing premises to be used as a brothel (Section-3)	Imprisonment- 1 to 3yrs,Fine- up to Rs 2000/-
living on the earnings of prostitution living on the earnings of minor /child prostitution (Sec.4)	Imprisonment- up to 2 years, Fine- up to Rs 1000 Imprisonment- 7 to 10 years.
Procuring, inducing or taking person for the sake of prostitution.(Sec.5) If it is committed against the will of the person If the person is child	Imprisonment- 3 to 7 years Imprisonment- 7 to 14 years Imprisonment- 7 to 14years
Detaining a person in premises where prostitution is carried on(Section 6)	Imprisonment- 7 to Life
Prostitution in or in the vicinity of public places. Where the offence is prostitution is committed in respect of a child or minor(Sec.7)	Imprisonment-up to 3 months Imprisonment- 7 to for Life or Imprisonment for 10 years with fine.
Seduction of a person in custody(Section 9)	Imprisonment- 7 to for Life or Imprisonment for 10 years with fine

The Central Government may, for the purpose of investigating any offence under this act or under any other law for the time being in force dealing with sexual exploitation of persons and committed in more than one state, appoint such number of police officers as trafficking police officer and they shall exercise all the powers and discharge all the functions as are exercisable by special police officers under this Act with the modification that they shall exercise such powers and discharge such functions in relation to the whole of India.

*In Mumtaj @ Behri v. State,*³the first and foremost challenge of learned counsel for the appellant was as to legality and validity of entire process of raid, arrest, investigation and prosecution of the appellant. Submission

of learned counsel for the appellant was that Section 13 of the Act mandates State Government to appoint special police officer for dealing with the offences under the Act .The appeal was allowed by the Delhi High Court.

*In Joseph v. Sub Inspector of Police*⁴,the Kerala High Court has repeated the Delhi and West Bengal High Court decisions.

*In Superintendent and Remembrancer of Legal Affairs on behalf of State of West Bengal v.SardarBhadur Singh and others*⁵the High Court of Calcutta held that the expressions "police duties" and "dealing with offences" are of the widest amplitude and necessarily connote all that the police has to do in connection with the offences under the Act including detection, prevention and investigation.



In Delhi Administration v. Ram Singh,⁶ the Supreme Court held that the expression "dealing with offences" in Section 13(1) of Suppression of Immoral Traffic in Women and Girls Act will include any act which the police has to do in connection with the offences under the Act. The expression "function in relation to offences" in Section 13(3) also includes its functions connected with the investigation of the offences which includes detection, registering of the crime and investigation of the crime has to be done by the special police officer.

*In Sinu Sainudheen v. Sub Inspector of Police*⁷ the High Court of Kerala reiterated the provision of the Section 14 of the Immoral Trafficking Prevention Act. Section 14 of the Act says that notwithstanding anything contained in the Code of Criminal Procedure, any offence punishable under the Act shall be deemed to be a cognizable offence, arrest without warrants may be made only by the special police officer or under his direction or guidance or subject to his prior approval. That also would indicate that the special police officer can give an order in writing to a subordinate officer for arresting a person only after he is being convinced that there are reasons to believe that a particular person has committed an offence.

In the case of *T. Jacob v. State of Kerala*,⁸ it was held that the Assistant Superintendent of Police, who conducted the raid in the instant case, was not justified in doing so without complying with the provisions of Section 15 (1) of the above Act. There was no ground stated in the charge or anywhere else why he did not call at least one woman witness of the locality to attend and witness the search. It is a mandatory provision.

In Harnam Singh v. State of Punjab,⁹ the conduct of the police officer in proceeding into the bed room of the revision petitioner and entering through the back door without the civility of a knock on the front door, which was locked inside or warning the revision petitioner for the intrusion would be a misuse of his powers.

In the result, the revision petition is allowed by the Court. The revision petitioner is discharged under Section 251A (2), Criminal Procedure Code. The movables recovered from the revision petitioner will be handed over to him immediately.

In Vishal Jeet v. Union of India,¹⁰ there was a PIL against forced prostitution of girls, Devdasis and Joginis, and for their rehabilitation. The Supreme Court held that despite stringent and rehabilitative provisions under the various Acts, results were not as desired and, therefore, called for evaluation of the measures by the Central and State Governments to ensure their implementation. The Court called for severe and speedy legal action against exploiters such as pimps, brokers and brothel owners. Several directives were issued by the Court, which, inter alia, included setting up of a separate Zonal Advisory Committees, providing rehabilitative homes, effectively dealing with the Devdasi system, Jogin tradition, etc.

*In Gaurav Jain v. Union of India*¹¹, the Supreme Court passed an order, directing inter alia, the constitution of a committee to make an in-depth study of the problem of prostitution, child prostitutes and children of prostitutes, and to evolve suitable schemes for their rescue and rehabilitation. Taking note of the fact that "children of prostitutes



should, however, not be permitted to live in the inferno and the undesirable surroundings of prostitute homes".

In 1998 the Central Government, pursuant to the directions issued by this Court in *Gaurav Jain case* constituted "Committee on Prostitution, Child Prostitutes and Children of Prostitutes and Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children"¹². In 1998 in a report containing an action plan which highlighted the problems in addressing issues of commercial sexual exploitation, detailed recommendations were made with a view to arrest the systematic problem, including issues relating to law enforcement and legal reforms.

In Orissa Patita Uddhar Samiti v. State of Orissa and others,¹³ the High Court has directed the Director, Social Welfare that an inquiry be made and after proper verification regarding such victims now residing at Mallisahi, Bhubaneswar on encroached land it shall be ensured that such victim persons shall not be evicted without proper rehabilitation. But this order shall not apply to other person residing in that area.

*In K. Radhakrishnan v. State of Kerala*¹⁴ the Supreme Court held that officer (Assistant Sub Inspector) who registered the crime and the Officer, Deputy Superintendent of Police (Administration) who conducted the investigation and charge sheeted the petitioner herein, were not empowered to do so.

Government measures against trafficking:

1. India has launched a comprehensive scheme to address the sexual exploitation of women and children, cross-border trafficking and the

rescue and rehabilitation of victims. Collaborating with the UNICEF, the Ministry of Women and Child Development also plans to undertake training programmes for stakeholders from SAARC Countries.

2. India's Ministry of Women and Child Development has been implementing three pilot projects¹⁵ to combat trafficking of women and children for commercial sexual exploitation under the sanction of tradition, in source area and in destination area. Based on the favorable feedback on the implementation of the pilot projects, it was decided to convert these three projects into a comprehensive scheme in the 11th Plan Accordingly, the Ministry of Women and Child Development has launched 'Ujjawala', a new Central Scheme "Comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation and Reintegration of Victims of Trafficking and Commercial Sexual Exploitation" last year. The scheme comprises of five components:

- **Prevention**, which consists of formation of community vigilance groups/adolescents groups, awareness and sensitization of important functionaries like police, community leaders and holding workshops, etc
- **Rescue**, safe withdrawal of the victim from the place of exploitation.
- **Rehabilitation**, which includes providing safe shelter for victims with basic inputs of food, clothing, counseling medical care, legal aid, vocational training and income generation activities etc.
- **Reintegration**, which includes restoring the victim into the



family/community (if she so desires) and the accompanying costs.

- **Repatriation**, to provide support to cross-border victims for their safe repatriation to their country of origin.

3. The Ministry in collaboration with UNICEF had undertaken a study '*Rescue and Rehabilitation of child victims Trafficked for Commercial Sexual Exploitation*'. The objectives of study were to obtain better understanding of the existing rescue and rehabilitation processes and take proactive steps to address them.

4. Anti – Human Trafficking Units (AHTUs) The Ministry of Home Affairs is implementing a comprehensive scheme of "Strengthening law enforcement response in India against Trafficking in Persons through Training and Capacity Building", wherein it is proposed to establish 330 Anti-Human Trafficking Units (AHTUs) throughout the country and impart training to 10,000 police

officers through Training of Trainers (TOTs) component in three years. The Ministry of Home Affairs released funds for the same.

5. Judicial Colloquiums are being held throughout the country to sensitize the Magistrates and Judges as to how women and children experience the process of law relating to trafficking, to enable the Magistrates and Judges to take proactive decisions and exercise discretion as provided under the law that will be most beneficial and just to the victim but most stringent to the trafficker. So far, 8 Judicial Colloquiums have been held¹⁶

Conclusion:

In the fight against trafficking government organizations, non-governmental organizations, civil society, pressure groups, international bodies, all have to play an important role. Law cannot be the only instrument to take care of all problems¹⁷.

References

¹ <http://www.unodc.org/>

² Human Trafficking in South Asia by Vinod K. Bhardwaj and Sherap Bhutia (2014)p-37

³(1997)Cr.L.J.56

⁴(1998)Cr.L.J.1125

⁵1969 (Cr.L.J. 1120)

⁶AIR 1962 SC 63

⁷2002 Cri.L.J. 3205

⁸AIR 1971 Ker.166

⁹AIR 1964 Punj. 436 at P. 437

¹⁰(1990) 3 SCC 318

¹¹(1997) 8 SCC 114

¹²*Gaurav Jain v. Union of India*, (1997) 8 SCC 114

¹³2007 (1) OLR 150

¹⁴CrI. M.C. No 294 of 2008

¹⁵<http://wcd.nic>

¹⁶ No. 6/RN/Ref./November /2014

¹⁷ op.cit. Human Trafficking in South Asia, p.16