

COMBATING VICE: THE IMMORAL TRAFFIC PREVENTION ACT 1956

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BEST CITATION – SARA RIZVI, COMBATING VICE: THE IMMORAL TRAFFIC PREVENTION ACT 1956, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 6 (5) OF 2026, PG. 673-677, APIS – 3920 – 0001 & ISSN – 2583-2344.

ABSTRACT

One of the oldest profession that has existed since the beginning of time is prostitution. In a society where girls are forced into the flesh trade by their parents and relatives, prostitution is a necessary evil that is widely accepted and reinforced by complicated web of social factors. Their own people treat these young girls as a commodity that may be bought and sold to brothel for a fee. Therefore, prostitution resembles a kaleidoscope of images fostered by social public programs such as the portrayal of women as sex object to satisfy their obsessive demands. Despite laws prohibiting it, it has endured throughout history in almost every nation and is openly practiced supported and defended. The international world responded to this heinous advancement of prostitution and the immorality of trafficking in persons for prostitution by enacting a number of conventions. The constitution mandate under Article 23 talks about prohibition of trafficking and all forms of exploitation. Prostitution and beggary were among the several forms of human trafficking that were intended to be eradicated. Despite the fact there were numerous local acts, but nothing of them were uniform. In 1956, the Suppression of Immoral Traffic in Women and girls act, known as SITA the purpose of this law was to penalize brothels for procuring and pimping as well as to stop prostitution near public areas. The goal of the act is to prevent or outlaw the commercial vice of trafficking women, which includes children for the purpose of prostitution as a structured form of income. Therefore this paper aims to analyze and examine the effectiveness of the present legislation whether this act attempts to combat the problems relating the trafficking of women and children.

INTRODUCTION

Human trafficking is a global issue where men and women are being sold and forced to cross international borders for prostitution (in case of women and girl child) forced labor (in case of men) for commercial exploitation and economic gain. Human Trafficking as defined by United Nation (UN) Protocol⁷⁹⁶ is transporting, finding harboring or receiving people by threatening or using force or other forms of coercion, kidnapping, fraud, deception, abuse of power or vulnerability or by offering

and receiving money or benefits in order to gain the consent of someone in a position of authority in order to exploit them. The exploitation, forced labor, slavery or behavior akin to slavery, servitude or organ removal are all considered kinds of exploitation.”⁷⁹⁷ It is estimated that around 3 million women in India become victim of trafficking annually in the country and around 40% of these are minors⁷⁹⁸. Human Trafficking is a huge concern for our country as India is extremely affected by trafficking in women and girl children for commercial exploitation. There are

⁷⁹⁶ Protocol to prevent, Suppress and Punish Trafficking in persons especially Women and Children, Supplementing the United Nations convention against Transnational Organized Crime (UN Protocol against Trafficking) The Government of India signed the Trafficking Protocol on (Dec. 12, 2002).

⁷⁹⁷ UN Protocol against Trafficking. art.3.

⁷⁹⁸ UNODC, India country report, ministry of Women and Child development, New Delhi, 2008,p4

approximately 10 million prostitutes in India⁷⁹⁹. Everyday about 200 girls and women in India enter prostitution and 80% of them are against their will.⁸⁰⁰ These figures indicate that the laws are quite ineffective in combating Human Trafficking for sexual purposes and despite being an affective country India lacks a serious and ineffective redressal mechanism to tackle the problem of trafficking in women and female children. There are so many domestic laws that are directly or indirectly talks about combating trafficking and despite of this there are constitutional mandates but still trafficking remains a pervasive and evolving crises affecting thousands of individuals at large

Secondly Corruption in India plays a vital role in retarding the redress measures in trafficking cases. Traffickers have money and trafficking business in profitable and hence, the traffickers play with money in order make the authorities to their side dishonest law enforcement officials still help sex trafficking victims travel and shield traffickers pimps, brothel keepers, hotel or lodge workers, etc⁸⁰¹

OBJECTIVE OF THE ACT

Eliminating the commercial vice of trafficking women, men, and children for the purpose of prostitution as an organized crime is the primary goal of this act. The act preamble was created in accordance with the International Convention that was signed in New York on May 9, 1950 for the suppression of immoral trafficking of girls and women. The short title of the act says that the act may be called "The Suppression of Immoral Traffic in women and girls act, 1950", now "The Immoral Traffic (Prevention) act, 1956". The act's preamble was created in accordance with the international agreement that was signed in New York. In addition to prevent prostitution, the legislation

should also aim to provide for rehabilitation of prostitutes, making this social legislation dual its punitive and ameliorative goals.⁸⁰² In *Ratnamala, re*⁸⁰³, it was observed: "It was no doubt that what is aimed at under the Act is not abolition of prostitutes and prostitution as such and make it per se a criminal offence or punish a women because she is prostitute herself, the purpose of the enactment was to inhibit or abolish commercial vice, namely traffic in women and girls for the purpose of prostitution as an organized means of living." In *Vishal Jeet v. Union of India*⁸⁰⁴, According to the court, the act addresses both social and social-economic issues. As a result, the law's provisions are more preventive than punitive.

After reviewing various sections of the act it would demonstrate that, in addition to the goal of suppressing the immoral trafficking of women and girls, the act also aims to reduce the opportunities that these women have to interact with the public, assist other women in doing so, and assist other women who have already chosen that path in rehabilitating themselves by removing them from their former surroundings.⁸⁰⁵ Whereas as section 3 and 4 discuss about the penalties for operating a brothel and for surviving on the profits of prostitution. Section 7 and 8 explains how to reduce the chances of being a threat to social decency. Section 10, 19 and 21 discuss how removing women from their former surroundings might help them transform themselves. Of course it has been made that the prostitution itself is not made punishable under the court of law so the provisions of the act only talks about punishing brothels keepers. Therefore, it evident from the act's scheme that the parliament's primary goal in passing this legislation was to prevent the exploitation of prostitutes and carry out the objective of Article 23 read with 35 of the constitution by

⁷⁹⁹ Robert I, Friedmen, India's Shame: Sexual Slavery and Political Corruption are leading to an AIDS Castrophe, *The Nation*, April 8, 1996.

⁸⁰⁰ Centre for Development and Population Activities (CEDPA) and Planning Rural – Urban Integrated Development through Education (PRIDE), *Devadasi System continues to Legitimise Prostitution: The Devdasi Tradition and Prostitution*, *Times of India*, (Dec. 4, 1997).

⁸⁰¹ K. Hanumantha Rose, *A Critical study of the Law relating to prevention of Immoral Traffic in India with Special Reference to east Godavari District in ANDHRA PRADESH*, (2014) (Acharya Nagrjuna University).

⁸⁰² Dr Mamta Rao, *Law Relating to Women and Children*, (2005).

⁸⁰³ A.I.R. 1962 Mad 31.

⁸⁰⁴ (1990) 3 S.C.C. 318:1990 S.C.C. (Cri) 482.

⁸⁰⁵ K. Hanumantha Rao, *A Critical Study on the Law Relating to Prevention of Immoral Traffic In India with special reference to East Godavari District in Andhra Pradesh*, (2014) (Acharya Nagarjuna University).

suppressing trafficking in women and girls. Parliament established measures to address all of the negative effects that resulted from it.⁸⁰⁶

“The Act’s provisions tend to reinforce the idea that the goal of the legislation is to prevent or outlaw commercial vice, specifically the trafficking of women and girls for the purpose of prostitution as an organized way of life. It does not, however, seek to outlaw prostitution per se, make it a criminal offence, or punish a woman for engaging in self-prostitution.”⁸⁰⁷“This law aims not only to prevent the trafficking of women and girls but also to restrict prostitution if its operations have the potential to attract young people or cause annoyance to who frequent visit places of worship or hospitals. There suspicious are impacted by nursing homes and educational institution.”⁸⁰⁸

ERADICATING EXPLOITATION: CONSTITUTIONAL SAFEGUARDS AGAINST TRAFFICKING

The Indian Constitution directly or indirectly talks about human trafficking. Some of the core provisions which directly talks about eliminating human trafficking. Article 23⁸⁰⁹ strictly prohibited human trafficking and forced labor and consider such practices as illegal. Article 24 prohibits children from working in hazardous jobs or in mines or plants that are inappropriate for their age. The language used in articles 23 and 24 gives the government a clear mandate to act decisively in order to end human trafficking as a violation of fundamental rights. Article 39⁸¹⁰ also talks about children that they should be develop in a healthy manner and be protected from all kinds of exploitation Article 42⁸¹¹ also ensures about that there should be humane working conditions and Article 45⁸¹² give rights to every children to have free and compulsory education.

Thus it can be said that Constitution treats human exploitation as an illegal act and

consider this as a violation of basic human rights and mandate that it is the state responsibility to actively combat human trafficking and make sure that no one rights are violated.

CRITICAL ANALYSIS OF THE ACT

The Immoral Traffic (Prevention) Act 1986 The Central law addressing Indian trafficking.⁸¹³ Although the term never implied the immoral trafficking of humans, the scope of the ITPA’s is restricted to prostitution or commercial sexual exploitation, and anyone who aid and abet such exploitation, including customers and others who depend on prostitution earnings, are subject to penalties.⁸¹⁴ The primary flaw of the act is its exclusive focus on trafficking concerning prostitution, neglecting other forms of trafficking such as domestic labor, child labor and organ harvesting etc. The basic deficiency of ITPA’s is that it lacks a definition of trafficking even though it is a specialized piece of legislation dealing only with trafficking. Furthermore, rather than defining commercial sexual exploitation precisely, the act focuses on indentifying brothels as a location of commercial sexual exploitation and prosecuting those who assist it.⁸¹⁵ The legislation is unclear as to whether prostitution or prostitution for trafficking is prohibited. This ambiguity allows the criminals involved in the transportation and sheltering of prospective victims to go unpunished.⁸¹⁶

This act penalize all stages of trafficking including recruiting, transporting, transferring, housing or receiving individuals for the purpose of prostitution in order to being the entire trafficking chain under its jurisdiction. However, it punishes trafficking only for the purpose and not when it is done for bonded labor organ trade, domestic work, slavery, etc. There is need for a comprehension legislation to tackle the issue of trafficking for all the purpose and not

⁸⁰⁶ Seetharamma v. Sambasiva A.I.R. 1964 AP 400 at 402-403.

⁸⁰⁷ Bai Shanta v. State of Gujarat, A.I.R. 1967 GUJ.211 AT 213.

⁸⁰⁸ Begum d/o Husain Saheb Kalawat v. State, A.I.R. 1963 Bom. 17.

⁸⁰⁹ INDIA CONST. art.23

⁸¹⁰ INDIA CONST. art. 39, cl. f.

⁸¹¹ INDIA CONST.

⁸¹² INDIA CONST.

⁸¹³ SITA was amended in 1986 and renamed ITPA.

⁸¹⁴ Kiran Bhatti, A Review of the Immoral Traffic Prevention Act,1986, (2017).

⁸¹⁵ Alla Srihari, Immoral Trafficking of Women and Children for Sexual Exploitation, 7 IJNRD (2022).

⁸¹⁶ Ibid

just prostitution. Also, the terms “sexual exploitation” and “commercial purpose” have not been defined leaving them open to interpretation. It legalizes prostitution for a person’s own profit but declares it illegal if it is conducted in a brothel or from any public location within 200 meters of a school, house of church, hotel, hospital, assisted living facilities or other public location.⁸¹⁷

Therefore, the commercial aspect of prostitution is declared illegal but it lacks clarity on whether prostitution ought to be a legitimate way of earning a living if the person enters or stays in the profession out of choice. Anyone who enters a brothel with the intention of sexually exploiting a victim of human trafficking faces penalties under this legislation. It would be difficult for a person visiting a brothel to distinguish between a trafficked person and a non – trafficked person.⁸¹⁸

So it has been clear by reviewing the section of the Act that it does not prohibit prostitution per se but only curbs the open manifestation of prostitution. The Supreme Court of India, in *Gaurav Jain v. Union of India*⁸¹⁹, pointed out the issue of offspring of prostitutes and said, that it would not be in the best interests of the children of prostitutes to have separate homes and schools. The court further stated that these children should leave their mothers behind and should mingle with the society so that they become part of society. Additionally, the judge suspended the order that these kids be kept apart from their mother they should be considered as the part of the society and should live in a society as its part. So far as rehabilitation of the prostitutes is concerned section 21 of the Act talks about the establishment of the Rehabilitation and Protective homes for the prostitutes. However, in reality, these protective homes prove to be a failure on the state’s part, as, no remedial actions have been implemented there and women were forcefully detained there and were told to learn sewing and such other

things⁸²⁰. As pointed out in the book named “*Raided*”⁸²¹, an empirical study has been done on the prostitutes who left the correctional homes and again come back to brothels. According to these women they earn more in brothels than in any other business so they actually want to continue their sex work and that is why they came back to brothels again.

According to the report published by the Centre for Feminist Legal Research⁸²², “The ITPA provisions operate against the women in prostitution in many ways. The Act contains several provisions that directly target the women in prostitution such as those that prohibit prostitution in the vicinity of a public place and soliciting for the purpose of the prostitution.”

ACTIVITIES AIMED AT PREVENTING THE TRAFFICKING OF WOMEN AND CHILDREN

In addition to the Immoral Trafficking (Prevention) Act, the government has implemented a number of other measures.

1. The Ministry of Women and Child Development is implementing “Ujjawala” – a comprehensive Scheme for the Prevention of Trafficking and Rescue, Rehabilitation, Re-integration and Repatriation of Victims of Trafficking for Commercial Sexual Exploitation.⁸²³
2. The Supreme court urged the government in 2018 to combat the exploitation of women in the sex industry and consider legalization in specific locations with rigorous regulation.⁸²⁴ In the response to the court directives the government started the awareness campaigns to educate people about the risk involved in the sex trafficking.
3. The MWCD⁸²⁵ has established a special task force to tackle cross-border

⁸²⁰ Aman Ahmed, A Critical Analysis of the Immoral Traffic (Prevention) Act, 1986, 5 JLSR (2019).

⁸²¹ <https://www.sangram.org/resources/RAIDED-E-Book.pdf>.

⁸²² www.cflr.org/form.htm.

⁸²³ www.drishtias.com.

⁸²⁴ Ibid

⁸²⁵ Ministry of women and child Development.

⁸¹⁷ Ibid

⁸¹⁸ Ibid

⁸¹⁹ 1990 SCC 709.

trafficking in collaboration with the ministry of external Affairs.

CONCLUSION

As per evaluation of the Immoral Trafficking (Prevention) Act 1956 that to what extent this legislation is able to stop trafficking in women so by analyzing the data and their percentage this law has been prove quite ineffective in combating trafficking as India is recognized as hub of Trafficking and the main deficiency in this act is that the title talks about the Trafficking but there is no precise definition of Trafficking present in this act and it only stuck with the concept that the trafficking only happens of women and girl child for the sole purpose that is prostitution and is silent on other types of trafficking such as Trafficking for bonded labor, domestic work etc. Moreover in this act cross border dimension of trafficking is neglected.

It is evident from above analysis that there are many lacunas in the act regarding redress of trafficking cases for sexual exploitation plus societal and victims attitude can also adversely affect in redressing effectively the trafficking cases for sexual exploitation and also that this act should be protective but it still this law remains punitive as it still prosecute victims of human trafficking. and it also increased the punishment for those individuals who are living on the earnings of the prostitute means it include prostitute children in its purview which means depriving them of their only source. Additionally, victim's rights are not well defined. Both at the federal and the state levels, the government ought to take action by proving effective remedial measures and make provision for Rehabilitation, Reintegration, and well-being of sex-trafficking victims. Secondly legal awareness is one of the effective measures for redress in trafficking cases.

So far as children of the prostitutes is concerned the guidelines of Supreme Court should be taken into account that children should be interact with the society and will also make

contributions in the growth and progress of the country.

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