



REVIEW ARTICLE

TRAFFICKING IN WOMEN AND FORCED PROSTITUTION

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ABSTRACT

The status of women in India, both historically and socially has been one of the respect and reverence. Our Constitution and other enactments are providing their protection to the utmost level. Usually respect of women is considered as the respect of nation. But in our society, monsters in the face of human being are prevailing, as a result of which inspite of so many enactments, the women in every phase of their life are being deprived and being made target of various heinous crimes from ancient era to till today. In these varieties in the world of crimes one of the most atrocious one is the trafficking in women and forced prostitution. Thus as we know trafficking means:, The recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat, use of force or other forms of coercion, of abduction, of fraud, of deception, abuse of power, or of giving or receiving payments or benefits to achieve the consent of a person having control over another, for the purpose of exploitation. So forced prostitution and trafficking of women is being practiced since ages. Various factors are working behind such crime. Poverty, illiteracy, lack of awareness, and some binding factors upon them may be the cause. It is researched that trafficking in persons is an increasing problem that involves both sexual exploitation and labour exploitation of the victims. It affects all regions and in the world. Both men and women may be the victims of trafficking, but primary victims worldwide are women and girls, the majorities of them are trafficked for the purpose of sexual exploitation and forced prostitution. Indian legislatures are there to curb such burning issues. But inspite of the presence of several laws, the problems are not decreasing due to various factors like growth of poverty, illiteracy, views and thoughts of men towards women and mainly lack of awareness among women about their rights. Thus Prevention of trafficking in women requires examining the factors that contribute to the problem and providing education to potential victims.

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INTRODUCTION

The status of women, in historical context, is in fact an integral part of the saga of civilization. In the Indian society, which was entirely patriarchal in nature, the duties of women as good daughter, good wife, good mother and their rights like right to equality, equal protection are well defined. The approaches of law towards women are protectionist, sameness and corrective approach. But inspite of all such protection also, discriminatory practices against women, continued unabated around the globe. Despite of commitments made under the international and national level on elimination of all forms of discrimination against women, various exploitations are there. One of those exploitations in its worst form is trafficking on women and forced prostitution. It is clearly the murder of one's self.

Now let's point to the meaning of trafficking;

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Definition

According to UN protocol: It is the recruitment, transportation, transfer, harbouring or trace it of persons by means of the threat, use of force or other forms of coercion, of abduction, of fraud, of deception, abuse of power, or of giving or receiving payments or benefits to achieve the consent of a person having control over another, for the purpose of exploitation.¹

According to Goa Children Act, "child trafficking means the procurement., recruitment; transportation, transfer, harbouring or receipt of person, legally or illegally, within or across borders, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving payments or benefits to achieve the consent of a person having

¹ Article 3 (a) of UN protocol to prevent suppress and punishment trafficking in persons.

control over another person, for monetary gain or otherwise".²

Immoral Trafficking (Prevention) Act: Thus trafficking would be generally understood to mean transporting a person by the means of use of threats force, coercion, abduction, fraud or deception. The legislation (ITPA) deals with acts like keeping a brother, soliciting in a public places, living on the earnings of prostitution; it does not have a definite definition of trafficking. And prostitution is deeply associated with trafficking.

Purpose of trafficking

Trafficking may be done for different purposes, like

- Sexual exploitation
- Forced labour
- Slavery
- Sex tourism
- Pornography
- begging
- Human organ trade
- Beer bar etc.

Both men and women may be victims of trafficking, but the primary victims world wide are women and girls, the majority of whom are trafficking for the purpose of sexual exploitation and forced prostitution.

According to prerana, a registered NGO working since 1986 in Mumbai for the welfare and development of victims of commercial sexual exploitation, stated that, India is rife with trafficking and exploitation which involves prostitution, pornography and sex tourism and traffickers often target women and children of low social standing living in poverty as they are vulnerable to exploitation.

Legislations are there to deal with the problem

Intenational level

The United Nations began to approach trafficking in women as human rights violation in the early 1990's.

- The declaration on the elimination of discrimination against women, adopted by General Assembly resolution in 1967 mentions-All appropriate measures, including legislation, shall be taken to combat all forms of traffic in women³.
- The subsequent – convention on the elimination of all forms of discrimination against women, 1981, creates binding obligation, requiring the state parties to take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women⁴.

Regional Level

At the regional level, there have been several initiatives taken by the Governments of South Asia and Asia-Pacific regions.

Following are illustrations of their concerted efforts—(i) The Bangkok Accord and Plan of Action to Combat Trafficking in Women, 1998;

- (ii) Asian Regional Crimes against Women Initiative against Trafficking in Persons, Especially Women and Children, (ARIAT) 2000;
- (iii) The ASEM (Asia Europe Meeting) Action Plan to Combat Trafficking in Persons, especially Women and Children, 2000;
- (iv) The Bali Conference Co-chair's Statement on People Smuggling, Trafficking in Persons and Related Transnational Crime, 2002;
- (v) SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002; and
- (vi) Convention on Regional Arrangement for the Promotion of Child Welfare, 2002.

National Level

The offences relating to Trafficking are covered by IPC and Immoral Traffic (Prevention) Act, 1956.

Offences relating to trafficking under IPC

Our Indian penal code deals with the particular crime under the following provisions like,

- Kidnapping from lawful guardianship and prescribes its punishment with imprisonment up to 10 years, and fine.⁵
- Procurement of minor girl and prescribes its punishment with imprisonment up to 7 years, and fine.⁶
- Importation of girl from foreign country and prescribes its punishment with imprisonment up to 10 years, and fine⁷.
- Selling or buying minor for the purpose of prostitution and punishes with imprisonment upto 10 years and fine⁸

Offences under the Immoral Traffic (Prevention) Act, 1956 (ITPA)

The Government has enacted a special law on this known as Immoral Traffic (Prevention) Act, 1956 (Act No. 104 of 1956) w.e.f. 30th Dec, 1956 (in short known as ITPA). Object and reasons of the Act stated in the preamble that "an Act to provide in pursuance of the International Convention signed at New York on the 9th May, 1950, for the prevention of immoral traffic". Specific offences under this Act are as follows—

Keeping a brothel or allowing premises to be used as a brothel: Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel, shall be punishable on first conviction with RI for 1-3 years and fine up to Rs. 2000 and in the event of a second or subsequent to conviction with Rigorous imprisonment for 2-5 years and also with fine up to Rs. 2000.⁹

² 2003.

³ section 8 of The declaration on the elimination of discrimination against women,

⁴ Article 6 of convention on the elimination of all forms of discrimination against women, 1981

⁵ Section 361 IPC

⁶ Section 366-A IPC

⁷ Section 366-B IPC

⁸ Section 372 & 373 IPC

⁹ Section 3 of ITPA, 1956

Living on the earnings of prostitution is punishable: Any person over the age of 18 years who knowingly lives, wholly or in part, on the earnings of the prostitution of any other person shall be punishable with imprisonment up to 2 years, or with fine up to Rs. 1000, or with both, and where such earnings relate to the prostitution of a child or a minor, shall be punishable with imprisonment for 7-10 years¹⁰.

Procuring, inducing or taking person for the sake of prostitution: Any person who procures or attempts to procure or induces or takes or attempts to take or causes or induces a person to carry on prostitution, shall be punishable on first conviction with RI for a term of 3-7 years and fine up to Rs. 2000. If, any person committed the offence second time, he will be punished with imprisonment for 7 to 14 years. If, the person in respect of whom an offence committed is a child (below the age of 16 years), the punishment shall extend to rigorous imprisonment for a term of not less than 7 years but may extend to life¹¹.

Detaining of a person in premises where prostitution is carried on: Any person who detains any other person, whether with or without his consent in any brothel, or in or upon any premises with intent that such person may have sexual intercourse with a person, who is not the spouse of such person, shall be punishable on conviction, with imprisonment not less than seven years but which may be for life or imprisonment up to The court may award less than 7 years with 10 years and fine, on recording of special reason¹². And also punishes for:

- Prostitution in or in the vicinity of public place¹³
- Seducing or soliciting for purpose of prostitution¹⁴
- Seduction of a person in custody
- Detention in a corrective institution etc

Lacunae of law

Laws are there. But sometimes failure or less execution of laws matters. Lacunae of legislatures are also there, which needs to be amended. According to the 182nd report of the Committees on human resource development, the ITPA ever after amendments failed to achieve its objectives due various lacunae in its drafting and implementation, like:

- The act fails a clear definition of trafficking and its clear cut difference with prostitution to protect the victims. In absence of such provision both traffickers and perpetrators at present go scot free.
- Moreover the Act provides punishment for trafficking in person for prostitution with Rigorous Imprisonment of 7 years for 1st offence. The committee feels that this should be enhanced to 10 years.
- Prostitutes are treated more criminal than victims.
- Presence of section 8 in the act, punishing for solicitation as such has been routinely misused by the police. This has resulted in harassment and punishment of sex workers more than the traffickers or pimps.
- The victims feel insecure and threatened in the presence of the accused or police in the court of law. Thus

committee recommends for trial in camera for the victims for just judgments.

- There is a common lack of public awareness and a clear cut lack of sympathy and co-operation with the victims.
- Lack of government efforts for rehabilitation of victims.

We can witness the lacunae by observing that though we are having so many laws and enactment, the problems are not curbing due to growth of poverty, illiteracy, views and thoughts of men towards women and mainly lack of awareness among women about their rights. Thus Prevention of trafficking in women requires examining the factors that contribute to the problem and providing education to potential victims.

National crime report bureau (NCRB) is collecting data that human trafficking during the year 2012 has increased by 17.3%.

Conclusion

Thus the magnitude of the problem of sex trafficking and prostitution is increasing, and its nature worsening. In the light of this data, it is clear human trafficking in India deserves immediate attention at policy as well as implementation levels. And the absence of this issue in policy discourses is the biggest hurdle in combating it. People who are being trafficked are so grossly marginalized they are neither visible nor listed anywhere. In 1990, economist Amartya Sen created ripples in the world by talking about 100 million missing women, and made a plea for ensuring women's survival in Asia and Africa. Almost 25 years later, women are still going missing, though they are alive, and there is no documentation to prove their existence.

Suggestion

Following suggestions may be given,

Misuse of Section 8 ITPA

On the one hand, there is non-utilization of sections of ITPA against traffickers and exploiters, and on the other hand, there is grave misuse of Section 8 ITPA, wherein victims are arrested, prosecuted and even convicted on the charge of soliciting. The legal concept of mens rea has to be investigated and the person should not be charge sheeted or convicted if mens rea is lacking. A person, who is made to solicit under coercion, duress, threat, etc., cannot be charged with the offence of soliciting, as there is no mens rea. A victim of trafficking should not be arrested at all.

Closure of brothel and eviction

The power to close brothels and evict offender's u/s 18 ITPA can be an effective tool in dealing with the exploiters. The prosecution should move the court for initiating such action, in the event of the court convicting the exploiters. Even before conviction, the executive magistrate can initiate such action by issuing notice. The ITPA also provides for surveillance of the convicted person. These provisions have been sparingly used. There is a need for sensitizing the officials concerned and making them accountable. Moreover, in some places, like Mumbai city, this power has not been conferred on the district

¹⁰ Section 4 of ITPA, 1956

¹¹ Section 5 of ITPA, 1965

¹² Section 6 of ITPA, 1956

¹³ Section 7 ITPA, 1956

¹⁴ Section 8 of ITPA, 1956

level officials. It would be better if such powers could be delegated to DCP

Special police officers under ITPA

The research has brought out the fact that there is acute shortage of notified special police officers in police stations for implementing the law. There is a definite requirement for augmenting the strength of police officers. Ideal situation would be to have adequate strength of notified women and men police officers, specially trained, in all police stations. *Section 13(2A)* authorizes District Magistrates to confer upon any retired police or military officer (not below the rank of Inspector and Commissioned Officer respectively) all or any of the powers under ITPA. This provision has not been utilized. It empowers the district administration to identify competent personnel, especially women, train them and utilise their services effectively in dealing with trafficking.

Special courts

The ITPA provides for establishment of special courts not only by the state governments but also by the central government. However, the latter has never been invoked and the former has been minimally implemented. The concerned government departments should take initiatives in setting up special courts, and preferably exclusive courts, to deal with the trial of offences under ITPA, so that justice can be delivered expeditiously.

Rehabilitative mechanisms

Rehabilitative measures should be oriented to the best interests of the trafficked victim/survivor and persons who are subjected to commercial sexual. Rehabilitation should be based on the rights approach rather than the narrow welfare-approach. It should not be considered as an act of welfare or extending sympathy, but should be seen as an act to protect and ensure human rights. Moreover, decision-making should be participatory, keeping in view the best interests of the survivor. Livelihood options have to be based on marketable skills and knowledge. Rehabilitative institutions should have a holistic approach with trauma counseling, psychosocial intervention and health care for the victims, as well as provision for imparting appropriate skills, knowledge and resources for a sustainable livelihood.

Organizing legal awareness camps

Though good laws are there, they are not always reaching to door of every common man, due to the lack of knowledge and awareness among general public. So to make the law to reach everyone so that all should take the privilege of it and can be aware about their rights, legal awareness camps can be organized, and leaflets in vernacular language can be provided to them. In this way the effectiveness of the law will definitely grow
