

## PROSTITUTION: A REASON FOR HUMAN TRAFFICKING

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### *Abstract*

*Human trafficking is evidently violation of human rights. As per the statistical data, the most heinous racket of human trafficking involves commercial sex. Presently, prostitution is a criminal transgression in India. Victims of human trafficking are mostly females and the enormous majority finish off being sexually exploited through prostitution. In this regard the law can play a vital role in combating prostitution and it would reduce human trafficking. Apart from the role of the State, social organizations like NGO's can play vital role in reducing human trafficking. Prostitution promotes Human Trafficking in regard to the increasing rate of child sexual exploitation. Sex trafficking would not have existed without the demand for commercial sex. In this racket there is no identity of the individuals but they are known as commercial exploits. But there is another side to this story. The Law governing prostitution in India is the Immoral Traffic (Prevention) Act, 1986 and it explains that the law does not criminalize prostitution but it prevents organized form of prostitution. Sex work can be legalized only when it is controlled by the government as a means to reduce crimes and atrocities on women. The NGO's and the State should take initiatives in providing the victims the means of livelihood and dignity so that they may not necessarily go back to the old profession. If this is to happen, these girls and women must be rescued from the clutches of the traffickers.*

*This will help in regaining their health position and honor in the society.*

**Keywords:** *child sexual exploitation, commercial sex, government initiative, human trafficking, legalizing prostitution.*

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## INTRODUCTION

Trafficking is caused by an amalgamation of factors which include poverty, corruption, and financial deprivation, incompetent legal systems and the inducement of financial gain in the trade. With the increase in migration across the world and the continued restrictions on movement of labour, irregular migration such as trafficking and smuggling has increased significantly. Trafficking is regarded a specific, gender-based harm. The majority of trafficked persons are women. Women are trafficked for the purposes of exploitation in - most often - typical gender-specific labour, such as forced prostitution, sex tourism, domestic work or into commercial marriages and suffer gender-specific harm. Unequal access to education, traditional practices, limited possibilities for women to access or own land and property and other forms of gender discrimination increase the vulnerability of women and girls to trafficking.<sup>1</sup> Trafficking is not prostitution. As per the, Immoral Traffic (Prevention) Act 1956 (ITPA) prostitution becomes an offence when there is commercial exploitation of a person. If a woman or child is sexually exploited and any person gains out of the same, it amounts to commercial sexual exploitation (CSE), which is a legally punishable offence wherein the culpability lies against all exploiters. Trafficking is the process of recruiting, contracting, procuring or hiring a person for CSE. Therefore, trafficking is a process and CSE is the result. The 'demand' in CSE generates, promotes and perpetuates trafficking. This is a vicious cycle<sup>2</sup>. Human trafficking has recently emerged as an important social issue in our country. Prostitution is the oldest profession in the world and therefore women are either forced or induced into the trade. Trafficking continues to be a problem mostly due to lack of action. Law enforcer and local police are often customers and deal with traffickers. Another reason that trafficking continues to increase with relative ease is because the legal system in India and its neighborhood have lax rules in dealing with these problems. Primarily human trafficking is done, to fulfill the purposes of, bonded labour, forced labour, sex work and organs trafficking. Amongst these, human trafficking for sexual purposes, known as sex trafficking, is the major thrust area. That prostitution has been going on in most of the countries is universally recognized. Unfortunately, no serious attempt has been made by the state and the society to control the menace.

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<sup>1</sup>Annette Lansink, *Human Rights Focus on Trafficked Women: An International Law and Feminist Perspective*, Agenda: Empowering Women for Gender Equity, No. 70, Gender-Based Violence Trilogy, Volume 1, 2: Trafficking (2006), page 45-56

<sup>2</sup> P.M. Nair, *Trafficking women and children for sexual exploitation*, United Nations Development Fund for Women, 2007

## HISTORICAL BACKGROUND

Prostitution is the worst form of exploitation of women and as an institution it speaks of man's tolerance of this exploitation on an organized level in society. Women are viewed solely as a sex object and as an outlet for man's baser instincts. Some societies have continued to regard prostitution as a necessary evil and have tolerated it as such.<sup>3</sup> Human Trafficking in women is considered as both a cause and effect of human rights violations.

In the 19<sup>th</sup> century, certain social customs were responsible for any women resorting to this profession, who were otherwise outside the hereditary and customary groups of prostitutes. The spread of child marriages, early widowhood, social taboos on widow remarriages, caste rigidity, dowry system and the practice of polygamy and polyandry among certain communities, the decay in the joint family system, and the generally low status accorded to women in society contributed to women being driven to prostitution as the only occupation for livelihood. At the same time, the beginning of industrialization and consequent urbanization in the latter part of the 19<sup>th</sup> and early 20<sup>th</sup> century drew in large number of women other than hereditary prostitutes into this profession. One reason was the wide sex disparity in the big cities when the migrant worker who had to leave his family behind in the village for mainly economic reasons, became a customer for the prostitutes.<sup>4</sup>

In India, the Devadasi system, a Hindu practice of temple prostitution, has existed for more than 5,000 years. The system which was so widespread in pre independence India that it necessitated legal measures such as the Madras Devadasi Prevention and Dedication Act of 1947 and the Bombay Devadasi Protection Act of Mysore, Andhra Pradesh and Orissa, practiced particularly by the lower castes. A study conducted in Bombay in the mid sixties reported that as many as 30 percent of Bombay prostitutes were of Devadasi origin. In a study of the Bijapur district, girls are still dedicated to the temples amongst certain sections of the lower castes and enter the occupation with the consent of the parents. No social stigma is attached to this. The reason is mainly economic. These girls are also taken out of the town or village by an agent and a large part of the earnings of the Devadasi goes to the family members and agents.<sup>5</sup> It has been described as 'the world's oldest profession'.<sup>6</sup>

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<sup>3</sup> Maya Majumdar, *An Unfortunate Lot, Social Status of Women in India*, Wisdom Press, Delhi, 2012, page 64

<sup>4</sup> Ibid

<sup>5</sup> Ibid at page 65

<sup>6</sup> Keegan Anne, *World's oldest profession has the night off*, Chicago Tribune, July 10 1974

A recent study of the immoral trafficking of women from the Purola Block of Uttarkashi district (UP), reveals that a large number of girls from the lower socio-economic communities go for prostitution. In 1969, 45 women had entered and remained in this profession for three years. It was estimated that about approximately 500 families were dependent on this profession on account of extreme poverty. 60 percent of girls from Rawain area were operating in Delhi and 77 agents were engaged in procuring women for prostitution.<sup>7</sup>

Prostitution must not be observed from the conventional or chronological aspect, but it should be viewed as a form of exploitation of women. According to Mahatma Gandhi, “Man is primarily responsible for the existence of these unfortunate members of society.” It has been commercialized and a large number of mediators, brothel keeper, etc., for whom the profit earning has become the vital principle, and this has amplified the exploitation of the females.

### **PRESENT SCENARIO**

Undeniable is the fact that trafficking of women and children and forcing them to sell their bodies for sexual exploitation is a grave violation of human rights. The traffickers in India by playing on the relationship of trust and affection, with promises of easy earnings are able to acquire the assent of families to take girls and young women away to what their families see as improved opportunities in life and later those women are end up being sexually exploited and a victim of sex trafficking.

UN definition of trafficking: Trafficking is not a new phenomenon. Yet, only recently international consensus was reached on a precise and unambiguous definition of trafficking. The four early international treaties on trafficking (1904, 1910, 1921 and 1933) were consolidated in 1949 by the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. This treaty connects trafficking to prostitution across borders and within a country. The preamble of the 1949 convention states that *‘prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community’*. It aims at punishing those who

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<sup>7</sup> *Supra* note 3

procure, entice, lead away or exploit a person for the purposes of prostitution *even with the consent of that person* as well as those keeping or financing brothels.<sup>8</sup>

Men who frequently visit brothels, strip clubs, massage parlors, escort agencies and street corners want limitless access to the supply of females from different countries, cultures and backgrounds. This invariable demand for ‘new merchandise’ is what dictates the international trade in women and girls. If men did not take for granted that they have the explicit right to buy and sexually exploit women and girls, the trade in females would not exist.<sup>9</sup>

Human Trafficking has become a global phenomenon which has gained impetus in recent years. The response systems are incapable to address or redress their grievances and, often, exacerbate the harm and sufferings of these women and children. According to estimates by the United

Nations, up to 200 million women and girls are demographically ‘missing’.<sup>10</sup> Prostituted women have a very high probability of acquiring sexually transmitted diseases, including HIV/AIDS. They usually suffer unwanted pregnancies, infertility and miscarriage.

Many experience serious post-traumatic stress disorder. Many slide into drug and alcohol abuse. Suicide rates are high. Prostitution is often also the means of rape of children. The UNFPA estimates that each year 2 million girls aged between 5 and 15 are introduced into the commercial sex market.<sup>11</sup>

Susceptibility of sex trafficking resulting into prostitution mainly arises because of the pitiable economic state of affairs, existence of gender-based violence and political instability like wars, internal disturbances etc. Conflict-ridden areas which have actual war or the mere presence of military bases create demand. These areas are characterised by the presence of sex workers and child soldiers. Government power in such areas is limited. Economic and social conditions like poverty and its resultant factors of social and cultural exclusion is a major problem. Socially and culturally excluded sections of the society are more prone to get trapped in to the trade.

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<sup>8</sup> *Supra* note 1

<sup>9</sup> Monica o’Connor and Grainne Healy, *The links between prostitution and sex trafficking*, 2006

<sup>10</sup> A. Diamantopoulos, Speech at the conference ‘*Violence against Women: Zero Tolerance*’, (Lisbon, 4 May 2000), Available at [http://www.eurowrc.org/13.institutions/1.ec/ecen/05.ec\\_en.html](http://www.eurowrc.org/13.institutions/1.ec/ecen/05.ec_en.html)

<sup>11</sup> Marie Vlacbovd and Lea Biason, *Women in an insecure world*, Geneva Centre for the Democratic Control of Armed Forces (DCAF), September 2005

India is unable to combat the widespread virus of human trafficking especially in the area of commercial sex where people are enforced to do activities in order to satisfy the customers.

### **SEXUAL VIOLENCE DURING ARMED CONFLICT:**

During armed conflicts the women are exposed to marginalization, prostitution, rapes, and unwanted pregnancies. Women are the worst sufferers as they are trafficked due to the demand from both the combatants on the frontlines and by the peacekeepers present to maintain the peace. Current conflicts have tinted the methodical and precise targeting of women for sexual brutality. Sexual violence is used as a method of warfare mainly to humiliate and demoralize the opponent. The consequence of sexual violence in armed conflicts has severe social, cultural, conjugal, bodily and psychological repercussions. There has been a prominent increase in HIV/AIDS infection along the corridors of armed conflict.

A woman who has suffered sexual violence is often ostracized by her family or the wider community, due to the perception that the woman has brought 'dishonor' upon them. Children born of sexual violence may need particular protection and assistance, as share the stigma of the rape. Those who work with survivors of sexual violence testify that breaking down the taboos surrounding rape and sexual assault takes a long time. Survivors of sexual violence may experience severe, ongoing physical injuries. The nature of physical injury after sexual torture (such as cutting off breasts) is an ever present, horrific reminder of the rape. Some of the most frequent psychological symptoms are anxiety, sleep disorders, nightmares loss of self-confidence, depression and, in more severe cases, psychosis. Self-loathing and suicide are not uncommon responses.<sup>12</sup>

### **LEGAL PERSPECTIVE:**

In the context of ITPA especially S.5 ITPA states that Procuring, inducing, trafficking or taking persons for the sake of prostitution. Even attempt to procure or take would constitute this Offence<sup>13</sup>. ITPA provides punishment even for attempt to traffic a person. Therefore, even before the person is physically trafficked, the law comes into operation.

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<sup>12</sup> Ibid

<sup>13</sup> Section 5, ITPA

All those who abet or support the exploitation or any process involved in trafficking are triable under ITPA (sections 3, 4, 5, 6, 7, 9 ITPA, read with Chapter V of IPC dealing with abetment of offences).

As a typical example, under the **Indian Penal Code**, a trafficked girl child has been subjected to a multitude of violations. She has been:

- Displaced from her community, which tantamount to kidnapping/
- Abduction (Sections 361, 362, 365, 366 IPC may apply).
- Procured illegally (S.366 A IPC).
- Sold by somebody (S.372 IPC).
- Bought by somebody (S.373 IPC).
- Imported from a foreign country (if she hails from a foreign country, or even from J & K State, and is under 21 years of age – S.366 B IPC).
- Wrongfully restrained (S.339 IPC).
- Wrongfully confined (S 340 IPC).
- Physically tortured/injured (S.327, 329 IPC).
- Subjected to criminal force (S. 350 IPC).
- Mentally tortured/harassed/assaulted (S. 351 IPC).
- Criminally intimidated (S.506 IPC).
- Outraged of her modesty (S 354 IPC).
- Raped/gang raped/repeatedly raped (S 375 IPC).
- Subjected to perverse sexual exploitation ('unnatural offences') (S.377 IPC). \_
- Defamed (S 499 IPC).
- Subjected to unlawful compulsory labour (S.374 IPC).
- Victim of criminal conspiracy (S 120 B IPC)<sup>14</sup>

The constitution of India prohibits trafficking under article 23. It specifically prohibits traffic in human beings and beggars and other forms of similar forced labour.<sup>15</sup> The inclusion of article 23 which prohibits trafficking has indeed helped the aggrieved to seek redressal but unfortunately it has failed to provide adequate protection to the sex workers in regard to the

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<sup>14</sup> *Supra* note 2

<sup>15</sup> Article 23, Constitution of India

vulnerability of violence in their work places and also to the sexually transmitted diseases. The role of the society or the NGO's in this regard is very important.

Section 8 of The Immoral Traffic Prevention Act, 1956 allows arresting of those who are engaged in acts of prostitution like seducing or soliciting for the purpose of prostitution.<sup>16</sup> The consequence of the Section 8 of the ITPA act is that the victims of the trafficking constitutes the largest number of arrestees rather than the trafficker which is affecting the victims of trafficking and has failed to provide sufficient attention to the aggrieved sex workers.

Although India has number of laws relating to the prohibition of the immoral acts, yet it has failed either to reduce the atrocities on the sex worker or to stop the diseases associated with the trade. The NGO's and the State should take initiatives in providing the victims the means of livelihood and dignity so that they may not necessarily go back to the old profession. If this is to happen, these girls and women must be rescued from the clutches of the traffickers.

## CONCLUSION

The conditions of the trafficked women need to be improved and their emotional and psychosomatic problems are to be tackled with understanding. Prostitution has to be curbed and essential preclusion has to be done. Counseling services could help them and prevent their taking recourse to this profession. Counseling centres should also have homes for such women.

The scale effect of legalizing prostitution leads to an expansion of the prostitution market and thus an increase in human trafficking, while the substitution effect reduces demand for trafficked prostitutes by favouring prostitutes who have legal residence in a country. Our central finding, i.e., countries with legalized prostitution experience a larger reported incidence of trafficking inflows, is therefore best regarded as being based on the most reliable existing data, but needs to be subjected to future scrutiny. More research in this area is definitely warranted, but it will require the collection of more reliable data to establish firmer conclusions.<sup>17</sup> In the profession of prostitution, there is also a precise sort of dehumanization experienced by women who are prostituted. Most of the women experience being treated like

<sup>16</sup> Section 8, Immoral Traffic Prevention Act, 1956

<sup>17</sup> Seo-Young Cho and Axel Dreher, *Does Legalized Prostitution Increase Human Trafficking?*, World Development, Vol. 41, page 67–82, (2013), [www.elsevier.com](http://www.elsevier.com)



a certain kind of object. They do experience a certain kind of abhorrence towards their body. In a male dominated society like India what prostitution does is that it establishes a social bottom beneath which there is no bottom. It is being believed that prostituted women are all on the bottom and all men are above it. In the earlier days women are treated as chattel by men but the society has changed from that period. The women are more empowered now. And the waves of feminism have contributed a lot in this regard. Women have been fighting continuously for their rights. But the existence of prostitution still indicates male dominance. It shows that though the time has passed, but even now the women are being used and abused by the men. Prostitution is a dreadful harm to women, it is abusive in its very nature, and that prostitution amounts to men paying for a woman for the right to exploit her. So, we can say that prostitution leads to human trafficking. Elimination of prostitution may also elevate complicated matters concerning to liberty of selection of both the potential suppliers and clients of prostitution services. Whether to allow prostitution or not to allow is beyond the scope of this article. Men and women are differently situated when accessing human rights. They are also trafficked in different ways and for different reasons. Trafficking violates the right to dignity and integrity of the trafficked person but is also a specific gender-based harm. Advocating for a human rights approach to trafficking does not diminish the importance of a criminal justice approach to human trafficking but rather integrates human rights into prevention, protection and prosecution.<sup>18</sup>

Legalizing prostitution is a dreadful idea, instead of it the government should work very dynamically at ending prostitution, which in our opinion would significantly contribute to the elimination of trafficking in persons and human sexual slavery. Prostitution is intensely rooted in a double standard of morality for men and women. Evidently, maintaining prostitution maintains that double standard rooted in that inequality. That is why legalizing prostitution is wrong as it indicates women's subordination.

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<sup>18</sup> *Supra* note 1