

# Access to Criminal Justice and Legal Reforms in India

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## Abstract

This paper is based upon the title “Access to criminal justice and legal reforms in India” and the theme this will be dealing would be “Access to Justice for Victims of Trafficking and Prostitution”. Trafficking is one of the most running cases today that we see today. Many people are involved under it. Some are organizing it and some are trapped because of them. Maybe for their living and family. The cause may be any of it but trafficking needs to be stopped. The other part is justice for the once under prostitution. Prostitution is one’s choice this is legalised in other countries and some do it on their own choice,while some our forced to do those who are forced should be given proper counselling. Like rape is one of the issues to stop that one way would be to legalise prostitution. If we practically look into it’s our body and we can keep it the way we want to and nobody is supposed to stop us. Likewise Prostitutes have their own choice and those caught should be relieved if they are not forced to do so. Justice is one thing which is denied and which is provided late herein India but if it’s provided on time then in no time crimes would go down. Reforms should come up one by one so that there is no delay in justice. In no time if the courts start up to take the case easily justice would be provided.Wise decisions are yet to be taken. The decision which is taken wisely gets over to heights.

“Laws catch flies but let hornets go free”

The wrong should be held and the right ones should be provided with justice.

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## **Introduction**

Criminal justice system is mainly made up of police, courts and correction agencies. Criminal justice system specifically deals with “laws regarding criminal behaviour”. The police are engaged in keeping of law and order. Another group that studies criminal justice includes the lawyers who defends or prosecute those accused of doing criminal activities.

However, it is quite important to talk of justice whenever one is implying to criminal justice system due to the fact that the accusers needs a fair trial. Trafficking and Prostitution are amongst them.

Trafficking in persons, also known as modern slavery or human trafficking, includes both sex trafficking and compelled labour. Human trafficking can include, but does not require, movement. Under the TVPA (The Trafficking Victims Protection Act of 2000), people may be considered trafficking victims regardless of whether they were transported to the exploitative situation, previously consented to work for a trafficker, or participated in a crime as a direct result of being trafficked. At the heart of this phenomenon is the trafficker’s aim to exploit and enslave their victims and the myriad coercive and deceptive practices they use.

Prostitution is the business or practice of engaging in sexual activity in exchange for payment. Prostitution is sometimes described as sexual services, commercial sex or, colloquially, hooking. Prostitution occurs in a variety of forms. Brothels are establishments specifically dedicated to prostitution. Although the majority of prostitutes are females, and have male clients, a prostitute can be, and have clients, of any gender or sexual orientation.

## **Background**

### **Prostitution**

Prostitution is technically illegal but widely practiced in India. By one count prostitution is an \$8 billion a year industry with more two million prostitutes and 275,000 brothels. In another count in all of India, there are as many as 10 million commercial sex workers. Their core clientele has traditionally been truck drivers, migrant workers and other men separated from their families for long period of time.

Many teenage girls turn to prostitution to raise money for their families or out of need for money to deal with a debt or a problem related to their husbands. Some village girls are tricked into entering the trade in the cities with promises of good money or another kind of job. Many surveys have found that a third of all prostitute enter the trade because of poverty and more than a forth become prostitutes after marital problems. These girls are often served as objects of sexual pleasure for temple priests and pilgrims. The current knowledge about female sex

workers is mostly gained from studies done in the red-light districts of metropolitan cities. Generally, prostitutes tend to come from the less-educated class of women, including single abandoned girls, and economically distressed women.

### **Trafficking**

Human Trafficking is the third largest organized crime after drugs and the arms trade across the globe. According to the definition of the United Nations-”trafficking is any activity leading to recruitment, transportation, harboring or receipt of persons, by means of threat or use of force or position of vulnerability”. Close to 80% of the human trafficking across the world is done for sexual exploitation and the rest is for bonded labor and India is considered as the hub of this crime in Asia. As per the statistics of the government-in every eight minutes a child goes missing in our country. In 2011 about 35,000 children were reported missing more than 11,000 out of these were from West Bengal. Further, it is assumed that only 30% of the total cases are reported, so the actual number is pretty high.

Human trafficking is one of the major problems in India. Till date no concrete study has been conducted so far to know the exact number of trafficked kids in India. Kids especially girl and young women, mostly from Northeast are taken from their homes and sold in faraway states of India for sexual exploitation and to work as bonded labour by the agents who lure their parents with education, better life, and money for these kids. Agents do not send these kids to school but sell them to work in brick kilns, carpentry units, as domestic servants, beggars etc. Whereas girls are trafficked for the purpose of sexual exploitation.

### **Legal Provisions**

#### **Trafficking**

Through the Immoral Trafficking Prevention Act (ITPA), the Indian Government penalizes trafficking for commercial sexual exploitation, with prescribed penalty of 7 years’ to life imprisonment.

India also prohibits bonded and forced labour through

1. Bonded Labour Abolition, Act
2. Child Labour Act and
3. Juvenile Justice Act.

Sections 366(A) and 372 of the Indian Penal Code, prohibits kidnapping and selling minors into prostitution respectively. Penalties under these provisions are a maximum of 10 years’ imprisonment and a fine.

Trafficking in Human Beings or Persons is prohibited under the Constitution of India Article 23(1). Protection of Children from Sexual Offences (POCSO) Act, 2012, which has come into effect from 14<sup>th</sup> November, 2012 is a special law to protect children from sexual abuse and exploitation. The Immoral Traffic (Prevention) Act, 1956 (ITPA) is the premier legislation for prevention of trafficking for commercial sexual exploitation.

Criminal Law (Amendment) Act 2013 has come into force wherein Section 370 of the Indian Penal Code has been substituted with Section 370 and 370 A IPC which provides for comprehensive measures to counter the menace of human.

There are other specific legislations enacted relating to trafficking in women and children:

1. Prohibition of Child Marriage Act, 2006
2. Bonded Labour System (Abolition) Act, 1976
3. Child Labour (Prohibition and Regulation) Act, 1986
4. Transplantation of Human Organs Act, 1994

Apart from specific Sections in the IPC the State Governments have also enacted specific legislations to deal with the issue.

### **Prostitution**

Section 3 provides punishment for 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,

A Person who-

1. Being the lessee, occupier, tenant, or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as brothel or
2. Being the owner or lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is willfully a party to the use of such premises or any part thereof as a brothel.

The other laws against Prostitution in India are;

1. Suppression of Immoral Traffic in Women and Girl Act-1956
2. Prevention of Immoral Traffic Act-1956
3. Immoral Traffic (Prevention) Act-1956

### **Legal Rights and Protection of the Sex Workers in India**

In the present state of affairs the laws that regulate prostitution in India is immoral Trafficking(Prevention)Act,1956.It is the main statute dealing with prostitutes in India.

One of the major protections that it gives to prostitute worker is:

1. It does not criminalise prostitution per se,
2. It punishes the acts of the third parties such as middle men,brothel keepers,pimps,etc. who either facilitates this entire act or procure and live on the earnings of the prostitute workers.
3. In furtherance to same-sex workers cannot solicit in public spheres but can practice their trade privately.
4. In private spaces neither the workers nor the clients are held criminally liable or prosecuted.

### **Causes**

There are a few causes which are considerable for trafficking as well as prostitution:

1. Men for work generally migrate to major commercial cities.
2. To fulfill the supply all sorts of efforts are made by the suppliers like abduction etc.
3. The economic injustice and poverty.
4. Debt labour is not known much but it is illegal but prevalent in our society.
5. Social inequality, regional gender preference, imbalance and corruption are the other leading causes of human trafficking in India.
6. Parents in tribal areas send kids for better life in terms of education and safety.
7. Girls and women are not only trafficked for prostitution but also bought and sold like commodity ratio is less as compared to male due to female infanticide.These are then forced to marry.

### **Socio-Legal Analysis of the Problem**

Prostitution has always prevailed as profession which brings with it a large amount of money. It has been there even when times and eras changed probably because human sexual demands neither declined nor completely satisfied. A lot of women indulge in this profession for various heartbreaking reasons including prevalent social customs,marriage accompanied with desertion,greed and need,psychological desires of physical pleasure and to top them all-rape and abandonment by the family and society.

As a matter of fact criminalizing prostitution only makes society worse as incidents of human trafficking,child trafficking,coercion and exploitation will only increase. Prostitutes deserve their legal and social rights, primarily because they are also human! All the views and

statements regarding prostitution are absolutely baseless because words in itself do not resolve any of their issues. India is developing, but with a mindset so backward that the women folk are always threatened. Their profession should not be looked down upon. Infact, it must be considered a brave choice. The legal analysis of this problem has already been mentioned.

While talking about human trafficking it's now a major issue especially in India. Actually, it's a trade now and what a trade is? It's a way of making money. Money has become such an important part in our lives that people have started using humans and some of them do not even leave their own family members. We may not even get to know that who has been traded and when, how or whatever. These days we also see some reality check scenes in which it is viewed that some people using just few days born kids for begging that's also what we call trafficking. As far as we see things they aren't properly looked upon we may look down upon the prostitutes but we definitely don't stop the trafficking rather indulge into them.

### **Impact and Implications**

India is a country full of contrasts. On one hand we find the noblest examples of humanity and peace, whereas on the other hand there are many instance of inhuman action of cruelty. A very accurate, comprehensive picture of prostitution in India is not available since sexual exploitation and sale of woman and children are mostly unreported crimes since many cruel episodes are caused by middlemen and procure who act secretly and in a very organized, criminal manner.

Girls and young women living below poverty line or belonging to Schedule Class or Schedule Tribe or Backward Classes are comparatively more vulnerable to this evil. In rural India women are facing hard life, which is full scarcity. Human trafficking leaves no land untouched. Trafficked persons often do not have limited access to basic necessities such as safety, food, sleep, hygiene, and medical care. The effects of trafficking vary depending on the type of trafficking and the specific situation. Victims of trafficking often experience harsh physical impacts due to excessive work or the use of force by traffickers. In addition victims may be exposed to serious health risks. It can also lead to impairment, memory loss, depression, and even suicide. It may greatly impact children's emotional, physical and overall psychological development. They may also experience social ostracism. They are often isolated from their circles leaving individuals unable to engage socially. There are various things which cannot even be mentioned including the fact that they have a difficult and harsh life.

### **Possible Outcomes and Solutions**

Many outcomes can come and go but the first and foremost thing is we need to follow them in order to continue them. First of all we need to increase awareness amongst the members about the trade of trafficking and prostitution. . All training activities and public awareness campaigns should be carefully designed to engage the public and service providers to act on the behalf of victims and survivors without doing any harm. There should not be lack of training amongst the professionals who interact with children.

There should be efforts to prevent the commercial sexual exploitation and sex trafficking of minors. There should be efforts to identify and respond to the commercial sexual exploitation. Commercial sexual exploitation and sex trafficking of minors should be understood as acts of abuse and violence against children and adolescents.

Identification of victims and survivors and any intervention, above all, should do no further harm to any child or adolescent.

Legalising prostitution can also be of great help for the people living in India because it can have an effect on rape because the ratio for rape is high and sex has now become a need especially for the youngsters because at a younger age they need it to utmost level .It would stop it atleast to some extent. If legalised it wouldn't be thought of as a trade. Also, a prostitute has her own right to live with dignity and with this that would be saved as in India we ask for equal rights then there you go, you are letting her live the way she wants too. At the end of the day it's her body as she wants and not the public's body.

### **Conclusion**

The trade in human lives-is a vile and heinous crime, it is the scourge of the mankind, and a gross abuse of human rights. It should shame us all as human beings.

The general public is becoming more aware of the sector of trafficking and prostitution. What with 'Fair trade' products being produced so that consumers know that workers are being paid fairly, but it is still very difficult for buyers to always know exactly where goods are being produced, the age and well-being of the workers, and if they are being produced in safe and respectful environments.

There have been many researches over them and governments have been pressurized to make changes to laws concerning the rights of victims of human trafficking. Sadly, though because of cut backs to funding, the system is constantly failing many victims and allowing the perpetrators to continue.

Human Trafficking touches every country and countless industries worldwide, and while there are many individuals and organizations working globally to combat this problem, it may take time before it is fully realized just how huge the issue is.