



## TRAFFICKING, PROSTITUTION AND LEGAL FRAMEWORK, ISSUES AND IMPACT

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### Abstract

The situation has been a part of our society since time immemorial. Many resorts to working in the sex work industry due to their poor socio-economic conditions, others are victims of trafficking. The text provides an overview of existing laws relating to trafficking and prostitution measures for control and steps taken, further the text highlights the relation between the offense of trafficking and prostitution along with research on the impact of legalization of prostitution. It is urged that the government ought to make and implement proper rules and regulations and to ensure a better life and protection for sex workers.

### INTRODUCTION

Trafficking of human beings is done for exploitation which in broad-spectrum is classified as (a) Based on sex and (b) Non-Sex-based. The prior classification comprises trafficking for the purpose of prostitution, sexual abuse for commercial purposes, Cyber-sex, Pornography, Pedophilia, and different types of disguised sexual exploitation that take place in some of the massage parlours, beauty parlours, etc. Non-sex-based trafficking could be for different

kinds of slavery and servitude, as domestic and industrial labour, organ trade, and rackets relating to marriage, etc. however the growing traffic in women is predominantly for prostitution. Sex trafficking encompasses fetching individuals to a country to engage in prostitution (mostly women, though sometimes men and minors too), and even conveying them on to other parties that profit from their prostitution, handling them as apparatuses for economic gain, and in some occurrences scheming them and depriving them of liberty. Numerous of the trafficked women conveyed from countries under economic hardship; they are recurrently transferred to developed nations, often with the promise of lucrative earnings in a short time, and told that it is perfectly legal. Prostitution is an internationally recognized problem that can be found throughout the world. Regrettably, society remains lenient about this detestable crime against women. There are different methods to involve women into prostitution that are common too in developed nations; while there exist some specific methods exclusive and particular to a country. Possibly the three most common methods are promises of false employment, fake marriages and also involves kidnapping. However, what brings females at risk are conditions of economic anguish, abandonment by their spouses, unfair social customs and traditions.

### HUMAN TRAFFICKING AND LAWS

*Section 370 – Trafficking of Person.*

Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by—

First— using threats, or

Secondly— using force, or any other form of coercion, or



Thirdly— by abduction, or  
 Fourthly— by practising fraud, or deception, or  
 Fifthly— by abuse of power, or  
 Sixthly— by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanation 1—The expression “exploitation” shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2.—the consent of the victim is immaterial in determination of the offence of trafficking.

*Section 370 A — Exploitation of a trafficked person.*

The detailed provisions regarding punishment for trafficking provided in the criminal amendment Act, 2013 in relation to section 370 are:-

1. Trafficking of persons- 7 to 10 years + Fine
2. Trafficking of more than one person - 10 years to life + Fine
3. Trafficking of minor - 10 years to life + Fine
4. Trafficking of more than 1 minor - 14 years to life + Fine
5. Persons previously convicted - Imprisonment of Natural-life + Fine
6. Public Servant or police officer involved in trafficking of minor[7] -Imprisonment for Natural -Life + Fine (Sec 370 Indian penal code, 1860 ).

## CAUSES OF TRAFFICKING OF HUMAN BEING

**Poverty:** it's a most identified cause of the said offence as parents sell their issues, at times for the money, while in some cases with belief that their children will escape the state of chronic poverty and will have an improved life and more opportunities.

**Devalued status of women:** makes women vulnerable to trafficking and to be treated as a commodity.

**Migration:** desire of prospective victims to migrate are usually exploited by offenders for the determination of recruiting and gaining control, by coercive measures oppression, lack of social or economic opportunity, lack of human rights.

## CONSTITUTIONAL & LEGISLATIVE PROVISIONS RELATED TO TRAFFICKING IN INDIA

Human Trafficking, had not been defined clearly in any statute.

The Constitution of India under Article 23 (1) prohibits Trafficking in Human Beings. (Article 23(1)Constitution of India, 1950) Article 23 and 24 of the Indian constitution provides for prohibition of forced labour and labour at places of hazardous employment. (Article 23,24 Constutuition of India , 1950) The primary statute for deterrence of trafficking for commercial sexual exploitation is The ITPA, 1956. (Immoral Traffic (Prevention) Act, 1956)

Criminal Law (amendment) Act 2013, sec 370 and 370 A has been substituted with Section 370 and 370A IPC which provide for comprehensive procedures to stand the menace of offences of human trafficking and prostitution including trafficking of children for exploitation in any form including



physical exploitation or any form of servitude, slavery, sexual exploitation, or the forced removal of organs. (Criminal Law Amendment Act, 2013)

Protection of Children from Sexual offences Act, 2012, is a distinctive law to safeguard children from exploitation and sexual abuse. It provides specific definitions for diverse forms of sexual abuse, inclusive of penetrative and non-penetrative sexual assaults and harassment. (Protection of Children from Sexual offences Act, 2012)

There are other explicit laws enacted concerning to trafficking in women and children Prohibition of Child Marriage Act, 2006, Child Labour (Prohibition and Regulation) Act, 1986, Bonded Labour System (Abolition) Act, 1976, Transplantation of Human Organs Act, 1994.

#### INTERNATIONAL CONVENTIONS ON TRAFFICKING AND IMPLEMENTATION BY INDIA:

**UN Convention:** the United Nations Convention on Transnational Organised Crime (UNTOC) has been ratified by India which includes as a Protocols Punishment of Trafficking in Persons and its suppression. Innumerable actions have been taken by the Indian legislature for implementation of the convention in accordance of the protocol for instance the criminal Law Amendment Act, 2013 is enacted which specifically define human trafficking. (United Nations Convention on Transnational Organised Crime )

**SAARC Convention:** India had ratified SAARC for Combating Trafficking in Women and Children for Prostitution. A regional Task Force was constituted for the

purpose of implementation of the SAARC Convention. Five meetings of Regional Task Force had been organised as of yet. (SAARC Convention )

**Bilateral mechanism:** to curb the problem of cross border trafficking for the purpose of addressing various issues relating to prevention of Trafficking, identification of victim and return also making the process speedy and victim-friendly with regards to India and Bangladesh, a Task Force of India and Bangladesh for the said constituted.

India and Bangladesh had signed a Memorandum of Understanding (MoU) between for Bi-lateral Cooperation for Deterrence of Human Trafficking in Women and Children, Rescue, Recovery, Repatriation and Re-integration of Victims of Trafficking was signed in June, 2015.

#### Judicial Pronouncements

Lakshmi Kant Pandey v. Union of India, (1984) 2 SCC 244 P.N. Bhagwati, J., observed: “Children are a ‘supremely important national asset’ and the future well-being of the nation depends on how its children grow and develop.” (Lakshmi Kant Pandey v. Union of India, 1948)

Bodhisattwa Gautam v. Subhra Chakraborty where a one had promised to get married to a woman and also went through a wedding ceremony which later was known to be false, compensation was ordered payment of compensation to the victim. ( Bodhisattwa Gautam v. Subhra Chakraborty, 1996)

In another case of PUCL v. Union of India hefty compensation was granted to be paid where children were trafficked and bonded for labour. (PUCL v. Union of India , 1998)



Vishal Jeet v. Union of India and others is a landmark judgement wherein the Honourable Supreme Court gave direction for safeguard and reintegration of devadasis by their families or community and were currently in the prostitution business. (Vishal Jeet v. Union of India, 1990)

In Gaurav Jain v. Union of India, a PIL was filed to seek protection for children of sex workers in order to keep them away from such a susceptible and detrimental environment, the Court agreed otherwise and gave directions, inter alia, of the constitution of a committee to make an in-depth study of the problems of prostitution, child prostitution, and children of prostitutes, to provide relief develop proper schemes for their rescue and rehabilitation. (Gaurav Jain v. Union of India, 1997)

In Lakshmi kant Pandey v. Union of India which scrutinised the vulnerability of children being trafficked in rackets due to deficiency of an effective mechanism to protect them, the court shaped an suitable apparatus to fill the gap, exclusively for inter-country adoptions. (Lakshmi kant Pandey v. Union of India, 1984)

### CHALLENGES

The threat of trafficking has over time has developed as a structured criminal consortium at parity with the drug syndicate. With its roots deeply set in the society with the assistance of money and debase politicians. The lack of tangible designations in the Indian legal charter doesn't help the cause either as numerous traffickers go unpunished by the reason of technical loopholes in the legal systems. Lack of the implementation of such laws in India. The lack of management and monitoring on social

media stands are acting as a new platform for the traffickers to transmit on their trade. The figures on the trafficking appear to be inadequate, thus the forms and working apparatus of the traffickers are ambiguous.

### PROSTITUTION AND LAWS

According to Indian history, the system of prostitution that prevailed was known as "Devadasi" who contributed their life to the devotion of Lord Krishna. A few religious convictions state that the Devadasis considered the Gods as their husbands and as a result, cannot wed other human men. They were later known as "Nagarvadhu" or the "town's wife" and they later became engaged in the activities dance and sing before royals.

### Causes of prostitution

There are several reasons which that compel a woman to get engaged in an occupation of prostitution due to poverty and unemployment which acts as two major persuasive factors that cause women to get involved in the practice of commercial sex.

### Poverty and unemployment

Scarcity and joblessness are the main causes where a woman chooses to work in such an industry. Hagan and McCarthy (1997) had identified certain factors such as age, unemployment, gender, hunger, number of times left home, shelter, and length of time on the street and street friends arrested.

### Woman being tricked into prostitution

Most of the females who are part of rural society earn scarce income as compared with women in urban areas. They trafficked and tricked into prostitution along with guarantees of better and decent job opportunities.



### Expectation family

Women in backward rural areas are under stress to pay for various expenses such as education, treatment of sick family members.

### **Types of Prostitutes**

Mostly prostitutes can be divided on the basis of mode of operation which is as follows:

Brothel Prostitutes: They carry out activities at brothel.

Call Girl Prostitutes: They usually carry out activities individually from their place. They solicit clients on the roads and streets and takes the customer.

Other Types: Underground forms of prostitution are also found in bare, massage parlours, amusement centres, dance clubs etc.

### **Laws and initiative related to Prostitution:**

ITPA states “prostitution” as abuse or sexual exploitation of a female for monetary purposes and a “prostitute” is the person who acquires that commercial benefit. (ITPA) The Indian Penal Code of 1860 also transacts with laws as to prostitution however it is limited to child prostitution. Although, it attempts to prevent activities as kidnapping in general, kidnapping for the purpose, importing a girl of a foreign country for sex, etc.

Besides, Article 23(1) of the Constitution prohibits traffic in human beings and beggars, slavery and servitude, and other similar forms of forced labor. Article 23(2) also declares that any infringement of this provision shall constitute an offense that will be punishable in accordance with the law. (Article 23(1),23(2) Constitution of India, 1950)

### **Immoral Traffic (Prevention) Act, 1956:**

The Immoral Traffic (Prevention) Act, 1956 the statute governing the subject of prostitution in India.

This Act reduces at subduing prostitution in women and girls and attaining a public purpose viz. to rescue and rehabilitate the women and girls who have fallen victim of prostitution and also to provide all opportunity to these fallen victims so that they could become decent members of the society. (MANU/SC/0277/1990.)

can be detained for soliciting sexual services it is also stated that call girls could not make their contact numbers public and its disobedience would lead to 6 months jail also provisions of the act included punishment for the offense of sex with a minor or someone who is below 18 years can lead to 10 years in prison managing and knowing brothers and forcefully keeping shall be punishable with imprisonment of 3 to 7 years of prison. (Gettinger, 2018)

### **Ujjwala scheme**

The government is implementing ujjwala scheme as an all-inclusive scheme for prevention of trafficking and Rehabilitation, liberating, and restoration of victims of trafficking for commercial sexual exploitation. Giving vocational training to sex workers.

### **Welfare and Rehabilitation bill 2016 India rehabilitation of sex workers**

- The central government shall constitute a board known as a national board for the welfare of sex workers. The powers conferred board shall take necessary measures programs and policies for the rehabilitation of sex workers.



- Professional photo identity card to sex workers containing details of all dependent.
- Members free health check-up. (Abhipedia, 2017)

### Judicial pronouncements

The right to life preserved under Article 21 is also pertinent to a prostitute. This was elucidated in the case of *Budhadev Karmaskar v State of West Bengal*. It held that sex workers are human beings too and no person holds a right to murder or assault as they are promised a right to life with dignity under Article 21 of the Indian constitution. The Central Government and State Governments were directed by the court to establish rehabilitation centres to impart vocational skills and technical skills like sewing so that they attain other means of livelihood. The Government is authorized to form ancillary rules concerning management, license, and maintenance of protection homes, or by virtue of Section 23 of the Act. (*Budhadev Karmaskar v. State of West Bengal*, 2012)

The acts constitutionality was challenged in the case (*The State of Uttar Pradesh v Kaushalya*, 1991) In this case, numerous prostitutes were removed from their place of residence for the purpose of maintaining decorum in the city. The High Court of Allahabad contended that Section 20 of the Act is violative of the fundamental rights such as Article 14 and sub-clause (d) and (e) of Article 19(1) of the Indian Constitution. However, the act was held to be constitutionally valid as there existed an intelligible differentia between a prostitute and a person causing a nuisance. The Act is also aimed at achieving decorum

### THE DIFFERENCES IN PROSTITUTION AND HUMAN TRAFFICKING

“A” is 16 years old, deprived, has no job, and desires to help her family survive.

Her mother lost her job and their family is in a vicious circle of debt. A man told her about says she can get her a job as a live-in housekeeper some months in she is transported across the state border where she is alien to the language and is sold into a brothel. She sees no way home nor has sufficient money.

In another case “B” is 24 years old; also, poor, got married at 18 and has five children, and the family is abandoned by her husband without any education or job opportunities, she goes to a bar and starts to prostitute herself. This is not the life she would choose for herself but has no way out.

“A” and “B” are both affected by scarcity and social exploitation.

A few choices and opportunities are available to them in life. However, one is a willing participant in the sex industry while the other is a victim of human trafficking.

### Essentials of Trafficking

The act: includes transportation, Recruitment, transfer, harboring, or receipt of persons. Means of the commission of the offense: coercion, Threat or use of force, abduction, deception, fraud, abuse of power, or inducement or benefits to a person in control of the victim.

Purpose of the procurement: sexual exploitation, Prostitution of others, forced labor or slavery or servitude.



### Essentials of Prostitution

Act: sexual favors in exchange for a fee or a thing of value.

Means: cajoling, proposing, inducing, or agreeing to engage in prostitution.

### HOW ARE PROSTITUTION AND TRAFFICKING RELATED

Trafficking of women arose in the 19th century and later 20th century with concerns over the migration, enslavement, and of women for prostitution.

The relationship and the distinction, between prostitution and trafficking between enforced and voluntary prostitution are controversial matters. Trafficking which known as sex trafficking may comprise prostitution, but not all prostitution is inevitably sex trafficking.

Prostitution and associated activities— includes pimping or maintaining a brothel are acting as a contributing factor to the growth of modern world slavery by providing concealment behind which traffickers for sexual exploitation operate their activities.

In all cases where prostitution is permitted and legalized or tolerated, there is a greater ultimatum for victims of human trafficking and probably always an increase in the number of women and children who are usually trafficked into commercial sex slavery.

Figures state that around 600,000 to 800,000 people trafficked across borders of nations annually, out of which 80 percent of victims are found to be female, , and around 50 percent of them are minors and they are forced into trafficking. (DC, 2004)

### IMPACT OF LEGALIZATION OF PROSTITUTION ON ACTIVITIES OF TRAFFICKING AND PROSTITUTION

#### Positive impact

1. Prostitutes are also guaranteed a life with dignity in the Indian constitution under Article 21.as they will not have to face police raids and social-stigma.
2. Their dependents and children can benefit from Government schemes which ultimately will lead to better employment alternatives for their families.
3. In the absenteeism of regulation, sex workers are often forced to serve clients in unhygienic unhealthy conditions leading to diseases such as HIV+STD. Laws and regulation can stop this.
4. Eradication of exploitation will be ensured as Work-hours, Minimum wages can be regularized.
5. Issue of I-cards will help the Police to between (intentional) sex works vs. (involuntary) trafficking thereby will help in curb the offense of human trafficking.

#### Negative impact

1. Fundamental duties enshrined in part IV-A of the Indian constitution stop practices that are derogatory to the dignity of women. The legalization of the sex trade will be a wrong indication for the coming generations leading them to treat women as commodities.
2. Mostly women are tricked into trafficking and ultimately sold for sex labor thus Instead of “legalizing” the same, Government must give alternative work to sex-workers and direct pimps into jails. For instance can be seen that in 2000: Netherlands took initiative and legalized the industry which lead to 25% thus, Legalization is not controlled measure in the sex industry. Rather encourages this immoral activity.



3. The belief that registered sex workers will lead to stop illegal minor trafficking. As the culprit always has a back door; the Aadhar cards can be created then fake id cards for under-age sex workers can be created as well.
4. Prostitution can't be a legitimate business as it will always associate with crimes of exploitation and human trafficking.
5. The idea can't be supported that Government is unable to stop something then it should be legalised.

### CONCLUSION

There are two categories of individuals in the sex work industry. Those who are working by their own will and the others who are forced or trafficked in this industry.

Prostitution may be synonymous with human trafficking. "Prostitutes." The term implies a choice or personal will to choose the occupation while the reality is that many people are not working as prostitutes by their free will. The term "prostitute" suggests a firm negative implication, and the victims of human trafficking don't deserve such labels.

While enacting a law to administer them, it is imperative to recognize the metamorphosis between the two groups and consider both of their interests and needs. The people who are in this industry opt for this industry must not be made to feel side-lined. They have to be provided with a healthy and safe environment for work where they active facilities like birth control, and other appropriate medical facilities, etc.

On the other hand, ones who are a victim of trafficking are ought to be released and rescued safely further are rehabilitated back into the society.

In the analysis, it can be concluded that for issues such as prostitution, no specific kind of requirement is needed to cure it as criminalization, decriminalization, or sanctioning the same. From the preceding research, it is hard to negate the fact that validation of prostitution involves negative as well as positive properties. Therefore, merely legalization of prostitution will not be adequate for the resolution of this problem rather its administration throughout the country must be focused upon the country. Thenceforth a set of rules and regulations should be established to regulate this industry.

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