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THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956- A CRITICAL APPRAISAL

Human Trafficking, an organized crime, is responsible for plaguing the vulnerable population of different nations. In order to find an effective remedy to this problem, UN, SAARC and various international bodies have come up with anti-trafficking laws. India being a signatory to many such bodies has also come up with similar legislations on human trafficking. Out of a dossier of anti-trafficking laws, the Immoral Traffic (Prevention) Act, 1956 is one such legislation that has been operative for a long time now. But its archaic provisions fail to address the problem of human trafficking in its entirety. Hence, the author in this paper scrutinizes and analyses various provisions of the Act that deters its effective implementation in the 21st century.

INTRODUCTION

Human trafficking implies “Illicit movement or acquisition of humans by improper means such as force, fraud or deception, with an intention of exploiting them.”¹ Human Trafficking is nothing but an organised form of crime that compels an individual to live a life of complete servitude. Human trafficking is the second-largest nefarious industry in the world, with 27 million people living in deplorable conditions.² It is practised in different countries in various forms, such as forced prostitution, bonded labour, and debt bondage.

¹ S Sarkar, *Rethinking Human Trafficking in India: Nature, Extent and Identification of Survivors*, 103(5) The Round Table (2014).

² Human Rights Commission, *What is Human Trafficking*, available at <https://sf-hrc.org/what-human-trafficking> (Last visited on April 19, 2020).

India is also a victim of this abominable industry, with the practice rampant across various states. In a span of 9 years (2011-2019), India has had over 38503 victims of human trafficking.³ Out of its numerous forms, the two most prevalent ones are bonded and sex labors.⁴ Despite such a large chunk of the population being victimised, the trafficking laws in India are feeble as they fail to curb the issue at hand. Multiple legislations have been introduced, various amendments have been brought about, nonetheless none have succeeded in eliminating, rather even curbing the issue. Of the plethora of legislations, one whose subject matter stands out and allows much space for critique, is the Immoral Traffic Prevention Act, 1956.

ANALYSIS OF THE ACT

The Suppression of Immoral Traffic in Women and Girls Act, 1956 (hereinafter referred as SITA) was passed in pursuance of India being a signatory to the United National International Convention for the Suppression of Traffic in Persons, 1950. SITA was a progressive move towards restricting prostitution and human exploitation. Nonetheless, due to a restricted scope the act adversely failed to address the significant issues in the Indian trafficking sphere. Therefore, due to its narrow approach, the government came up with an alternative Act known as the Immoral Traffic (Prevention) Act, 1956 (hereinafter referred as ITPA) that was passed in 1986. This specifically focuses on human trafficking as a segment of the sex industry. Be that as it may, ITPA has certain loopholes due to which it fails to serve its purpose. The main aim of the paper is to discuss some of the fundamental failings of the act, which require imperative amendments.

- 1) Ambiguous definitions –The ITPA tends to deal with problems of sexual exploitation but fails to provide a specific definition for the term itself. It leaves this fundamental question open for the judge to interpret. This subject interpretation may create a situation where a judge, from a moralistic viewpoint, might just punish the victim of trafficking rather than the trafficker. Furthermore, a judge based on its subjective interpretation may punish individuals associated with the abhorrent profession and remain oblivious to the

³ The Print, India had 38,503 victims of trafficking in 2011-19. Only 77 have got compensation, available at <https://theprint.in/india/india-had-38503-victims-of-trafficking-in-2011-19-only-77-have-got-compensation/365761/> (Last accessed April 19, 2020).

⁴SARKAR, *supra* note 1.

offenders of trafficking who actually introduce the victims to such professions.⁵ It is also necessary to note that the Act penalises prostitution carried out in public places. But the word “public places” in this Act is so loosely defined that it becomes difficult in demarcating between public and private space, since all places are accessible by people. Furthermore, section 7 of the Act punishes prostitution carried out in “notified areas” and public places of worships, hospitals, etc., thereby it encourages moralistic ideals of “public decency” to prevail over protection of victims. But the lawmakers fail to realise that this provision may give leeway to the brothel owners to carry out exploitation of women and children outside the public realm and away from the police scrutiny.

- 2) Treating victims as offenders – The ITPA is full of contradictions, since unlike its objective, many of the provisions treat victims as offenders instead of protecting them from the sleazy brothel keepers. The Act emphasises on the need of putting victims in detention homes to correct her behavior.⁶ But the Act fails to acknowledge that most prostitutes are made to work against their will. Hence, in such a situation, keeping women in detention centres for months is unjust because they are treated as offenders rather than victims for whom the legislation is drafted. Such contradictions in the Act must be rectified immediately to put a halt to problem of human trafficking.
- 3) Lack of proper welfare measure – The ITPA permits the prostitutes to file applications to stay in a protective home.⁷ But it does not mandate the protective homes to follow various welfare measures, such as, access to medical and educational facilities. Providing necessary welfare measures is vital since it helps the prostitutes to forget the traumatizing experiences of the past and help move forward with a hope for a better future. It is also observed that the Act does not direct the state government to arrange proper means of livelihood for the prostitutes, after they are released from the protective homes. Such lack of efficacy on the part of the government may again force them to go back to their previous vocation to ensure that they have a secured lifestyle.
- 4) Redundant Penal provisions- Section 4 of the ITPA act punishes all those who are depend on the prostitute’s money as a source of livelihood.⁸ Such a provision is arbitrary because it does not consider the plight of the sex workers who take up this profession as a last recourse to earn money to run their families. For example, there may be a situation, where the remuneration earned by the prostitute may help

⁵ Kiran Bhatta, *A Review of The Immoral Traffic Prevention Act, 1956*, Centre for Policy Research (2017).

⁶ The Immoral Traffic (Prevention) Act, 1956, §10A.

⁷ The Immoral Traffic (Prevention) Act, 1956, §19.

⁸ The Immoral Traffic (Prevention) Act, 1956, §4.

her child finish college. Still, if he is punished under Section 4 of the Act then he will be deprived of an education that would help him secure a job to bring his mother out of this detestable profession. Therefore, this provision of the Act does not focus on the problem of trafficking but indulges in unnecessary regulation of the victim's life. Also, section 8 of the Act punishes a sex worker for seducing or soliciting for the purpose of prostitution.⁹ Here, again the Act penalises the victims of trafficking who are coerced into these inhumane activities by the brothel owners rather than targeting the actual culprits.

- 5) Inconsistent provisions – India is said to have a liberal approach towards prostitution because under section 3 of ITPA, only owners who permit their property to be used as a brothel are penalised.¹⁰ This means if an individual carries out prostitution in a hotel room all by herself, then she will not be punished. But this very provision goes against the spirit of Article 23 of the Indian Constitution¹¹, which completely prohibits human trafficking.¹² This also provides scope for the pimps to send out their girls to different places for prostitution without ever being caught, which again defeats the purpose of the legislation. Furthermore, section 15 of ITPA acquiesces a police officer to search a brothel without a warrant,¹³ after which those individuals found on the premises are made to produce before the magistrate. The magistrate has complete discretion to decide whether to punish the prostitutes along with the brothel owners or to put her in a corrective home. In either of the two cases, the victim loses out from the protection that the anti-trafficking legislation should provide. Also, section 20 of ITPA,¹⁴ is against the spirit of the Indian Constitution, as the magistrate can evict a prostitute from his jurisdiction and prevent her from re-entering the area thereby affecting her right to free movement under Article 19 of the Constitution.¹⁵
- 6) Lack of Gender neutrality – Even though ITPA tries to cover both female and male trafficking, yet specific provisions like section 8 target women that use gestures and expose their private parts for seducing a client.¹⁶ This reinforces the patriarchal ideology that women who tend to engage in lascivious activities should be severely punished, because section 8 nowhere punishes male sex workers for engaging in similar activities. Furthermore, ITPA ensures that male prostitutes are given lesser punishment as

⁹ The Immoral Traffic (Prevention) Act, 1956, §8.

¹⁰ The Immoral Traffic (Prevention) Act, 1956, §3.

¹¹ The Constitution of India, 1950, Art. 23.

¹² Rajalakshmi Ramprakash, *Delinking Prostitution from Trafficking- A Look at India's Immoral Traffic Prevention Act, 22(3,4) Canadian Women's studies.* (2003).

¹³ The Immoral Traffic (Prevention) Act, 1956, §15.

¹⁴ The Immoral Traffic (Prevention) Act, 1956, §20.

¹⁵ RAMPRAKASH, *supra* note 11.

¹⁶ The Immoral Traffic (Prevention) Act, 1956, §8.

compared to the women for the same offence. The Act also fails to address the rights of sex workers belonging to other categories of gender spectrum who are more vulnerable to exploitation and harassment.

- 7) Failure to comply with due process of the law – Due process of law, denounces that under criminal law, the burden of proof lies on the prosecution and not on the offender. However, section 20 of ITPA fails to comply with due process of law since when a magistrate calls a prostitute on a show-cause notice¹⁷ then there is an assumption that the prostitute is the offender and the burden to disprove this presumption lies on the prostitute. Therefore, it completely disregards the due process of law and harasses the victim based on her degrading profession.

CONCLUSION

On introspecting the various provisions of the article, it is evident that the Act does not live up to its expectations of combatting human trafficking since all throughout its provisions, it targets susceptible victims. The Act pays more weightage to activities of prostitution rather than regulating trafficking of women and children that happens due to deception, coercion. Furthermore, the Act tries hard to maintain a gender-neutral connotation but fails miserably as various provisions highlight the stereotypical view that women should be subjected to severe punishments to control her promiscuous nature.

Therefore, in response to the above discussion, I feel that the Act should be amended to redefine some of its provisions and also provide scope for new definitions. It should incorporate basic rights, like access to education, proper health care facilities for those who wish to continue with this profession. It should also ensure that the facilities of rehabilitation centers and detention homes are restructured for providing help to the victims. Above all, the Act should come out of its moralistic viewpoint that disdains prostitution. Instead it should address the problems of human trafficking in the 21st century to ensure protection of the vulnerable.

¹⁷ The Immoral Traffic (Prevention) Act, 1956, §20.

BIBLIOGRAPHY

Journal Article

1. S Sarkar, *Rethinking Human Trafficking in India: Nature, Extent and Identification of Survivors*, 103(5) *The Round Table* (2014).
2. Kiran Bhatta, *A Review of The Immoral Traffic Prevention Act, 1986*, Centre for Policy Research (2017).
3. Rajalakshmi Ramprakash, *Delinking Prostitution from Trafficking- A Look at India's Immoral Traffic Prevention Act*, 22(3,4) *Canadian Women's studies*. (2003).

Statute

4. The Immoral Traffic (Prevention) Act, 1956.

Constitution

5. The Constitution of India, 1950.

Online Materials

6. Human Rights Commission, *What is Human Trafficking*, available at <https://sf-hrc.org/what-human-trafficking> (Last visited on April 19, 2020).
7. The Print, India had 38,503 victims of trafficking in 2011-19. Only 77 have got compensation, available at <https://theprint.in/india/india-had-38503-victims-of-trafficking-in-2011-19-only-77-have-got-compensation/365761/> (Last visited on April 19, 2020).

