

## Human Rights and Trafficking in Women in India

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### Abstract

The trafficking of women is multilayer phenomenon involving multiple players. The legal system which binds the conduct of human being to higher standards, has attempted to regulate women trafficking too. The present article details out the legal regime of India dealing with women trafficking with special focus on The Immoral Traffic (Prevention) Amendment Bill, 2006, 2016 and 2018

**KEYWORDS :** Women, Law, Constitution, Immoral Traffic, Human rights

### Introduction

It is said that once a girl is induced into prostitution no gentlemen comes to marry her. She is described as a woman making her living out of sin, yet the gentleman, even after repeatedly having an intimate relationship with the woman, remains clean.<sup>1</sup> The matter is one of great importance warranting a comprehensive and searching analysis and requiring a humanistic rather than a purely legalistic approach from different angles.

Highlighting the position of the unfortunate victims, the Supreme Court of India in *Vishal Jeetv Union of India and Others Ors*<sup>2</sup>, observed:

“Prostitution always remains as a running sore in the body of civilization and destroys all moral values. The causes and evil effects of prostitution maligning the society are so notorious and frightful that none can gainsay it. This malignity is daily and hourly threatening the community at large slowly but steadily making its way onwards leaving a track marked with broken hopes. Therefore, the necessity for appropriate and drastic action to eradicate this evil has become apparent but its successful consummation ultimately rests with the public at large”.

In India, prostitutes were part of organizational structure of society. Mention of prostitutes are found in Mahabharata, Ramayana, Dharmashastras and various Puranas .

<sup>1</sup>Poonam Pradhan Saxena, “Immoral Traffic in Women And Girls: Need For Tougher Laws And Sincere Implementation”, Vol. 44, No. 4 *Journal of the Indian Law Institute*, (October-December 2002), p. 504. Available @: [https://www.jstor.org/stable/43951841?seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/43951841?seq=1#page_scan_tab_contents), accessed on March 25, 2019.

<sup>2</sup>1990 AIR 1412.

Brahma Purana and Padma Purana contain provisions relating to their regulations. Kautilya's Arthashastra contains an entire chapter on prostitution. In olden ages prostitution was associated with hospitality. It was a sort of social service, or sort of help given to sailor or traveler, which later assumed religious character. Since then sex workers have existed and still .... exist in India.<sup>3</sup> Today, one of the most common reasons for trafficking in women is to kindle the prostitution trade.

In India women and girls are the main victims of human trafficking. They are then forced into prostitution, forced marriage, and domestic work. Based on a report published by the Government of India, there are approximately 10 million sex workers in India out of which 1,00,000 belong to Mumbai alone which is Asia's largest sex industry center. 300,000 to 500,00 under 18 years of age children are involved in the sex trade. The extent of trafficking in women in India is disturbing and shocking.<sup>4</sup>

### **Understanding Human Rights**

The idea of human rights commenced in the form of the natural rights conceptualized by the social contract theorists. Today, human rights have become the *sine quo non* to the humanity at large. They are the basic rights, generally considered that all people should possess. The concept has been defined as, 'human rights are those fundamental rights to which every man and woman inhabiting any part of the world should be deemed entitled by virtue of having born as human beings'. They are available to the entire community irrespective of race, religion, colour, sex or domicile. They are guaranteed as fundamental rights and statutory rights under the human rights law.

Human rights have four major characteristics: universal; inherent; indivisible and inalienable.<sup>5</sup> By this we can entail that they apply to human beings everywhere and that no one can ever take away these rights. The vast majority of legal scholars and philosophers are of the opinion that every human being is entitled to some basic rights. According to R.J. Vincent, human rights are the rights that everyone equally has by virtue of his very humanity and also by virtue of his being grounded in an appeal to our human nature.<sup>6</sup> Chief Justice of India, J.S. Verma has rightly stated that human dignity is the essence of human rights. Accordingly, justice is the primary moral virtue within human society and all rights are fundamental to justice". Right to live with dignity and right to fair treatment are the most fundamental components of human rights.

### **Indian Constitution and Human Rights**

The Indian Constitution upholds the principles of humanism, social and economic justice, and the dignity of the individual together with equal opportunity and equal protection of law for all its citizens. According to Article 23 of the Constitution of India, trafficking in human beings is prohibited. The right aims at putting an end to all forms of trafficking in

<sup>3</sup>Lohit D Naikar, *The Law Relating to Human Rights*, 1<sup>st</sup> edn., (Bangalore: Puliani & Puliani, 2016), p.635

<sup>4</sup>The Times of India, May 7, 2018, available @: <http://www.fiinnovation.co.in/news/govt-report-suggests-almost-20000-women-children-trafficked-india-2016/>, accessed on March 16, 2019

<sup>5</sup>Jo-Anne Wemmers, "Victims' Rights are Human Rights: The Importance of Recognizing Victims as Persons", *Temida*, (2012), p.73.

<sup>6</sup>R J. Vincent, *Human Rights and International Relations*, (Cambridge: Cambridge University Press, 1986), p.13.

human beings including prostitution and beggar. Hence people in prostitution can avail the benefits of these constitutional rights.

The Indian Constitution is in analogy with United Nations Charter, Universal Declaration of Human Rights and various international Covenants: as they all lay emphasis on human dignity. The Constitution of India assures dignity of the individual which is a core value in its preamble. Even the Constitution of India was drafted at the same time as the Universal Declaration of Human Rights, thus, it has similar provisions. This becomes obvious when we look at Article-23 of the Part- III of the Indian Constitution and Articles 2-21 of Universal Declaration of Human Rights. The Part-IV of the Indian Constitution which contains Directive Principles of State policy in the article 38, 39A, 41, etc. also has reflection of articles of 22-28 of the Universal Declaration of Human Rights. So, it can be said that Indian Constitution has vast scope to protect and promote human rights. The importance of fundamental rights can be imagined by that is not only available to citizens of India but also non-citizens and it establishes the relevance of rights in the times we are living.

The Indian Constitution specifically bans the traffic in persons. Article 23, in the Fundamental Rights section of the Constitution, prohibits 'traffic in human beings and other similar forms of forced labour. The trafficking of women violates the rights and dignity of the individual in several ways. It violates the individual's rights to life, dignity, security, privacy, health, education etc.

### **Understanding Women Trafficking**

Trafficking in women is an ancient enterprise that dates back to the beginning of civilization. In the ancient nations, female slaves were often highly valued for use as prostitutes, concubines, or even to breed more slaves.<sup>7</sup> The panic over the trafficking of women began in the

late 19<sup>th</sup> century, and in the early 20<sup>th</sup> century the apprehension over immigration of individual women and the capture of women for prostitution lashed out.<sup>8</sup> A woman trafficking is a worldwide and domestic human rights issue that is portrayed by economic exploitation through force, fraud and coercion. Trafficking in women is one of the most humiliating and ignominious forms of violations of human rights. It violates many human rights of the women. It violates the individual's rights to life, dignity, security, privacy, health, education and redressal of grievances. These victims face many consequences and they suffer many phases of exploitation even after they come out of such status of exploitation. The trafficking of women into sexual slavery is undeniably a gross abuse of human rights. Many a times they are subjected to re-victimization.<sup>9</sup>

According to Oxford dictionary, 'Trafficking' means deal in something especially illegally. It also offers new terms like drugs trafficking, arms trafficking and human

<sup>7</sup>Saraswati Raju Iyer, "Women Trafficking In India - A Critical Analysis", vol.4 *Shanlax International Journal of Arts, Science & Humanities*, (2016), p.108-109.

<sup>8</sup>Boaventura de Sousa Santos, Conceição Gomes and Madalena Duarte, "The Sexual Trafficking of Women: Representations of Illegality and Victimization", *RCCS Annual Review*. Issue no.2 (2010), p.25, available @ <https://journals.openedition.org/rccsar/247#tocto2n2>, accessed on March 18, 2019.

<sup>9</sup>Janani. G.S "Human Trafficking In India", *International Journal of Pure and Applied Mathematics*, Vol.120 No. 5 2018, p. 44. ISSN: 1314-3395, Special Issue, available @:url: <http://www.acadpubl.eu/hub/>. accessed on March 18, 2019.

trafficking. The conceptual meaning of human trafficking refers to “to the criminal practice of exploitation of human beings where they are treated as commodities for profit and after being trafficked, are subject to long term exploitation”.

The Palermo Protocol (UN 2000) defined trafficking from a wider perspective as a matter of international law. It took into account the pre-existing individual crimes such as abduction, kidnapping, forced prostitution and slavery. It highlighted on the following important areas:

- It recognized that any human can be trafficked, not just women and children,
- It is not just for sexual exploitation, it is for labour and other areas also,
- It categorically mentioned that force, coercion or deception must be present,
- The intent to exploit and control another human being is central to the crime of trafficking.<sup>10</sup>

### **Trends and Dimensions of Women Trafficking**

According to ‘Report on Trafficking in Women and Children India’ by Sen and Nair the overall major trends are<sup>11</sup>:

- Trafficking major purpose is commercial sexual exploitation,
- Trafficking is becoming extremely lucrative business,
- There is strong nexus between traffickers and public officials with the participation of corporate, sex and tourism industry.
- Majority of women and children are trafficked through deception and false promises

Human trafficking is a multi-dimensional problem. There is not only significant rise in trafficking but also increase in its magnitude. The literature on trafficking carries conflicting layers of understanding with trafficking equated with prostitution and migration. Any reliable statistical information is absent in terms of quantification of almost any aspect of trafficking, from the number of people trafficked to the amount of money earned but it is estimated by UNICEF that it is around 5 to 10 billion dollars earned per year by traffickers. The United Nations estimated the number of trafficking victims at more than 30 million, with the largest number originating in Asia and an estimated 1, 50, 000 annually in South Asia alone. The Indian Government’s Ministry of Women and Child Development estimated the number of persons trafficked for commercial sexual exploitation in India to be around 2.8 billion and about three million prostitutes in the country. It is said to be ‘acquiring grave dimensions worldwide in the recent context of globalisation’.<sup>12</sup>

### **Indian Legislation on Immoral Traffic**

<sup>10</sup> Roy S, Chaman C. ,”Human rights and trafficking in women and children in India”,. *J His Arch & Anthropol Sci.* 2017;1(5):162–170.,DOI: 10.15406/jhaas.2017.01.00027,p.163, available @: <https://medcraveonline.com/JHAAS/JHAAS-01-00027.pdf> ,accessed on March 19, 2019.

<sup>11</sup>Sen S, Nair PM. A Report on trafficking on women and children in India 2002-2003 vol 1. Institute of Social Sciences, NHRC & UNIFEM, India; 2004. p. 440.

<sup>12</sup>Sanjoy Roy, Chandan Chaman, “ Human rights and trafficking in women and children in India”, *Journal of Historical Archaeology & Anthropological Sciences*, Vol. 1 Issue 5 – 2017,p.166 available @: <https://medcraveonline.com/JHAAS/JHAAS-01-00027>,accessed on March 24, 2019.

- **The Immoral Traffic (Prevention) Act, 1956**

None of the Acts in India were neither uniform nor effective. The Indian parliament thought it fit and desirable to pass a central law that will secure uniformity throughout the country.

To give effect to the constitutional provisions the Trafficking Act was passed. The parliament passed the Suppression of Immoral Traffic in Women and Girls Bill of 1954, which became the Immoral Traffic in Women and Girls Act, 1956, and covered only the females and children. Subsequently, realizing that prostitution should also cover the males, the expression 'persons' was used. The Act was renamed as The Immoral Traffic (Prevention) Act, 1956<sup>13</sup>, by an amendment in 1986. Power to make rules has been vested in the State Governments and accordingly many States have framed Rules for carrying out the purposes of the Act effectively.

The purpose of the enactment was to prevent or to abolish commercial vice namely traffic in women, men and children for the purpose of prostitution as an organized means of living. The aim of this Act was not to render prostitution '*per se*' a criminal offence or punish a woman merely because the prostitution herself. The Act aimed at the suppression of commercialized vice<sup>14</sup>. Although the Act was amended twice in 1978<sup>15</sup> and 1986<sup>16</sup>, it did not prove to be an effective prevention to trafficking or sexual exploitation for commercial purposes.

- **Immoral Traffic Prevention Act 1986**

In the year 1986, the Act was further amended and was known as the Immoral Traffic Prevention Act, 1986. The purpose of this Act is to give effect to the Trafficking Convention and to prohibit the immoral human trafficking. This Act deals with trafficking and it has its objective as to abolish traffic in women and girls for the purpose of sexual exploitation. The Act defined 'prostitution' as "Sexual exploitation or abuse of persons for commercial purposes."

The offences included are taking persons for prostitution, detaining persons in premises where prostitution is carried on, seducing or soliciting for prostitution, making life on the earnings of prostitution, seduction of a person in custody, keeping a brothel or allowing premises to be used as a brothel, prohibits employment of children in certain conditions of work of children.

There is an inbuilt discrimination contained in the Act on the basis of gender and class. Though the Amendment of 1986 has made the term 'prostitute' gender neutral, each and every provision is constructed in such a manner that the women in prostitution is ended up being victimized. They are arrested and prosecuted if they prostitute, solicit, seduce in the vicinity of public places. If the Magistrate feels that their presence is unwelcome in the person's jurisdiction, they can be immediately thrown out of their place.

The 1986 Act is misused by the police to harass women in prostitution. Every aspect of the Act criminalizes the women in prostitution. Traffickers are booked very rarely under the Act.

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<sup>13</sup>The Act was passed in line with the International Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, signed by India on May 9, 1950.

<sup>14</sup>G.B.Reddy, "women and the law", 1<sup>st</sup> edn., (Hyderabad: Gogia Law Agency, 2011), pp.144-145.

<sup>15</sup> The Suppression of Immoral Traffic in Women and Girls (Amending) Act, 1978 .

<sup>16</sup> The Suppression of Immoral Traffic in Women and Girls (Amendment) Act, 1986.

The Act has to be replaced by a law that only criminalizes trafficking, forced prostitution and child prostitution. The law must be framed in such a manner that the rights of women in prostitution are not compressed in any form. Women in prostitution must be completely legalized. Institutional rehabilitation has proved to oppress the women. The law should respect the desire of the women in prostitution. The customary initiation of women practices of devadasi, jogins prevalent in Karnataka and Maharashtra and the resultant practice of prostitution is a crime against humanity and hence violation of human rights.<sup>17</sup> Unfortunately, even cross-border dimensions of trafficking (including interstate trafficking) remain severely neglected in the Act.<sup>18</sup>

▪ **The Immoral Traffic (Prevention) Amendment Bill, 2006, 2016 and 2018**

In 2006 the Ministry of Women and Child Development proposed an amendment Bill. The Immoral Traffic (Prevention) Amendment Bill, 2006, amends the Immoral Traffic (Prevention) Act, 1956 to combat trafficking and sexual exploitation for commercial purposes. It mainly focuses on trafficking which is done for the purpose for sexual exploitation. According to this Bill the term “trafficking in persons” has been defined with a provision for punishing any person who is guilty of the offence of trafficking in persons for the purpose of prostitution.

In 2016, the Ministry of Women and Child Development had proposed a draft “Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2016”<sup>19</sup> and suggestions were invited. The Bill mainly aimed to prevent trafficking of persons and to provide protection and rehabilitation to the victims of trafficking and to create a legal, economic and social environment against trafficking of persons.

In the wake of the alarming increase in the number of cases of human trafficking in India and the shortfall of the existing legal framework to deal with the same, the Ministry of Women and Child Development has proposed the Trafficking of Persons (Prevention, Protection and

Rehabilitation) Bill 2018. It has been claimed to be victim oriented. Welfare of victim has been given priority. 2018 Bill provides for prevention, protection and rehabilitation to the victims of human trafficking.<sup>20</sup>

None of the three Bills discussed above are neither clear nor comprehensive. They are founded on baseless claims and have not fulfilled their objectives, except that they added other legislations to the already existed several laws against human trafficking.

As a result, there is no proper domestic legislation in India which combats all forms of human trafficked in India. Thus, the domestic legislation for combating human trafficking in India must be strengthened to battle all forms of human trafficking.

<sup>17</sup>Justice Rangaswamy in *Gaurav Jain V Union of India* (1997) 8 SCC 114.

<sup>18</sup>Kiran Bhatta, A Review Of The Immoral Traffic Prevention Act, Centre for policy research .pp3-4, 1986 November, 2017, available @:  
file:///C:/Users/om/Downloads/A%20Review%20of%20the%20Immoral%20Traffic%20Prevention%20Act,%201986\_Final%20Edit%20(3).pdf, accessed on March 27, 2019.

<sup>19</sup>Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill 2016- DRAFT, Preamble,, available  
at: <http://wcd.nic.in/sites/default/files/Draft%20Trafficking%20of%20persons%20Bill%202016.pdf>, accessed on March 28, 2019.

<sup>20</sup>Available at: <http://ili.ac.in/pdf/abhi.pdf>, accessed on March 27, 2019.

### **Conclusion**

Women's trafficking has become a present day threat to human dignity, human rights and liberty. The issue of trafficking women around the world to be used as slaves and prostitutes represents the global current issue that needs greater attention. The act of selling women is still occurring at a disturbing rate. 79% of the trafficking victims are young girls and women and they are taken from their countries to the other country where they can be sold into prostitution. The only remedy for this is that the laws for woman trafficking must be strengthened that it meets all the requirements for preventing woman trafficking.