

Humans- Priced, Bought and Sold

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Abstract

The increase in the intensity of two evil practices in our country i.e. human trafficking and prostitution, which are inseparable because the very purpose of trafficking of human body is to perpetuate sexual slavery and to facilitate sexual slavery one needs a thriving human trafficking trade. This paper begins by giving a short insight into the meaning and practices during their earlier days versus the situation in present time. It focuses on the laws already in existence for providing justice to the victims of human trafficking and prostitution. This paper aims to highlight the vulnerable conditions of the victims and root causes for the very existence of such practices. We have divided our paper into two segments, the first part discusses the trade of human trafficking while the later emphasises on its sub-part, i.e. prostitution.

Prostitution is a well-known concept and has been a part of established and organised society since time immemorial. Keeping an eye on the reality, the present facts are mentioned. As far as the laws are concerned there is no doubt as to the illegal status of human trafficking in our country. The continuance of this practice is strictly prohibited and punishable. But for the legality of prostitution, laws are grey, incompetent and rather non-existent to some extent. Ambiguity exists in the sense that prostitution is not illegal per se but there are huge amount of restrictions imposed on its practices questioning its validity in the eyes of the law. Therefore, due to lack of legal awareness, the sex workers live in a petrified condition which indeed allows them to be misused and abused. Often, sex workers are charged with offenses like public nuisance, public indecency, etc.

The agenda is to draw emphasis on whether prostitution should be legalised or not, whether proper laws and licensing could be imposed to keep a check on its impact widely. Furthermore, this paper discusses the constitutional provisions for the sex workers, their practices and protecting victims of human trafficking. This paper aims to highlight the conditions of sex workers in the industry due to the vagueness of the current laws. Also, few suggestions have been made that aim at reducing the practices along with keeping in mind the safety of the victims.

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Human Trafficking

In India, “human trafficking” is an evil and illegal practice, being the trade of human beings. This involves the sale and purchase of human bodies for the explicit purpose of carrying on sexual slavery, prostitution, forced labour or sexual exploitation. The beginning of the initial stage of this process involves influencing the innocent people and entrapping them in situations from which escape then seems to be next to impossible.

There are three elements of this practice, namely-

1. The mechanics of the trade - i.e.what is involved – including transporting, sale, purchase of human beings;
2. The methods of the trade – i.e. how it is done – what influences are used including luring the victims, using coercive methods and seducing parents etc;
3. The purpose of the trade – i.e. why it is done – who benefits from the trafficking.

There are various purposes for carrying on this practise of which prostitution is the most common one. The types of human trafficking include;

Trafficking for forced labour

Generally, the victims of this category belong to developing countries, where resources are limited. This results in fewer opportunities for people to earn a basic living. Such people in need are usually trapped by traffickers who show the desperate people a rosy picture of getting better opportunities of working and earning. The reality is actually quite the opposite with most ending up being the victims of trafficking and coerced to work as slaves in a variety of jobs.

Trafficking in women for sexual exploitation

This is the most common and prevalent form of trafficking. Most commonly, women and children from developing countries, in vulnerable conditions, are lured by making fake promises of providing job opportunities. Later, after travelling away from their home, sometimes to different countries, they are forced into sexual slavery. The women and children find themselves isolated, in a new country and with no support from family or friends. They have no other option for earning a livelihood and many times victims are threatened to be killed or that their relatives would be thrown into danger if they don't follow orders. Fear of physical harm is used by traffickers to make victims do as they are told.

Trafficking for organs

Another purpose of trafficking generally known as organ trade is again an illegal form of business commonly conducted in India for trading organs of human beings like kidneys, liver etc.

Trafficking for domestic servitude

This means that sometimes and nowadays many times humans are immorally trafficked for the purpose of carrying on the work of private households through their help.

The practice of human violation continuing from ancient times and still in existence has now in the modern time been provided with provisions for the protection of its victims.

Constitutional Provisions

1. Constitution of our country has laid down various fundamental rights for the protection of the citizens. The term “fundamental” in itself explains the very essence of these rights as being very essential. Indian constitution talks about the right to protection against exploitation.
2. Article 23 talks about prohibition of traffic in human beings and forced labour. It clearly lays down that any act which is in contravention with the provision where the Constitution has mentioned the strict prohibition of traffic in human beings, would be a punishable offence according to the procedure laid down by law.
3. Further, since forced labour is part of trafficking, the constitution through Article 39(e) makes sure that the state through its principal polices secure the health and strength of workers, men and women and tender age children. This article also ensures that these people are not abused and none of the citizens are forced to opt the profession due to the economic necessity, which does not suit them.
4. Main victims of human trafficking are the youth section of the country. They are easily influenced, trapped and targeted. Thus, again the constitution through Article 39(f) of Directive Principles of State Policy, directs the state to ensure that children are given facilities and opportunities to develop themselves in a healthy manner.

This article makes sure that these opportunities are given with freedom and enjoyed with dignity. Moreover, youth are protected from exploitation too.

Thus, there are two levels at which provisions of trafficking are discussed in the Constitution. First, in the third part of the constitution i.e. fundamental rights, which are justifiable and at the same time enforceable in the court of law. Second, in the Part IV of the Constitution, which is Directive Principles of State Policy, which helps to shape the principal policies of the state for securing and protecting the victims. Indian Constitution through Article 23

strictly prohibits and penalizes human trafficking and India was a signatory to the International Convention for the suppression of traffic in persons dated 9th May 1950.

In the context of these provisions the Parliament passed the Suppression of Immoral Traffic in Women and Girls Bill, 1954, which later became the Immoral Traffic in Women and Girls Act, 1956. Generally, the act of prostitution is considered gender centric, but in reality male prostitution is not a well-known practice. Moreover, due to insufficient laws, stereotypes and stigmas in our Indian society, the male victims of this horrendous act are unable to come forward. Thus, this act was renamed as the Immoral Traffic (Prevention) Act, 1956.

Indian Penal Code Provisions

1. Section 366B Indian Penal Code prohibits trafficking of women and girls into forced prostitution. Anyone who acts in contravention to it would be punished in accordance with the law. Cross border trafficking is also recognized under this code `i.e. any girl under the age of 21 years if imported to India from any other country for the purpose of forcing her into prostitution or illicit intercourse shall be punished with imprisonment which may extend to ten years and shall also be liable to monetary fines.
2. Further, any person who transports or transfer any other person by threatening, forcing, inducing, abducting or by means of deception, for the purpose of exploitation is said to have committed the offence of trafficking, which is again punishable with the imprisonment of term not less than 7 years and may extend to 10 years and may also be liable to fine mentioned in clause (2) of section 370. While clause (3) and (4) provides the punishment of imprisonment of a minimum term of 10 years and may extend to imprisonment for life. It may include fine as well in case the offence involves trafficking of more than one person and trafficking of a minor. Clause (6) talks about punishment in case of a repeated offence of trafficking of a minor, which shall include imprisonment for a minimum term not less than fourteen years and may extend to imprisonment for life.
3. Most importantly, in accordance with clause (7) if any public servant or police officer is involved in the offence of trafficking then they would be punished with the imprisonment for life and may also be liable to fine.
4. Selling, letting for hire or disposing for any other reason any minor, such that the minor is used for illicit intercourse, prostitution or for any unlawful immoral purpose shall be punished with the imprisonment which may extend to ten years and may also be liable to fine.

Prostitution

Prostitution is one of the oldest institutions in Indian society dating back to the Vedic times. of the established and organised society. The Vedas have incorporated it as one of its subject and also states that it is an organised and established profession. It is to be noted that back in time, this profession was accorded the same respect as given to every other profession. The women were proficient in different skills and apart from offering their body for service, they played an important role in the religious practices of the society. However, the scenario is completely opposite in the current era. Prostitutes generally are not treated with respect and their profession is considered immoral yet ironically it is practiced widely. There are certain restrictions imposed on their actions and movements, making them vulnerable to discrimination.

In earlier times before the Britisher colonisation of India, the prostitutes were known as 'devdasis'. They considered God as their husbands and were refrained from marrying. Also, according to known facts, devdasis also known as 'nagarvadhush' did not indulge in sexual activities. Instead, they were called upon by the high society to sing and dance usually for religious or entertainment purposes. Interestingly, they were treated with respect and it is said no man dared to touch their body. It is after the establishment of the East India Company that there was a drastic change in the attitudes to the role of the devdasis. In other words there was a downfall in the outlook of their profession. The British officers witnessed their performances and ended up getting attracted to them. They offered these dancers for the new emerging trend, called one-night-stands, for sexual pleasures and this paved way for prostitution in India.

In the case *BudhadevKarmaskar v. State of West Bengal*,³ the court referred to certain sources like, "Stories of the great Bengali Writer Sharat Chand Chattopadhyaya, many prostitutes have been shown to be women of very high character, e.g., Rajyalakshmi in 'Shrikant', Chandramukhi in 'Devdas' etc. We may also refer to the character Sonya Marmelodov in Dostoyevsky's famous novel 'Crime and Punishment'. Sonya is depicted as a girl who sacrifices her body to earn some bread for her impoverished family."

The term prostitution as defined under the Suppression of Immoral Traffic in women and Girls Act 1956 states that '*prostitution means the act of a female offering her body for promiscuous sexual intercourse for hire, whether in money or in kind.*' It is pertinent to mention here that the act of prostitution does not involve the feeling of love instead it is seen

³AIR 2011 SC 2636.

as a way of earning some money. However after the Amendment Act, 1986, it is known as Immoral Human Trafficking Act of 1956 which defines the 'prostitution' as the sexual exploitation or abuse of persons for commercial purposes'.

Interestingly, there are many women who choose this path of their own will. What is unknown here is whether many of these women would have chosen this profession if they were able to have a better alternative to deal with their economic desperation. Article 23 incorporated under the Indian Constitutions provides rights against exploitation. This right is extended to the sex workers as well. It is under this constitutional provision that the Immoral Traffic (Prevention) Act, 1956 has been incorporated aiming to abolish the devdasi system. The act has been upheld in *Vishal Jeet v. Union of India*⁴ and the court in context of prostitution observed that 'the human trafficking has been prevalent in India for a very long time where the selling and purchasing of woman for a price just like vegetables'. The court in the above case also held that 'the prostitution is not only a social but a socioeconomic problem and therefore measures to be taken in that regard should be more preventive rather than punitive'.⁵ Since the laws are vague there is a lack of legal awareness amongst the sex workers leading them to operate in an environment of uncertainty that allows them to be abused.

Provisions Of Prostitution Under The Immoral Trafficking (Prevention) Act, 1956

In the present scenario, prostitution is not illegal per se, however, there are certain acts in relation to the practice which are not permitted by law. In other words there are certain acts which are offences punishable by law.

Section 3 provides that any person who keeps or assigns such keeping or manages a brothel shall be punished. Another pertinent fact to be mentioned here is that even a landlord owner, tenant occupier, etc. who with knowledge gives up their premises or accommodation for prostitution is also punished under this section, keeping in mind, having knowledge is the essence of the offence.

Any person who is over the age of eighteen years and knowingly lives on the earnings of the prostitution of any other person, who is a third person often known as a pimp of the prostitute, shall be punishable with the imprisonment of a period below ten years and above seven years under Section 4 of the Act. Furthermore, this section enforces that any person

⁴AIR 1990 SC 1412.

⁵ Ibid.

who is above the age of eighteen years is proved: to be living or habitually being in the company of the prostitutes in a certain manner; exercising control, direction or influence over the movements of the prostitute in a manner portraying aiding, abetting or compelling her prostitution; or acting as a tout or pimp, shall be presumed that such a person is living on the earnings of the prostitution unless and until the contrary is proved.

The Act by Section 5 also restricts the acts of a person who procures another person for instituting prostitution. In addition to this, inducing a person to take up prostitution and moving the person from one place to another for this purpose is also prohibited. Such act is also punishable under Section 366, 372 and 373 of the IPC.

Another Section which needs to be mentioned here is Section 7 which prohibits the practice of prostitution in or in the vicinity of public places. It states that any person who practices prostitution in or within the area of 200 meters from any place of religion, school, college, hospital or any such other kinds of places may be brought under the notice of the Commissioner of Police or the district magistrate. Along with the prostitute their client is equally liable under this section and is punishable for a term which may extend to 3 months.

Section 8 prohibits reducing and soliciting persons for the purpose of prostitution in any public area or in sight of it.

The above laws do not criminalise the practice of prostitution, but it makes sure that it is not encouraged. Furthermore, the vagueness of laws has created uncertainty requiring an urgent need to clarify whether prostitution should be legalised or not. Often women are charged with offences like public indecency and public nuisance under IPC which requires further introspect. In the case of *BudhadevKarmaskar v. State of West Bengal*⁶ the court stated that prostitutes are entitled to a life of dignity by Article 21 of the Indian Constitution. Furthermore, the court asserted that the central government and the state government through Social Welfare Boards should prepare certain schemes for rehabilitation of woman who are forced into this profession or for those who had no other option for earning money.

Legalizing Prostitution

It is pertinent to mention here that legalizing sex trade will not encourage the trade as it has been in practice for a very long period of time and will continue irrespective of its legal status. Infact, criminalising the sex trade shifts it under the table thus making it even harder and near impossible to keep a check which encourages rape culture and human trafficking. No tangible assistance and support can be provided to the workers if the sex trade becomes

⁶AIR 2011 SC 2636.

illegal. This eventually places them at risk of being treated as criminals in the eyes of law irrespective of the fact that they may have been forced to be in it in the first place. This is like throwing the sheep to a pack of wolves to be eaten alive. The law has to make the trade safer for the sex workers and for their clients so no one is mistreated or taken advantage of. Legalizing prostitution will protect the sex workers from mistreatment while providing women rights that will be denied to them if the sex industry is criminalised.

Following are some of the points and suggestions for legalizing the sex trade-

1. Legalizing the sex industry is the only way to regulate its practices and by implementing laws in an organised way. The government will be able to control the malpractices to make it safer for the sex workers and their customers.
2. Another important factor is that if the sex trade becomes legal then the government will be able to keep a proper check on HIV/AIDS by providing regular health checkups and promoting the use of condoms. By making it compulsory, it makes it safe for both the sex worker and their client.
3. There should be provisions for proper licensing. This will help in controlling trafficking. Maintaining a proper record and by having a proper procedure for registration will help in cutting down the no. of people who are forced into this profession. Not only this, it will provide these sex workers a professional status.
4. The government will be able to impose restrictions on its expansion to public areas. For example, consumption of alcohol is legal however, there are certain restrictions imposed on it. One wouldn't expect an alcohol shop or pubs and bars in residential areas. Smoking is prohibited in public areas. Similarly, prostitution can be controlled the same way and does not need to be criminalised.
5. Sex is a biological need and hence it cannot and should not be policed. Decriminalising the trade may curb the problems of sexual violence and various other sexual crimes like rape.
6. Prostitution is a kind of business where the maximum transaction happens under the table which indeed promotes black money and the government becomes incapable of reaping the benefits of taxes. Hence legalizing the practice solves this purpose too.
7. It is necessary to mention here that criminalising the buyers does not in any way protect sex workers, rather puts them in danger. Prostitutes have to meet their clients in aloof places and are forced to put the protection of their client above their own well-being making them vulnerable to discrimination.

8. Sex trade has the support of many leading human rights organisations like WHO, UNAIDS, HIV and AIDS social groups etc. There should be provisions for human rights protection of these sex workers. Along with it proper education must also be practised.
9. The last fact that needs to be mentioned here is that the government should impose proper rehabilitation scheme for people who have been forced into this profession and also for the people who want to drop sex work and start a new life by joining other profession.

To Sum It Up

Human Trafficking

In the case *Prajwala v. Union of India*,⁷ Prajwala an anti-trafficking organization filed a PIL in the supreme court so that government creates a “victim protection protocol” for protecting the rights of the victims of trafficking and rehabilitating women and children who have been the victims of human trafficking. The court held that there should be complete protection to the victim, his/her family and the witnesses involved. On the other hand, in *Vishaka v. State of Rajasthan*,⁸ SC held that the international treaty provisions must be read with the Indian law so as to expand the provisions for protecting the victims. Also, in absence of any domestic law such international laws can be used for interpretation.

Hence there is no doubt that human trafficking in any sense is prohibited by law and every attempt shall be made eradicate it.

Prostitution

It is recommended that Prostitution must be decriminalised. It is a win-win situation for the workers, their client, the government and its people. Prostitution is a victimless crime. It is not a crime against anyone. A person has a right to their body and the right to decide whether they want to use it to earn money or not. Prostitution should be treated as a profession to be practiced by people with their own consent. One peculiar fact that always contradicts sex work is the cultural and the moral values fed to us. Moral values are different for every person. Often moral issues arise when we are judging someone’s choice. Something might be right for one while being wrong for another. Moreover legalizing something will not encourage any person to shed their values. For example live-in relationships are legal now, however not everyone, who are in a relationship, plan to shift with their partners as it might not be morally right for them but that doesn’t not make it legally wrong. It is to be kept in mind that what is morally wrong might not always be legally wrong and if we keep the judgment out of it then there will be no problem.

⁷ WP(C) No. 576 of 2004.

⁸ AIR1997 SC 3011.