

PROTECTING HUMAN DIGNITY: A BATTLE AGAINST HUMAN TRAFFICKING

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ABSTRACT

This abstract explores the constitutional and legal framework governing human trafficking in India, emphasizing key provisions and recent developments. Article 21 of the Constitution guarantees the right to life and dignity, shaping interpretations that extend to combating trafficking under Articles 23 and 24. Legal instruments such as the Immoral Traffic (Prevention) Act and recent amendments align India with international standards, focusing on prevention, prosecution, and victim protection. Despite robust legislative measures, challenges persist, including coordination gaps among law enforcement agencies and societal stigmas hindering victim reporting and rehabilitation efforts. This paper underscores the complexity of addressing trafficking across borders and within domestic contexts, proposing comprehensive reforms to enhance implementation effectiveness and safeguard human rights.

Keywords: Human Trafficking, Human Dignity, Rehabilitation, Prevention, Prosecution, Victim Protection.

Constitutional Provisions

"Article 21 of the Constitution guarantees the right to life and personal liberty" (The Constitution of India, Pt. III, art. XXI). It asserts that the right to life extends beyond mere survival and includes the right to live with dignity. Articles 23 and 24, which are Fundamental Rights, remained largely inactive for nearly thirty-two years after the Constitution's enactment, with minimal judicial interpretation. However, since 1982, these Articles have gained significant importance and have become powerful tools in the hands of the Supreme Court to improve the impoverished conditions in the country.

Article 23(1) specifically prohibits trafficking in human beings, forced labor, and similar forms of coerced labor, stipulating that violations of this provision are punishable by law. Certain Fundamental Rights, such as those articulated in Articles 17, 23, and 24, are enforceable globally, not just against the state. Article 23 applies universally, targeting such practices wherever they occur, thereby ensuring its extensive and unrestricted application. The term "traffic in human beings" in Article 23(1) (The Constitution of India, Pt. III, art. XXIII) commonly referred to as slavery, encompasses the buying and selling of human beings as commodities and includes the prohibition of trafficking in women for immoral purposes.

Legal Instruments on Trafficking

Legal instruments addressing human trafficking encompass not only international laws but also regional treaties among groups of states. These mechanisms aim to protect victims' rights and interests, though some gaps exist. For instance, the Framework Decision lacks provisions acknowledging the protection needs of trafficked children and does not address the repatriation of victims. There is also a notable absence of anti-discrimination clauses or saving clauses that uphold established rights under international law.

In India, efforts to combat trafficking began with the Suppression of Immoral Trafficking Act of 1956, subsequently amended in 1978 and 1986, and now known as the Immoral Traffic (Prevention) Act. This legislative framework reflects India's commitment following its ratification of the International Convention on Suppression of Immoral Trafficking and Exploitation of Prostitution. Today, both international and national laws take a stringent stance against trafficking.

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General Provisions on Trafficking

Section 370: "This section imposes penalties for importing, exporting, buying, selling, or disposing of a person as a slave, with possible imprisonment extending up to 7 years and a fine" (Indian Penal Code, ch. XVI, Sec.370).

Section 371: "This section addresses habitual dealings in slaves, punishing those who repeatedly engage in this activity. It also covers individuals who steal children to sell them as slaves" (Indian Penal Code, ch. XVI, Sec.371).

Section 372: "This section penalizes the sale of minor girls under 18 years for prostitution, illicit intercourse, or other unlawful and immoral purposes. It aims to protect the chastity of girls and can lead to imprisonment for up to 10 years and a fine" (Indian Penal Code, ch. XVI, Sec.372).

Section 373: "Complementing Section 372, this section punishes those who buy or hire minor girls for prostitution or illicit intercourse. If a brothel manager acquires a girl under 18, it is presumed she will be used for prostitution" (Indian Penal Code, ch. XVI, Sec.373).

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 aims to prevent atrocities against members of these communities.

The Juvenile Justice (Care and Protection of Children) Act, 2000 consolidates and amends the law relating to juveniles in conflict with the law and children needing care and protection. It focuses on providing proper care, protection, and treatment, and adopts a child-friendly approach in adjudicating and resolving issues in the best interest of children, aiming for their rehabilitation through various institutions.

The Indecent Representation of Women (Prohibition) Act prohibits the indecent representation of women in advertisements, publications, writings, paintings, and figures, and can be used to prevent trafficking for pornography. Any act facilitating the offenses mentioned in Sections 3 and 4 is punishable.

The Young Persons (Harmful Publications) Act, 1956 was enacted to prevent the distribution of publications harmful to young people, including books, magazines, pamphlets, leaflets, newspapers, or similar materials.

Provisions for Rehabilitation Towards Inter-Country Trafficking

In India, people are trafficked from neighboring countries for various reasons. Domestic law includes several provisions to combat such trafficking, focusing on issues related to inter-country trafficking. These laws mainly regulate the entry and stay of foreigners in India and address offenses committed when people are trafficked across borders.

According to the Indian Penal Code of 1860, trafficking involves moving a kidnapped person beyond India's borders without their consent. This offense is punishable by up to seven years of imprisonment and a fine. The Importation of Girls from Foreign Countries Act effectively combats cross-border trafficking of women and girls under 21 years old, with penalties including up to ten years of imprisonment and fines.

The Citizenship Act of 1955 addresses the acquisition and determination of Indian citizenship. Traffickers involved in cross-border trafficking can be prosecuted under this Act if they meet the criteria for naturalized citizenship. If a naturalized citizen is convicted of trafficking and sentenced to at least two years in prison within five years of naturalization, their citizenship may be revoked. The Central Government has the authority to revoke citizenship after giving the person a reasonable opportunity to be heard.

The Foreigners Act of 1946 grants the Central Government certain powers concerning foreigners, including regulating their entry, exit, and behavior in India. These provisions help counter cross-border trafficking by controlling irregular entry and the trafficking of people into India. Violations of this Act result in imprisonment.

The Immigration (Carrier's Liability) Act of 2000 holds carriers responsible for passengers they bring into India in violation of the Passport (Entry into India) Act of 1920. A "carrier" includes any person or association involved in transporting passengers by water or air. This Act can prosecute those who illegally transport humans from other countries.

The Indian Passport (Entry into India) Act of 1920 requires individuals entering India to possess a valid passport. This law helps counter inter-country trafficking by punishing traffickers who enter India without proper documentation. Offenders face imprisonment of up to three months, a fine, or both. However, care must be taken to avoid re-victimizing trafficking victims who may be in India without appropriate documents, and measures should be taken for their protection.

Recent Development

Recent updates to the Criminal Law (Amendment) Act, 2013 include the addition of two new sections, Section 370 and Section 370A, to the Indian Penal Code. These amendments introduce significant changes, aligning the definition of trafficking with the UN Trafficking Protocol of 2000. According to Section 370 of the amended act, the victim's consent is irrelevant in determining the offense of trafficking. Additionally, Section 370A imposes penalties for exploiting trafficked individuals, including minors, and sets stringent punishments for public officials and police involved in trafficking activities.

The one area that has obviously been watered down is where the Ordinance had penalized people who employed trafficked children or adults. In the new law, this provision has been replaced with one penalizing those who engage trafficked children or adults in sexual exploitation. The new law further don't provide provision to criminalize the users of trafficked persons in other sectors like agriculture, construction industry, domestic work etc. But, it was made punishable in the Ordinance. The new law is quite tough and more comprehensive than existing laws. These changes are absolutely necessary and undoubtedly improve the law. But, simply, having laws won't serve the purpose without proper implementation of the same.

Challenges to Indian Laws

Unfortunately, while the crime is very Well organized and continues unabated, its detection and punishment does not match it, there is sometimes a lack of co-ordination between the law and law enforcement between the placed of removal or disappearance of the victim and place of landing or lodging of the victims. As it is a buyer's and suppliers market, the methods adopted suit them and work to the disadvantage of the 'goods'. The absence of strong network of surveillance mechanism is a boon to traffickers to escape the arms of law. Multiple laws involving multiple jurisdictions make prosecution of traffickers in the country of destination very low.

For instance, the country of disappearance would have one police department to look into the crime in that area. The crossing of borders is looked after by usually the border security forces. From the border to the ultimate destination may involve crossing a number of interstate borders having separate jurisdictions as far as the police are concerned. The country of re-surfacing which is the place of exploitation would again have a different police force.

Another problem is the difference of languages, legal provisions and also the enforcement procedures. Then there is lack of reporting of the missing persons. It is still considered shame for the family that one of their daughters is tricked into sex trade through deceptive means. They hesitate to report the matter to the police for fear of stigma and sometimes also with frustration that nothing is going to come out of it. The fear of exploiters taking revenge on them by using muscle power is also one of the reasons for few cases being reported to the police.

An additional and in fact the most disturbing factor is the regular payments that the traffickers make to the police for ensuing safe and hassle free trafficking. Called 'hafta' or bribe, it takes care of the police looking the other way or blindly shutting their eyes or actually co-operating with them in this immoral traffic. In some cases the police actually discourage or display an uncooperative attitude when parents of girls go to lodge a missing report with them. No wonder that trafficking continues unabated despite tall claims of proposed or actual action taken by the government. Even the raids on the brothels are followed by the tip offs by the police staff themselves.

For instance, once a raid has been conducted in brothel no 42 at G.B Road area of New Delhi which reflects connection between the police and the brothel owners. A report was lodged by the parents at the police station that a minor girl was missing from Kolkata. The informer spotted her near a Kothain the red light area. At the time when the informer went to give the information at the police station, he was asked to write the name of the Kotha on the piece of paper by the in-charge of the police station and not say it aloud for fear of leakage of information. The decoy customer was, immediately sent and he actually paid money to spend time with the minor girls who was to be rescued. However, after the raiding party reached the brothel, the frantic decoy customer met them and deposed that the information about the raid had already reached the brothel and the girls were hidden. The girl along with eight others was later found in a tiny attic, the passage to which was through a secret door small enough for a man to just crawl through. What was alarming was that despite the commitment showed by the senior staff and the efforts made to conduct the raid, the information reached the brothel even before the raiding party could reach there. The informers were the policemen themselves posted at the very police station, which is supposed to take action against the brothel owners for exploiting the girls.

The stereotyping of the ideas of good and bad and the gender bias deeply inculcated in Indian minds have taken care of the total ineffectiveness of this Act to achieve the desired objectives. The Act has faced criticism for criminalizing trafficking solely in relation to prostitution while neglecting other forms of trafficking. Although it aims to shield sex workers from exploitation by organized groups, it ultimately works against their interests. All women and even minor girls engaged in this profession whether voluntarily or even forced are bad, soiled, fallen and not worthy of being referred to by a normal name. She is 'pattita' literally meaning fallen, looked at with disdain and contempt. However, a man craving for sex outside wedlock displays a sign of manhood and even visiting these fallen women would not have any adverse effect on his respectability. Therefore, the customer, who is essential for the act of prostitution, often escapes without any consequences. The police and judiciary's attitudes have been similarly lenient. This explains why the legislation's impact and reach are noticeably limited. Although the ITPA aims to prevent the sexual exploitation of women and children and protect them, police operations under this Act or various police laws often result in the arrest of female sex workers during raids. Thus, the maximum arrests are of them, while the pimps, procurer and the brothel owners are rarely apprehended and even if arrested are released after imposition of nominal fines or lighter punishments. One primary cause of this is the significant presence and involvement of women and girls, which stands in stark contrast to the almost unnoticed presence of pimps and brothel owners. An Act does not punish women operating on their own without being part of an organized set up, brothels are passed off as the homes of these women by the owners to escape punishment. Even otherwise, the enforcement of this social legislation appears to be one of the lowest priorities of the state.

Thus, the law which ostensibly is aimed at controlling the trafficking in women and thereby giving her relief and succour, acts inimically to her interests. There are local and special Acts, which are frequently used by the police for making a large number of arrests of women.

The enforcement mechanisms of the ITPA should assume direct responsibility for taking effective actions to deter offenses, potentially by amending the Police Acts. Instead of simply being detained under the Police Act and quickly released after fines or imprisonment for non-payment, prostitutes should be supervised under the TTPA. However, specific sections of the Act confer extensive powers to apprehend prostitutes. For instance, Section 15 permits special police officers to conduct warrantless searches at premises where they suspect offenses have taken place. He is then authorized to remove from the premises, all the persons found therein, produce them before the Magistrate, get them medically examined for determining age, injuries sustained through sexual abuse, or for the signs of sexually transmitted diseases. The Act indemnifies the police party from any civil or criminal proceedings and for any action taken by them in connection with the search that is lawfully done. The vast sweep of the power and authority enjoyed by the state machinery vis-à-vis the prostitutes put their life and liberty under constraint. Raids on brothels have become a routine and stereotyped activity often preceded by a tip off. Action against trafficking and brothel keeping is tardy. Bail is liberally given to brothel keepers and procurers. Traffickers posing falsely as the parents of women apprehended by the police in the course of raids are a common sight in the magistrates court.

Although legally required to prevent women arrested and brought to court from returning to their exploiters, in practice, brothel owners and pimps frequently arrange their bail and bring them back. Options for women apprehended by police and not returned to their exploiters are limited. Perceived as lawbreakers, these women are subject to correctional measures aimed at reintegrating them into society. However, the rehabilitation services provided prioritize discipline over skill acquisition. Efforts should prioritize teaching income-generating activities to enable self-sufficiency and reduce reliance on previous lifestyles and societal stigma. The number of government institutions for reform, correction, rehabilitation, and improvement is insufficient compared to demand. These institutions face challenges such as limited funds, inadequate infrastructure, and untrained and unsympathetic staff. Staff members primarily enforce rehabilitation, reflecting the state's approach of treating prostitutes as criminals and deviants. Homes for these women often resemble prisons, with restricted movement and supervised outings. Opportunities for recreation, entertainment, personal growth, and skill development are severely restricted. Counseling and follow-up services for women discharged from these institutions are also lacking. The mandatory two to three-year stay is perceived as punitive, often resulting in women returning to their previous trade upon release.

Conclusion

The issue of human trafficking in India is deeply intertwined with constitutional protections, legal frameworks, and ongoing challenges in enforcement and rehabilitation. Constitutional provisions such as Article 21, guaranteeing the right to life and dignity, form the cornerstone of legal interpretations

combating trafficking under Articles 23 and 24. Despite legislative measures like the Immoral Traffic (Prevention) Act and recent amendments aligning with international standards, significant challenges persist. These include coordination gaps among law enforcement agencies, societal stigmas hindering victim reporting and rehabilitation efforts, and systemic issues like corruption and insufficient infrastructure in rehabilitation centers. Efforts to address trafficking across borders and within domestic contexts underscore the complexities involved, demanding comprehensive reforms for effective implementation and safeguarding human rights. Recent legal developments, such as amendments to the Criminal Law (Amendment) Act, 2013, have aimed to strengthen penalties and expand definitions, yet implementation remains a critical hurdle.

The need for a robust network of surveillance, enhanced cooperation among jurisdictions, and proactive measures to combat police complicity and societal stigma are paramount. Addressing these challenges requires not only stringent legal measures but also concerted efforts to protect and rehabilitate victims with dignity and ensure that justice prevails over impunity. Ultimately, a holistic approach is essential to mitigate the multifaceted impacts of trafficking and uphold the fundamental rights enshrined in India's Constitution.

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