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**“ANALYSIS OF THE PRESENT DAY
CONDITION OF HUMAN TRAFFICKING
VICTIMS”**

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ABSTRACT

“It is not my purpose to just create a ruckus, my attempt is that the appearance should change. If not in my heart then maybe in your heart, the fire anywhere but the fire of change should light.”

In the era of 21st century where modernization is prevailing in the world where mainly transfer of technology is done there also exists a small sector of human community, whose sale is not bound to just technology but of human beings. These people in the lure of earning money sell human beings for various purposes and among those purpose the most prevalent purpose is selling women for the purpose of prostitution.

In our country where around 1.4 Billion people are there and among this vast population the illiterate population is greater than the literate population leading to the non-reporting of the cases of missing girls due the societal status pressure where the questions are raised on the character of the girl herself and according to statistics most of the missing girls are pushed into the business of prostitution by the pimps. Numerous girls are bought and sold in this market where they are considered as goods for the trader and for the buyer and have lost the status of being a human itself. Since this sort of crimes are not reported, general public are not usually aware about the vastness of this business but on a certain level they are all aware about the dangers of it.

This paper will focus on the Trafficking done for prostitution purpose, what are their rights that needs to be protected by law, this paper will involve case studies of the victims. This paper is a voice for such people who have suffered this fate and are unheard by the society.

Key Words: Human Trafficking, Prostitution, Women

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INTRODUCTION

According to United Nations' Palermo Protocol, "Trafficking in persons can be defined as the transfer, transportation, harboring, recruitment, or receipt of persons, by means of the threat or use of force or other forms of abduction, of coercion, of the abuse of power, of fraud, of deception, or of the giving or receiving of payments or of a position of vulnerability or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation should include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, slavery or practices similar to slavery, forced labor or services, servitude or the removal of organ".¹

Comprehensively it's accessed that there are around forty million people who are within the present-day subject to slavery. Anyway, the genuine numbers are not accessible on account of the number for the most part goes undetected, something the United Nations insinuates as " the hidden figure of crime." ²Human trafficking acquires overall profit of for the most part \$150 billion consistently for vendors, \$99 billion of which starts from commercial sexual misuse. ³Extensively, a normal 71% of oppressed people are women and youngsters, while men and youngsters speak to 29% globally.⁴

¹United Nations' Palermo Protocol

²"*Forced Labor, Modern Slavery, and Human Trafficking.*" INTERNATIONAL LABOR ORGANIZATION. Accessed July 22, 2020. <http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>. "Monitoring Target 16.2 of the United Nations Sustainable Development Goals." United Nations Office on Drug and Crime. Accessed July 22, 2020. https://www.unodc.org/documents/research/UNODC-DNR_research_brief.pdf

³"*Human Trafficking by the Numbers.*" HUMAN RIGHTS FIRST Accessed July 22, 2020. <https://www.humanrightsfirst.org/resource/human-trafficking-numbers>.

⁴"*Trafficking and Slavery Fact Sheet.*" FREE THE SLAVES. Accessed July 22, 2020.

<https://www.freetheslaves.net/wp-content/uploads/2018/04/Trafficking-ans-Slavery-Fact-Sheet-April-2018.pdf>

TRAFFICKING CONCERNS IN INDIA

The Indian constitution restricts trafficking.⁵ However India is a major form of source, goal and travel nation for the crime of trafficking which is for the sexual exploitation and constrained work, and with the falling sex proportion, dealing for marriage as the declining ratio of the gender is turning into another drawing factor for trafficking of women and young girls. The vindictive game plan of this malicious work continues despite the many enactments which exist to fight the same.⁶ The main movement of people is from Bangladesh and Nepal into India and sometimes it is even beyond these routes to various parts of the world. The border of these nations is very long thus making it very easy for the movement of these people. There exist around twenty checks along the border of Bangladesh which is around 4,156 km long. However, crossing the border is not much of a task, and cash may change hands in various ways making it very easy for these people to continue with their cross border business. With Nepal, the recognitions of trafficking and all the similar kinds of dealings are very difficult to be identified because of the open border policy that exists between India and Nepal.⁷ Since India has an open fringe strategy with Nepal, dealing might be hard to recognize but a similar condition is lacking with Bangladeshis, however dealing from both these nations happens. Inside India, there exist various elements that work as a vacillating factor affecting dealing of Indian men, women, and youngsters.

In India, there exist various social practices because of which girls might be dealt with. One of these is the devadasi framework which although prohibited still exists in rural parts of India and another such strong factor is poverty and destitution.⁸ There are again numerous ladies who eagerly relocate to the United States, Europe, and the Middle East to fill in as house workers who are swindled by agencies and in some cases are trafficked. Men, ladies, and children are dealt inside India and abroad are forcefully kept in the state of bondage through various methods, for example, not providing them with the wages, their travel documents are seized, the middlemen are given unnecessary benefits for the bonded labor to take care of the benefits/charges, and so on. Bonded labor inside the nation is additionally a significant issue.[5]

⁵ Constitution of India, art. 23

⁶ The Bonded Labor System (Abolition) Act, 1976.

⁷ Adapted from Trafficking in Women and Children in India, Orient Longman, New Delhi (2005) pp 10-12.

⁸ Dedicating a girl to prostitution, though ostensibly dedicated to serve a goddess.

India is likewise a destination nation for people from Bangladesh and Nepal, and heft of those dealt from these nations are mostly constituted of mainly women and children. In these two cases referred, the movement whether it's legitimate or illicit might be voluntary, and in this way, vagrants might be dealt with. The numbers are very large; however accurate statistics are missing and should be handled in a good way.

The 2020 Trafficking in Persons Report⁹ additionally brings up that 90% of those who are trafficked have a place with the most held up gatherings and go through destitution and this is mostly the main cause. It additionally conveyed verification of NGO investigates tricking of girls from North East India with guarantees of occupations and subsequently constraining them into prostitution just as constrained relationships. Ladies are sought after in the State of Haryana and different States because of the low sex proportion brought about by sex-specific premature births. There, consequently, is by all accounts more push and pull factors for dealing that should be critically tended to.

CONSTITUTIONAL PROTECTIONS FOR TRAFFICKING IN INDIA

In its constitution India has addressed the issue of the human trafficking in its various provisions directly as well as indirectly. There are three Articles in our Constitution under Part III and Part IV which deals with trafficking related issues. The chart below provides with the summary of the same.

ARTICLES ON TRAFFICKING IN THE CONSTITUTION OF INDIA

Article 23	“FR ¹⁰ prohibiting trafficking in human beings and forms of forced labor.” ¹¹
Article 39(e)	“DPSP ¹² directed at ensuring that health and strength of individuals are not abused and that

⁹Trafficking in Persons Report, 2020; 20th ed.

¹⁰Fundamental Right

¹¹Constitution of India. art. 23

¹²Directive Principle of State Policy

	no one is forced by economic necessity to do work unsuited to their age or strength.” ¹³
Article 39(f)	“DPSP ¹⁴ stating that childhood and youth should be protected against exploitation.” ¹⁵

IMMORAL TRAFFIC PREVENTION ACT, 1956

The Act deals with the problem of trafficking in India. The Trafficking of Persons (Prevention, Protection, and Rehabilitation) Bill, 2018 was introduced in Lok Sabha on 18th July, 2018 by the minister Ms Maneka Gandhi, and passed on 26th July, 2018. The Act stirs up issues of trafficking and prostitution. It penalizes the dealing of ladies and kids for commercial sexual misuse.¹⁶ “The Bill also classifies certain purposes of trafficking as ‘aggravated’ forms of trafficking. These include trafficking for: (i) forced labor, (ii) begging, (iii) inducing early sexual maturity by administering chemical substances or hormones, or (iv) bearing children.”¹⁷ The punishment for aggravated trafficking is more serious in nature than that of simple trafficking. Under this act keeping a brothel as well as living on the prostitution of others is a punishable offense. However, if the dependent is not over eighteen years of age, he/ she shall carry immunity for the same.¹⁸ A segment of the noteworthy components of trafficking is protected by the Act. For example, inducing persons for the sake of prostitution¹⁹, detain someone in a place where such activities are carried out²⁰, providing protective homes to the victims²¹, etc. On the off chance that an individual is found with a child in a house of ill-repute carrying such activities, there is a supposition that the youngster has been kept back in that place for sexual abuse unless the contrary is proved.²² The Act also provides provisions for the rescue and rehabilitation of the victims.²³ To assure that the victim’s rights are not bugged, it

¹³ Constitution of India art. 39 (e)

¹⁴ Directive Principle of State Policy

¹⁵ Constitution of India art. 39 (f)

¹⁶ Immoral Traffic Prevention Act, 1956 , Sect. 3

¹⁷ Immoral Traffic Prevention Act, 1956 , Sect. 2

¹⁸ Immoral Traffic Prevention Act, 1956 , Sect. 4

¹⁹ Immoral Traffic Prevention Act, 1956 , Sect. 5

²⁰ Immoral Traffic Prevention Act, 1956 , Sect. 6

²¹ Immoral Traffic Prevention Act, 1956 , Sect. 21

²² Immoral Traffic Prevention Act, 1956 , Sect. 6 (2-A)

²³ Immoral Traffic Prevention Act, 1956 , Sect. 16

necessitates that there must be two lady police officers available during the procedures and added that the cross-examination is finished by a lady police officer.²⁴

The bill is loaded with fluffy arrangements that criminalize activities without culpability or criminal intent. It criminalizes electronic data that "may prompt" an offense of trafficking. Penal provisions against "promoting or facilitating the trafficking of persons " are also very ambiguous and vague. Properties might be attached on the off chance that they are " likely to be used" for the commission of an offense under the act.

Legislation	Provisions
Provisions relating to trafficking Immoral Traffic Prevention Act, 1956	<p>Section 3: Brothel keeping</p> <p>Section 4: Living on the earnings of prostitution of others.</p> <p>Section 5: Procuring, inducing or taking person for prostitution. Section 6(1): Detaining person in premises where prostitution is carried on.</p> <p>Section 6(2): Presumption of offence if a person is found with a child in a brothel.</p> <p>Section 7: Prostitution in the vicinity of public places.</p> <p>Section 8: Seducing or soliciting.</p> <p>Section 9: Seduction of a person in custody.</p> <p>Section 15: Two women police officers to be present during search, and interrogation is to be done by a woman police officer.</p> <p>Section 16: Rescue on Magistrate's directions.</p> <p>Section 17: Intermediate custody in a safe place, not with those with a harmful influence over her.</p>

²⁴ Immoral Traffic Prevention Act, 1956 , Sect. 16

MISCELLANEOUS LEGISLATIONS RELEVANT TO TRAFFICKING

Also, there are penal laws which deals with human trafficking. trafficking also in India. These legislations, bring about criminalizing of a number of offences which aren't exclusively addressed within ITPA. These comprise penalizing acts like procuring, buying and selling of persons, importing or exporting persons, buying and selling minors, coercing or forcing marriage of minors, kidnapping/abducting and using force for the aim of trafficking, Slavery and slavery like conditions, bondage, servitude and unacceptable types of labor, and others.

LEGISLATIONS	Section	DETAILS OF THE PROVISION
Indian Penal Code, 1860	366	“Kidnapping, abducting or inducing a woman to compel marriage.” ²⁵
	366A	“Procuring a minor girl. 366B Importation of a girl below 21 for sexual exploitation.” ²⁶
	367	“Kidnapping/ abducting to subject person to grievous hurt, slavery.” ²⁷
	370	“Buying or disposing of person as slave” ²⁸
	370 A	“Exploitation of a trafficked person” ²⁹

²⁵ Indian Penal Code, Sect. 366

²⁶ Indian Penal Code, Sect. 366 A

²⁷ Indian Penal Code, Sect. 367

²⁸ Indian Penal Code, Sect. 370

²⁹ Indian Penal Code, Sect. 370 A

	371	“Habitual dealing in slaves.” ³⁰
	372	“Selling minor for prostitution.” ³¹
	373	“Buying minor for prostitution.” ³²
	374	“Compelling a person to labor” ³³
Prohibition of Child Marriage Act, 2006	12	“Child marriage void, if after that the minor is sold or trafficked or used for immoral purposes.” ³⁴
Children (Pledging of Labour) Act, 1933	4-6	“Penalties for pledging labor of children (under 15 years).” ³⁵
Bonded Labour System (Abolition) Act, 1976	16	“Compelling a person to render bonded labor or forced labor.” ³⁶
Child Labour (Prohibition and Regulation) Act, 1986	3	“Child work in certain employments. Juvenile Justice Act, 2000” ³⁷
	2(vii)	“A child in need of care and protection includes one who is

³⁰ Indian Penal Code, Sect. 371

³¹ Indian Penal Code, Sect. 372

³² Indian Penal Code, Sect. 373

³³ Indian Penal Code, Sect. 374

³⁴ Prohibition of Child Marriage Act, 2006, Sect. 12

³⁵ Children (Pledging of Labour) Act, 1933, Sect. 4, Sect. 5, Sect. 6.

³⁶ Bonded Labour System (Abolition) Act, 1976, Sect. 16

³⁷ Child Labour (Prohibition and Regulation) Act, 1986, Sect. 3

		vulnerable and likely to be trafficked.” ³⁸
	24	“Employment of child for begging.” ³⁹
	26	“Procuring juveniles for hazardous employment or bonded labor is punishable.” ⁴⁰
Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989	3(vi)	“Compelling or enticing a member of a SC/ ST.” ⁴¹
	3(xii)	“Using a position of dominance to sexually exploit a Scheduled Caste or Scheduled Tribe woman.” ⁴²

LANDMARK JUDICIAL PRONOUNCEMENTS HAVING A BEARING ON HUMAN TRAFFICKING

In spite of taking a gander at provision in constitutions and enactments, case laws developed by courts are in addition part of the domestic law. These Case laws gives a noteworthy comprehension into the route that the law is taking, and the rendition the courts may have on some provisions of the law. Court decisions supervise issues extending from supervision of trafficking victims to the constitutional safeguard of victims along with with the trafficker’s prosecution. Additionally, rather than cross border trafficking the major center of attention has been of the domestic trafficking. Nonetheless, studies have indicated that convictions have

³⁸ Child Labour (Prohibition and Regulation) Act, 1986, Sect. 12

³⁹ Child Labour (Prohibition and Regulation) Act, 1986, Sect. 24

⁴⁰ Child Labour (Prohibition and Regulation) Act, 1986, Sect. 26

⁴¹ Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Sect. 3 (vi)

⁴² Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Sect. 3 (xii)

been wretchedly extremely small and during that time the trafficked victims have been re-victimized most of the times in the process.⁴³

The High Courts and The Supreme Court have laid down various doctrine dealing with the rights of the victim and other pertinent issues such as child protection and directions to the government. These principles have had affirmative impact on the approach of the judiciary in cases which recount to trafficking. The brief of these are:

- a) **Victim's Rights:** The main concern of the judiciary was the protection of the victims and providing them with rights. In the case of *Prajwala v Union of India*⁴⁴, the court demanded the implementation of the protocol of the victims. In some cases there have been incidents where the perpetrator of the crime have been made to pay compensation to the sufferers of the same as in *Bodhisattwa Gautam v Subhra Chakraborty*⁴⁵, wherein a false promise of a marriage was made. He went through the wedding ceremony as well but it turned out to be false. This has been applied to foreign nationals as well. This principle has been used in the case of trafficking as well, as seen in *PUCL v Union of India*⁴⁶, where children were trafficked and the court ordered to pay compensation for the same.
- b) **Directions to State functionaries to tackle the problem of trafficking :**
*Vishal Jeet v Union of India and Others*⁴⁷ was a landmark judgement where the Supreme Court willingly volunteered to give directions for the rehabilitation and protection of the individuals who are devoted as devdasis by their own family members or the communities for cultural reasons and were presently in prostitution. While devadasis and jogins are from various states in India, this additionally could apply to Nepali ladies who are likewise committed, but in Nepal, and end up in brothels in India. In *Gaurav Jain v Union of India*⁴⁸ the court was of the opinion that it is the duty of the state to enable women to lead a life of dignity, to rescue them and to rehabilitate them. The Court has also taken into consideration the callous and indifferent behavior of the State Administration that is referred in the case of identifying of bonded laborers, releasing them and their rehabilitation facilities that are overlooked nationwide. It was contended that whenever a

⁴³ Judicial Handbook on Combating Trafficking of Women and Children for Commercial Sexual Exploitation, UNICEF (2004)

⁴⁴ *Prajwala v Union of India*, (1996) 1 SCC 490 (India).

⁴⁵ *The Chairman, Railway Board v Chandrima Das*, AIR 2000 SC988 (India).

⁴⁶ *PUCL v Union of India*, (1998) 8 SCC 485 (India).

⁴⁷ *Vishal Jeet v Union of India & Ors.*, (1990) 3 SCC 318 (India).

⁴⁸ *Gaurav Jain v Union of India*, AIR 1997 SC 3021 (India).

laborer is shown to have provided work there will be prerequisite presumption that there has been an advance payment provided to him for that work and therefore is a bonded labor. The burden of disproving this presumption is upon the employer. This observation was made by the court in *Neerja Chaudhary v State of Madhya Pradesh*⁴⁹.

- c) Special safeguard to the children : There have been two categories of children that courts have looked at - children who have been trafficked themselves and children who are in need of care and protection (those vulnerable to being trafficked). *Prerana v State of Maharashtra*⁵⁰ clearly held that children who are trafficked themselves should be pondered as kids in need of help, care and protection⁵¹, and not as kids in conflict with the law. *Gaurav Jain*⁵² among other things also addressed children of sex workers who were vulnerable. The Court held that they must not be allowed to reside in their homes as their surroundings were undesirable. Yet another case was *Lakshmikant Pandey v Union of India*⁵³ which examined the vulnerability of children being trafficked in adoption rackets due to the lack of an effective protection mechanism. The court went on to create an appropriate mechanism to fill the gap, especially in the context of inter country adoptions.

GAPS IN THE LEGAL FRAMEWORK OF TRAFFICKING IN INDIA

- There are many enabling provisions of various treaties which can be availed of but failed as there is non ratification of UNTOC and protocols and this acts a major hurdle.
- There exists provisions in the Immoral Traffic prevention Act which penalize the victim and thus there is a general sensitivity which is missing from the law. There is need to bring a more sensitive laws which can take into consideration the major concerns and the effects of trafficking which are left with the victim and should not be penalized for the acts which flow through the trafficking business itself.
- Trafficking is not considered as an structured crime and in the trafficking cases the provisions associated to the organized crime are omitted.

⁴⁹*Neerja Chaudhary v State of Madhya Pradesh*, AIR 1984 SC 1099 (India).

⁵⁰*Prerana v State of Maharashtra*, (2003) MLJ 105 (India).

⁵¹ Juvenile Justice (Care and Protection) Act, 2000, Section 2(d) 'child in need of care and protection' means a child : (vi) who is being or is likely to be grossly abused, tortured, or exploited for the purpose of sexual abuse or illegal acts ; (vii) who is found vulnerable and is likely to be inducted into drug abuse or (viii) who is being or is likely to be abused for unconscionable gains

⁵²*Gaurav Jain v. Union of India*, AIR 1997 SC 3021 (India).

⁵³*Lakshmikant Pandey v Union of India*, AIR 1984 SC 469 (India).

- There is a vague language which could be misused and abused very easily by the brothel keepers and the agents.
- The most prevailed trafficking is done to the LGBT community and no other specific laws are existing for the people of this community.
- There exists a provision which deal with issue of trafficking by setting up an Anti Trafficking Unit⁵⁴ which is to work at the nationwide level. There also exists provisions for Anti Trafficking committees both at district⁵⁵ and state level⁵⁶. In addition the bill also provides a provision for setting up National Anti Trafficking Relief and Rehabilitation Committee.⁵⁷ These committees have caused an overlap of functions which lead in an undue delay and huge wastage of time and also funds which could have been utilized in various other ways to help the victims.
- The Supreme Court in the case of *Budhadev Karmaskar v. State of West Bengal*⁵⁸, the main goal of the court was to provide sex workers who intentionally want to quit with adequate rehabilitation and are thus provided with technical skills for their livelihood. Thus it was held that the state is to endow with the same to the victims. However, the Bill treats all sex workers in a similar way which is, as victims of trafficking. The facet of voluntariness and thus every person is considered as a prey of sex trafficking. In accordance with the contemporary provisions of the Bill, all these assumed victims, upon salvage, are to be sent to therapy homes, even when it means forcing them to go to improvement homes. This is an inherent shortcoming in our at hand lawful framework that has been aptly acquired in this Bill. This mirrors the cultural outlook towards prostitution as a line of work.

⁵⁴ Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill 2018, Sect. 10

⁵⁵ Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill 2018, Sect. 12

⁵⁶ Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill 2018, Sect. 13

⁵⁷ Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill 2018, Sect. 11

⁵⁸ *Budhadev Karmaskar v. State of West Bengal*, (2011) 10 SCR 577 (India).

CONCLUSION

For that reason, we can conclude that sex work sterilizes sexual misuse and such a representation can't be acceptable to watch over India in its existing situation. There is far to go before we actually achieve our aim of scrutinizing the danger of human trafficking with India. Presently, India is placed among Tier II nations in running trafficking with people, implying that on the other hand India has been legitimate in its vow to scuffle the evil of human trafficking, it has not had the alternative to adequately manage the question of trafficking with people⁵⁹



⁵⁹ U.S. State Department, Trafficking In Persons Report (2017) Pg. 205