

**INTERNATIONAL JOURNAL OF LAW  
MANAGEMENT & HUMANITIES**  
**[ISSN 2581-5369]**

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**Volume 3 | Issue 4**

**2020**

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# Accessing the Issues associated with the Immoral Traffic (Prevention) Act, 1956

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## ABSTRACT

*The research attempts to review the existing law about Human Trafficking in India and the major concerns present in the act which are not addressed by the government. Since the Immoral Traffic (Prevention) Act was last amended in the year 1986, it lacks a lot of changes which are to be made for the act to fit in the present society. It also aims to highlight the problems in the act with the help of case laws as to how the application of the act has somehow failed to grant the remedy. Some new techniques and measures are required in both short-term and long-term aspect to combat Human Trafficking. Like other countries where trafficking laws are much stricter than India, it must adopt such anti-trafficking laws to evade the Human Trafficking issue. The organs involved in the Criminal Justice system should work together to safeguard the country from Human Trafficking.*

**Keywords:** Human Trafficking, Immoral Traffic, Prostitution, Brothel.

## I. INTRODUCTION

Trafficking of human beings especially the immoral use of women and girl child for the purpose of sexual satisfaction has been a global concern. It is not of recent origin but trafficking of human beings which is of different types like forced sex or rape, sexual slavery, bonded labour, illegal organ trade, drug peddling, to name a few, can be dated back to history. During the times of war, women and girls were the most vulnerable races as they were raped and used for satisfying the lust of the masses of soldiers of the oppressor states. Trafficking can be said to be a form of slavery<sup>3</sup> as human beings are forced to be slaves to others in terms of labour or to beg or are sexually exploited. Like the illegal trade of arms and drugs, trafficking is positioned to be the third<sup>4</sup> most largest trade in the world. It has been seen that the drug mafias have rose to be richest in several western countries and also the smuggling of arms has a huge

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<sup>3</sup> *Human Trafficking*, VIKASPEDIA (5 May 2020),

<https://vikaspedia.in/social-welfare/social-awareness/human-trafficking-1/human-trafficking>, (last visited Apr. 9, 20:21 P.M).

<sup>4</sup> *Trafficking and the Law (2011)*, HUMAN RIGHTS LAW NETWORK (Second Edition),

<https://hrln.org/wp-content/uploads/2017/09/trafficking--the-law.pdf>, (last visited Apr. 9, 22:26 P.M).

amount of money involved, besides this is the trading of human beings for the sake of gain and generally is transnational in nature through which the traffickers profit either through money or labour.

India is a member of the United Nations and it has ratified the 'International Convention for the Suppression of Immoral Traffic in Persons and the Exploitation of the Prostitution of Others of 1950' and in the year 1956 it passed the 'Suppression of Immoral Traffic in Women and Girls Act' to combat exploitation of human beings for immoral purposes which underwent an amendment in the year 1986, and the act was renamed as the The Immoral Traffic (Prevention) Act [ITPA] of 1956, which contained alterations as to the punishments and the meaning of 'prostitution' recognized child trafficking and prostitution with regards to male beings as a race. Though there were no substantial changes in the new act which only contained very little of what was actually required, the Act still remains unaltered and below the expectations to cater to the new needs of the ever changing society.

Sex workers (prostitutes) have been treated as outcasts in societies throughout history. They are generally regarded those who do not adhere to the fixed and generally perceived societal sexual and other behavioral norms and are therefore excluded from the mainstream society. The outcast status meted to them denies them the basic human rights enshrined in International Conventions and National laws from abuse which is available to others. This social exclusion renders them susceptible to exploitation.<sup>5</sup>

One of the major pertinent loophole in ITPA is it does not provides for any definition of trafficking. One of the commonly accepted definitions of 'trafficking' worldwide is Article 3 of the 'Protocol To Prevent, Suppress and Punish Trafficking in Persons' which states that "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the 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 the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation".<sup>6</sup>

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<sup>5</sup> *Research Study on Human Right Violation of Victims of Trafficking Conducted by Social Action*, FORUM FOR MANAVAADHIKAR, [http://ncwapps.nic.in/pdfReports/Human\\_Right\\_Violation\\_of\\_Victims\\_of\\_Trafficking.pdf](http://ncwapps.nic.in/pdfReports/Human_Right_Violation_of_Victims_of_Trafficking.pdf), (last visited Apr. 11 10:21 A.M).

<sup>6</sup> *The UN refugee Agency (India)*, UNITED NATIONS HUMAN COMMISSIONER FOR REFUGEES, <https://www.unhcr.org/protection/migration/4d52493b6/protocol-prevent-suppress-punish-trafficking-persons-especially-women-children.html>, (last visited Apr. 11 16:31 P.M).

## II. LEGAL FRAMEWORK

India has formulated number of laws to combat human trafficking. It is signatory to the United Nations 'Protocol to Prevent, Suppress and Punish Trafficking in Person Especially Women and Children of 2000' and also the United Nations Convention against Transnational Organized Crime which is also known as the Palermo Protocol<sup>7</sup>. This protocol is very important at the international level as it provides the signatory states to take action against Human Trafficking and has recognized Human Trafficking as an organized crime which was later included as 'Crime Against Humanity' which is a core crime under International Law.

The Constitution of India under Articles 23 and 29 provides for the prohibition of human trafficking and right guaranteed to every citizen to be free from any kind of trafficking.<sup>8</sup> India has also enacted the ITPA of 1956 as its domestic law to deal with the human trafficking cases and provide for punishment to the traffickers and protection to the victims.

## III. ISSUES IN THE PRESENT IMMORAL TRAFFIC (PREVENTION) ACT

As the act has been amended in the year 1986, no substantive changes has been brought out in the act since then, the act has failed to comply to the need of the dynamic society due to which there are a number of issues found in the act which needs to be addressed. Some of the major issues are mentioned hereinafter.

### (A) REFORM AND REHABILITATION OF WOMEN AND CHILDREN

There are many instances in which prostitution becomes a choice for those who are financially not sound. Women and teenagers end up choosing prostitution as a career so as to afford their day-to-day living expenses. But even when they try to give up they are ostracised in the society. Like any other crime which consists of the concept of 'reform and rehabilitation' as the criminal justice system has given more value to reformation and rehabilitation than punishment there is no such provisions mentioned in the said act for the reform and rehabilitation of the victims, specially children who at a very tender age are sold to carry out such business when they are in need of reformation, treatment and rehabilitation to fit into the normal society.

In the case of *Vishal Jeet v. Union of India*<sup>9</sup> the Supreme Court laid down certain guidelines to be followed in terms of reformation, rehabilitation, care, treatment and other requirements which are necessary to be followed by the government both at state and central levels. It also

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<sup>7</sup> *Combating Human Trafficking (2011)*, HUMAN RIGHTS LAW NETWORK, <https://hrln.org/wp-content/uploads/2018/08/combating-human-trafficking.pdf>, (last visited Apr. 12 20:21 P.M).

<sup>8</sup> *Supra* note 5.

<sup>9</sup> *Vishal Jeet v Union of India* 1990 AIR 1412.

asked to take care of the appointment of professionals to carry out actions of the rehabilitation process. The Central Government has issued directions to find out the gaps in the present act and to propose for the needed amendments.

The court had issued some important directions:

- Stringent laws to be made by the law enforcement authorities and strict actions to be taken to eradicate child prostitution by the State and Union Government.
- For the formation of an advisory committee in different zones who would look into the formation of programs relating to the care, protection, treatment, reformation and rehabilitation of children rescued.
- Adequate rehabilitation homes to be setup by the social workers, doctors and psychiatrists.
- The Union Government should form a committee whose aim would be to setup programs for eradication of child prostitution and the Central and State Government must oversee that the suggestion of the committee is followed.
- The Devdasi or Jogni system is to be eradicated by the State Government.

In the matter of *Gaurav Jain v Union of India*<sup>10</sup>, the Apex Court highlighted the plight of the children of the prostitutes as they were considered to be neglected children within the scope of the Juvenile Justice Act and no care was taken of these children and took the improvement and welfare of the commercial sex workers into account. The case led to the formation of the Mahajan committee which gave a detailed report that maximum number of children were involved in the business of prostitution following which the Supreme Court gave directions for treatment and rehabilitation of victim children.

#### **(B) MAINTAINANCE OF PRIVACY OF VICTIMS**

There is no mention regarding confidentiality of identity or for the maintainance of privacy of any person who is a victim under the said Act. No cases recorded under this act are subject to the maintaining privacy hence depriving the trafficked victims of confidentiality of their own identity which make them vulnerable as they can be traced easily. Like in matters of Juvenile Justice in which an in-camera trial is a mandate, it is not so for the victims of the said act. When a person is accused under the provisions of the act or the victims so trafficked for immoral purposes, are often subject to questions which are very private and personal and are highly immoral to be asked in presence of people who are not directly party to the case. But the act

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<sup>10</sup> Gaurav Jain v Union of India, 1990 AIR 292.

does not contain any provision for trials to be carried out in-camera, depriving the victims their basic right of privacy.

In this case of *Prajwala v Union of India*<sup>11</sup> the owner of Prajwala, which is a non governmental organization for trafficked women had surfaced videos online in which two women were raped by two men and in which the faces and private parts of the women were blurred but the men who were raping them, their faces were visible and a campaign was setup by the organization as “ Shame the Rapist”, later on videos went viral which were unedited and contained the face and the private parts of the women which were visible. By this act, people were well aware about the identity of the women raped and their was nothing which remained confidential.

So a letter was written by the organization to the Supreme Court demanding Right to Privacy for the victims of rape and sexual assault and number of suggestions were made, out of which the court adhered to the first suggestion of “involving CBI into such kinds of probes and to make their findings public” and asked the CBI to investigate the matter thoroughly.

#### (C) ABUSE OF POWER BY THE POLICE

Under Section 13 of the said act, only a special police officer who is appointed by the State Government in an area specified by that government could deal with the matters. The police officers who are vested with the powers to look after the society and to take reasonable actions have in every instance used their powers to benefit themselves. In a lot of cases police officers are seen to be collecting ‘*haftas*’ on a weekly basis from the brothel keepers to provide them protection from police raids.<sup>12</sup> Also the officers are the ones who to fulfil their sexual pleasures by going to these brothels and are offered services for free. As under Section 13 only special officer could deal with the matters within the act, it is often violated, sometimes it is carried out by officers below or above the rank of a special officer.

In the case of *Raghubir Singh v State*<sup>13</sup> the accused was charged under Section 3, 4 and 5 of ITPA. The case was registered in the police station of Preet Vihar, Delhi and was investigated by R.P Tyagi and after the charge-sheet was filed the Magistrate took the cognizance and the party aggrieved filed a revision petition which was dismissed at the Sessions Court and then the petitioner went to the High Court on the grounds that R.P.Tyagi was neither a Special Officer nor a Station House Officer. So it was held that the investigation carried out by R.P.Tyagi as well as the arrest was illegal.

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<sup>11</sup> *Prajwala v Union of India*, W.P.(C) No. 576 of 2004.

<sup>12</sup> *Review of Immoral Traffic (Prevention) Act, 1956*, SHODHGANGA (Chapter V), [https://sg.inflibnet.ac.in/bitstream/10603/124050/11/11\\_chapter%205.pdf](https://sg.inflibnet.ac.in/bitstream/10603/124050/11/11_chapter%205.pdf), (last visited Apr. 14 09:45 A.M).

<sup>13</sup> *Raghubir Singh v State*, 83 (2000) (DLT) 189.

In the matter *Mumtaj a.k.a behri v State*<sup>14</sup> two men were convicted for detaining girls forcibly for immoral purpose and one of the men appealed for his convictions on several grounds and the most important grounds was that there was no evidence to prove that the accused was running the place and premises for abuse and for the purpose of prostitution of more than two girls and the other was that the Special Officer did not carry out the investigations and hence his appeal was accepted and his conviction was set aside.

In the case of *Delhi Administration v. Kishan*<sup>15</sup> the accused was convicted by the Sub Divisional Magistrate under Section 8 of the said act and was sentenced to rigorous imprisonment for 1 month and fine of Rs.150 was imposed on him. An appeal was filled in the Additional Sessions Court on the grounds that the investigation was not carried out by a special officer who is appointed by the state. So the convict was acquitted at the Sessions Court only on this ground.

#### **(D) EXPLOITATION OF LABOUR**

The ITPA has no scope and doesn't contain any provision for the class of labourers who are exploited within the course of their work in here prostitution also comes under the view of labour. Small children as well as adults are bought from one city to another to work as laborers at daily wages and are exploited by not paying proper wage or are trafficked for prostitution and are sold as slaves to others, this also includes younger girls.

In the case of *Bachpan Bachao & Ors. vs. Union of India & others*<sup>16</sup> and *Shramjivee Mahila Samity vs. State*<sup>17</sup> & *Others And Kalpana Pandi vs. State*<sup>18</sup> some girls were bought by an agency in order to employ them as domestic help but were missing when their families tried to locate them as girls were often taken by agencies and were sold or were sent out to brothels for prostitution. In this case the High Court of Delhi issued directions for the registration of the placement agencies, failure to which they would be subject to penal sanctions and the State Government amended the Delhi Shops and Establishment Act to make the registration of placement agencies mandatory.

In the matter of *Bachpan Bachao Andolan v. Union of India and Others*<sup>19</sup> a report was submitted by the petitioner before the Delhi High Court which depicted about the rescue of 9 adults and 24 children as to which regard no arrests were made. Another complain was also

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<sup>14</sup> *Mumtaj @ Behri v State* 100, (2002) (DLT) 286 2003.

<sup>15</sup> *Delhi Administration v. Kishan*, (ILR) 1973 Delhi 765.

<sup>16</sup> *Bachpan Bachao & Ors. vs. Union of India & others* W.P. (C) No.75/2012.

<sup>17</sup> *Shramjivee Mahila Samity vs. State & Others* W.P. (Crl.) No. 619 of 2002.

<sup>18</sup> *Kalpana Pandi vs. State* 2010 W.P. (Crl.) No. 619 of 2002.

<sup>19</sup> *Bachpan Bachao Andolan v. Union of India and Others* W.P. (C) No.51 of 2006.

filed by the petitioner on behalf of a man who has alleged that his sister-in-law and some friends have been called to Delhi but he was unable to locate them. The High Court issued direction to the Delhi Police to take necessary actions as no action was taken by the police despite the seriousness of offence.

#### **IV. CONCLUSION**

To enforce law and order in the society for the betterment of people residing in the country the state has the power to make laws and modify them in times of need. The Act was formulated by the Indian Government to protect its citizens from getting trapped in trafficking. The laws were applied properly in those times when it was bought. But in recent days after amendments in several acts and new precedents as well as judgement passed by the courts the ITPA needs to be amended by the legislature to be applied successfully to the present cases.

In a country like India where trafficking is most common among other crimes, it is hard to believe that in the cases of trafficking for immoral purpose, any victim has got justice. It is very much evident from the said act which has not undergone any modifications since the last few decades as to how seriously the legislature is taking into account the cases which come within the act. Also that when a women who is employed into immoral act or chooses it out of self will on violation of her rights decides to seek relief from the Indian Justice System, she is not paid heed and her complaint in many instances goes unnoticed. As the women is made to realize that rape and molestation is common in her profession and she does not has a legal remedy to it, contravening her basic fundamental right of equality as she is treated like an unequal from the other people of society and the matter of 'consent' is not given any importance.

The above-mentioned issues needs to be addressed through specific amendments in the provisions of the act. Certain definitions in the act also require changes after the several landmark judgements. The Indian Government should also look after the rights of the prostitutes who coexist with the other classes of the society. The traffickers punishments should be made more rigorous in order to make India a trafficking free country. It is not only on the part of the government to oversee to the needs of the society but also the youth of India who play a major role in bringing these changes.

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