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## Women trafficking in India its crime in legal perspective: A study

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### Abstract

The aim of this paper is to present the Trafficking in Women and Children is the gravest form of abuse and exploitation of human beings. Thousands of Indians are trafficked everyday to some destination or the other and are forced to lead lives of slavery. They survive in brothels, factories, guesthouses, dance bars, farms and even in the homes of well-off Indians, with no control over their bodies and lives. There are two issues to be discussed in this paper The two principal Indian laws that address trafficking and prostitution in particular are: The Suppression of Immoral Traffic in Women and Girls Act of 1956 (SITA) and The Immoral Traffic (Prevention) Act of 1986 (ITPA), colloquially called PITA, an amendment to SITA.

**Keywords:** Women trafficking, crime, legal perspective

### Introduction

Rightly did Swami Vivekananda say, 'Just as a bird cannot fly with one wing only, a Nation cannot march forward if the women are left behind'. Men and women are the two holes of a perfect whole. Strength is borne of their union their separation results in weakness. Each has what the other does not have. Each completes the other, and is completed by other. Etymologically, the word 'woman' mean - half of man. The relation of the male and female is very well illustrated in our Nyaya Darshan by the analogy of mind and matter, which means that man and woman are closely associated with each other, as the soul and body. Therefore the women ought to be respected.

There is no doubt that we are in the midst of a great revolution in the history of women. The evidence is everywhere; the voice of women is increasingly heard in Parliament, courts and in the streets. While women in the West had to fight for over a century to get some of their basic rights, like the right to vote, the Constitution of India gave women equal rights with men from the beginning. Unfortunately, women in this country are mostly unaware of their rights because of illiteracy and the oppressive tradition. Names like Kalpana Chawla: The Indian born, who fought her way up into NASA and was the first woman in space, and Indira Gandhi: The Iron Woman of India was the Prime Minister of the Nation, Beauty Queens like Aishwarya Rai and Susmita Sen, and Mother Teresa are not representative of the condition of Indian women.

Trafficking in Women and Children is the gravest form of abuse and exploitation of human beings. Thousands of Indians are trafficked everyday to some destination or the other and are forced to lead lives of slavery. They survive in brothels, factories, guesthouses, dance bars, farms and even in the homes of well-off Indians, with no control over their bodies and lives.

### Historical Overview of the UN Perspective on Trafficking

The League of Nations concluded two treaties on the suppression of traffic in women. The latter treaty, the 1933 International Convention for the Suppression of the Traffic in Women of Full Age, is notable for provisions that punish traffickers, without regard to whether the victim in some way gave consent. In 1949, the United Nations consolidated the earlier treaties into the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others. This convention remains the only international treaty on trafficking, although it has not been widely ratified. In 2000, the UN drafted a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,

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discussed below, which largely supplants the earlier treaty. The Trafficking Protocol elaborates the UN Convention Against Transnational Organized Crime, viewing trafficking in women in the larger context of transnational organized crime activities, such as money laundering, corruption, trafficking in firearms and the smuggling of migrants.

The 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others is problematic for a number of reasons. First, the convention does not define trafficking, but equates trafficking with the exploitation of prostitution. Trafficking in women can take many forms, for commercial sex work and also as forced labor, as domestic servants and as "mail-order brides." The difficulties in connecting trafficking and commercial sex work are discussed in the Explore the Issue section of Trafficking.

Second, the treaty reflects a prohibitionist stance toward prostitution, in which the acts associated with prostitution are criminalized, but not prostitution itself. Thus, the Convention defers to national law and does not prohibit the prosecution of commercial sex workers themselves.

The Convention does not take a human rights approach. It does not regard women as independent actors endowed with rights and reason; rather, the Convention views them as vulnerable beings in need of protection from the "evils of prostitution". As such, the 1949 Convention does very little to protect women from and provide remedies for the human rights violations committed in the course of trafficking, thereby increasing trafficked women's marginalization and vulnerability to human rights violations. Further, by confining the definition of trafficking to trafficking for prostitution, the 1949 Convention excludes vast numbers of women from its protection. Documentation shows that trafficking is undertaken for a myriad of purposes, including but not limited to prostitution or other sex work, domestic, manual or industrial labor, and marriage, adoptive or other intimate relationships.

The 1949 Convention sets forth obligations to State parties to take and encourage "health, social, economic and other related services, measures for the prevention of prostitution and for the rehabilitation and social adjustment of the victims of prostitution" but does not address the underlying factors that contribute to trafficking, such as women's lower economic status, demand for women's sexual services, organized crime and internal conflict. Finally, the 1949 Convention contains provisions for the repatriation of trafficking victims but also anticipates that trafficking victims may be deported in accordance with national law. Deportation is a measure that does not take into account the risk of returning a woman to her country of origin and does not consider possible hardship inherent in the situation she was originally seeking to leave.

While a number of UN declarations and conference reports on the broad issue of women's human rights made mention of the issue of trafficking in women, the UN legal framework for describing the phenomenon of trafficking in women changed little before the early 1990's.

The Indian Constitution specifically bans the traffic in persons. Article 23, in the Fundamental Rights section of the constitution, prohibits "traffic in human beings and other similar forms of forced labor". Though there is no concrete definition of trafficking, it could be said that trafficking necessarily involves movement /transportation, of a person by means of coercion or deceit, and consequent exploitation

leading to commercialization. The abusers, including the traffickers, the recruiters, the transporters, the sellers, the buyers, the end-users etc., exploit the vulnerability of the trafficked person. Trafficking shows phenomenal increase with globalization. Increasing profit with little or no risk, organized activities, low priority in law enforcement etc., aggravate the situation. The income generated by trafficking is comparable to the money generated through trafficking in arms and drugs.

Trafficking in human beings take place for the purpose of exploitation which in general could be categorized as (a) Sex -based and (b) Non-Sex-based. The former category includes trafficking for prostitution, Commercial sexual abuse, Pedophilia, Pornography, Cyber-sex, and different types of disguised sexual exploitation that take place in some of the massage parlors, beauty parlors, bars, and other manifestations like call girl racket, friends clubs, etc. Non sex based trafficking could be for different types of servitude, like domestic labor, industrial labor, adoption, organ transplant, camel racing marriage related rackets etc. But the growing traffic in women is principally for the purpose of prostitution. Prostitution is an international problem which can be found in both developing and industrialized nations. Unfortunately, society remains tolerant of this abominable crime against women. There are ways of getting women into prostitution that are common to many countries; then there are particular methods unique to a country. Probably the three most common methods are false employment promises, false marriages and kidnapping. But what makes women and girls vulnerable are economic distress, desertion by their spouses, sexually exploitative social customs and family traditions.

In a recent survey in India, prostituted women cited the following reasons for their remaining in the trade, reasons that have been echoed in all concerned countries. In descending order of significance, they are: poverty and unemployment; lack of proper reintegration services, lack of options; stigma and adverse social attitudes; family expectations and pressure; resignation and acclimatization to the lifestyle.

The two principal Indian laws that address trafficking and prostitution in particular are:

1. The Suppression of Immoral Traffic in Women and Girls Act of 1956 (SITA) and
2. The Immoral Traffic (Prevention) Act of 1986 (ITPA), colloquially called PITA, an amendment to SITA.

Neither law prohibits prostitution per se, but both forbid commercialized vice and soliciting. Aside from lack of enforcement, SITA is problematic in several ways. One of its drawbacks is that the prescribed penalties discriminate on the basis of sex: a prostitute, defined under SITA as always a woman, who is arrested for soliciting under SITA could be imprisoned for up to a year, but a pimp faces only three months. SITA allowed prosecution of persons other than the prostitutes only if the persons involved "knowingly" or "willingly" made women engage in prostitution. Accordingly, pimps, brothel owners, madams, and procurers could feign ignorance of prostitution and escape punishment. The client, moreover, was not viewed as an offender and could not be sanctioned under SITA. Finally, SITA only addressed street prostitution; prostitution behind closed doors was left alone -- a loophole that actually promoted the establishment of brothels.

SITA, a penal law, was passed in 1956 and enforced in 1958 as a consequence of India's signing the Trafficking Convention, rather than as a result of any mass social welfare movement. SITA did not seek the "abolition of prostitutes and prostitution as such and to make it per se a criminal offence or punish a person one prostitutes oneself." Its stated goal was "to inhibit or abolish commercialized vice, namely the traffic in persons for the purpose of prostitution as an organized means of living." Prostitution was defined as the act of a female who offers her body for promiscuous sexual intercourse for hire. Accordingly, the engagement by a woman in individual, voluntary, and independent prostitution was not an offense.

The law permitted penalization of a woman found to be engaged in prostitution under certain conditions. For example, Section 7(1) penalized a woman found engaged in prostitution in or near a public place. Section 8(b) did the same for a woman found seducing or soliciting for purposes of prostitution. The law also permitted a magistrate to order the removal of a person engaged in prostitution from any place and to punish the person upon refusal. Offenses under SITA were bailable, but a woman picked up from the street by the police usually did not have either the money or the influence to keep her out of custody or free from fines.

India is said to have adopted a tolerant approach to prostitution whereby an individual is free to carry on prostitution provided it is not an organized and a commercialized vice. However, it commits itself to opposing trafficking as enshrined in Article 23 of the Constitution which prohibits trafficking in human beings. India is also a signatory to international conventions such as the Convention on Rights of the Child (1989), Convention on Elimination of all forms of Discrimination Against Women (1979), UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000) and the latest South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2002).

A trafficked victim is therefore, a victim of multiplicity of crimes, and extreme form of abuse and violation of human rights. The constitution of India, under article 23 specifically prohibits trafficking in human beings. At present the legal regime to trafficking of women and children for commercial sexual exploitation includes the following.

- a. Indian Penal Code 1860
- b. ITPA-1956
- c. J.J. Act-2000.
- d. Special laws of various states.
- e. Rulings of Supreme Court and High Court.

Thus there exists a need for a specialized legislation in India to deal with trafficking even though the existing Indian Penal Code (IPC), 1860, deals with the offences of kidnapping, abduction, and buying and selling of minors (Sections 359-373 of IPC). The IPC is narrower in scope to deal with the wide range of activities involved in trafficking which do not neatly fit into "kidnapping" or "abduction." For example luring, coaxing individuals in vulnerable positions with false promises of better jobs, contract work as domestic workers, mail order brides, and situations where the women are sold in connivance with the parents or husband. The IPC is thus less adept in dealing with the nuances involved in organized trafficking.

In order to ensure effective implementation of the existing law there is a need for sensitization of all concerned in the criminal justice system, including judicial officers, prosecutors, medical experts, Police officers. Moreover there should be partnership with the NGOs so as to ensure law enforcement, rescue, prevention, counseling, rehabilitation, reintegration, social empowerment etc.

### **Law and Policy on Trafficking and Women's Human Rights**

The United Nations began to approach trafficking in women as a human rights violation in the early 1990's. As outlined above, prior to this time, reiterations of the need to address trafficking equated the problem with forced prostitution.

The Declaration on the Elimination of Discrimination against Women, adopted by General Assembly resolution in 1967, for example, mentions only that, "All appropriate measures, including legislation, shall be taken to combat all forms of traffic in women and exploitation of prostitution of women."

(Article 8)- The subsequent Convention on the Elimination of All Forms of Discrimination Against Women, which entered into force in 1981 and creates binding obligations for signatories, added little to the earlier 1949 Convention or Declaration on the Elimination of Discrimination Against Women, requiring State parties to "take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women."

(Article 6)- The report of the Third World Conference to Review and Appraise the Achievements of the United Nations Decade for Women, which was held in Nairobi in 1985, included women victims of trafficking and involuntary prostitution as an area of special concern. At the time of the Third World Conference, trafficking discourse was still limited to the exploitation of women as prostitutes, and the UN urged State parties to the 1949 Convention to enact measures to combat trafficking for the purposes of prostitution as well as attendant crimes, such as violence and drug abuse. The UN also emphasized the need for States to assist prostitutes with reintegration, including the provision of economic opportunities, training, employment, self-employment and health facilities for women and children.

The Convention on the Elimination of All Forms of Discrimination against Women, as mentioned above, articulates a need to combat trafficking but does not directly address violence against women generally. The Committee on the Elimination of Discrimination against Women clarified that trafficking is a form of gender-based violence when it adopted General Recommendation No. 19 in 1992, which highlights the interconnections between trafficking in women, women's lower economic status, armed conflict and violence. General Recommendation 19 explains, "Poverty and unemployment increase opportunities for trafficking in women. In addition to established forms of trafficking there are new forms of sexual exploitation, such as sex tourism, the recruitment of domestic labor from developing countries to work in developed countries and organized marriages between women from developing countries and foreign nationals. These practices are incompatible with the equal enjoyment of rights by women and with respect for their rights and dignity. They put women at special risk of violence and abuse. Wars, armed conflicts and the occupation of territories often lead to increased prostitution,

trafficking in women and sexual assault of women, which require specific protective and punitive measures.”

(Articles 14; 16)- The Committee on the Elimination of Discrimination against Women also made specific recommendations to State parties to the Convention to prevent and punish trafficking and to include information about trafficking in periodic reports that describe “the extent of [the] problems and the measures, including penal provisions, preventive and rehabilitation measures that have been taken to protect women engaged in prostitution or subject to trafficking and other forms of sexual exploitation.”

(Article 24(h))- Although General Recommendation 19 does not have the force of law, it is a pivotal UN statement on States’ obligation to protect women from violence.

### **Piloting Good Practices**

1. Compulsory Registration of birth with special focus in vulnerable areas.
2. More than 70% of victims belong to SC and backward castes that are desperately poor. Need to improve the lot of people especially women by specially targeted programmes.
3. Devise a system to monitor missing persons across district and state borders.
4. Creating a database on trafficking including routes, vulnerable areas, information about traffickers and their whereabouts, information about NGOs working in this filed in different districts and states, information about local bodies, Panchayats and self-help groups in the vulnerable areas.
5. Drawing up specific guidelines for investigation and prosecution of trafficking.
6. Identifying areas for law reforms in the area of trafficking including both substantive as well as procedural law.
7. Coordination among different state police departments working in this field including sharing of information regarding interstate traffickers.
8. Permanently closing brothels known for repeated offences.
9. Improvements in victim care at government run facilities. These shelter homes should have counselors, nurses, physicians, psychiatrists etc. Such effort has been made by Maharashtra’s Social Defense Department in coordination with NGOs which led to an overall improvement in the environment of shelter homes.
10. Victim Compensation Fund to be created so as to provide vocational trainings, give loans etc. so as to enable victim to become economically independent.
11. Provision for confiscation of property and assets of traffickers and agents of organized prostitution/flesh trade.
12. Formation of Community Vigilant groups in vulnerable areas.
13. Setting up of crisis centers at Railway Stations and bus stops in trafficking prone areas/routes. These may be manned by a group consisting of NGOs and police.
14. Drop in centers and night care services for children in red light areas.
15. Promoting programs to stop second generation trafficking by providing educational options to the children of sex workers and other vulnerable children.

Thus the lack of an integrative approach towards prevention, rescue, repatriation and reintegration presses for a new legislation and in the view of the United Nations High Commission there exists a need for initiation of public information campaigns to make both potential victims and the general public aware of the terrible exploitation and possible loss of life inherent in trafficking in women and children.

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