

### **Immoral Trafficking of Women and Children in India**

*“The illicit and clandestine movement of persons across national borders, largely from developing countries and some countries with economies in transition, with the end goal of forcing women and girl children into sexually or economically oppressive and exploitative situations for profit of recruiters, traffickers and crime syndicates, as well as other illegal activities related to trafficking, such as forced domestic labour, false marriages, clandestine employment and false adoption...”*

-----United Nations General Assembly, 1994.

Trafficking in human beings is not a new phenomenon and it has a long history. It is one of the most lucrative criminal activities. According to the estimation of UN that 1 to 4 million people are trafficking worldwide each year and are worth more than \$ 10 billion annually. The NHRC Committee on Missing Children has reported that about 12.6 million (Government sources) to 100 million (unofficial sources) are stated to be child labour; 44,000 children are reported missing annually, of which 11,000 get traced ; about 200 girls and women enter prostitution daily, of which 20% are below 15 years of age. Human trafficking means trading female children, adolescent girls and women of productive age group (18-45years). It becomes one of the major businesses across the globe. It is shame to see such business in our country. Andhra Pradesh had 438 cases registered in 2010. Second place Kerala state which had 281 cases and followed by Karnataka and Tamilnadu, 250 & 230 respectively in 2010. The aims of this evil is sexual abuse or any risky job or for forced marriage.

India is a source, transit and destination country for women, men and children trafficking for the purpose of sexual and labour exploitation. Trafficking of women and children for commercial sexual exploitation is one of the most inhuman issues existing in our society. Internal trafficking of women and children for purposes of sexual exploitation, domestic servitude, bonded labour and indentured servitude is highly widespread across the country, either because their husbands deserted them, or have had broken marriages and are into trafficking through coercion and deception or due to traditional compulsions like Devadasis. Indian women are subjected to several forms of exploitation on the pretext of economic security.

Trafficking is defined as a trade in something that should not be traded in for various social, economic and political reasons. The concept of human trafficking refers to the criminal practices of exploiting human beings by treating them like commodities for profit. Even after being trafficked victims are subjected to long term exploitation. According to a recent survey, women are bought and sold with impunity and trafficked at will to other countries. These girls and women are sourced from different parts of India. These girls and women are sourced from Dindigul, Madurai, Trichurapalli, and Chengalpattu in Tamil Nadu, Gaya, Katihar, Purnes, Araria and Madhubani from Bihar, Murshidabad and 24 Paraganas in West Bengal, Maharajgunj from Uttar Pradesh, Dholpur, Alwar, Tonk from Rajasthan, Mangalore and Gulberga and Raichur from Karnataka. These women and girls are supplied to Thailand, Kenya, Africa and Middle East countries like Bahrin, Dubai, Britain, Oman, South Korea and Philippines. They are forced to work as sex workers undergoing severe exploitation and abuse. These women are most vulnerable group

in contracting HIV infection. Due to unrelenting poverty and lack of unemployment opportunities there is an increase in the voluntary entry of women into sex work. According to estimates by the United States Government, trafficking involving one million people is going on across international borders every year. India, along with Thailand and the Philippines, has 1.3 million children in its sex trade centres. The children come from relatively poorer areas and are trafficked to relatively richer ones. According to an International Labour Organization (ILO) estimates, 15% of the country's estimated 2.3 million prostitutes were children, while the UN reported that an estimated 40% were below 18 years of age. A large proportion of the women forced into sexual exploitation were tribals and dalits. Sixty per cent of prostituted women in Mumbai's red light areas are infected with Sexually Transmitted Diseases (STDs) and Acquired Immune Deficiency Syndrome(AIDS). More than half of Mumbai's 1, 00,000 prostitutes are infected with Human Immune Deficiency Virus (HIV).

Many indigenous tribal women are forced into sexual exploitation. According to India Centre for Indigenous and Tribal Peoples (ICITP) more than 40,000 tribal women, mainly from Orissa and Bihar were forced into economic and sexual exploitation; many come from tribes that are driven off their land by national schemes or in the name of development. Press reports indicate that children were trafficked from Assam into Haryana and other North Indian states for sexual slavery under the pretext of entering into arranged marriages. Many Dalit women have been forced to become prostitutes. Besides inter-state trafficking, inter-country trafficking from Nepal, Bangladesh and Ukraine has substantially promoted immoral trafficking in India. In India, Andhra Pradesh has the dubious distinction of having the maximum number of women trafficked in the

Mode of Entry	Means	Forms of Exploitation	
Job in Foreign Country with Alluring pay Package (voluntary)	<ul style="list-style-type: none"> <li>*Enticement</li> <li>*Inducement</li> <li>*Fraud</li> <li>*Concealment of Material fact</li> </ul>	<p><b>Physical</b></p> <ul style="list-style-type: none"> <li>• *Prostitution</li> <li>• *Pornography</li> <li>• *Semi-Sexual</li> <li>• Entertainment Industry</li> <li>• * Sex</li> </ul>	<p><b>Occupational</b></p> <ul style="list-style-type: none"> <li>• *Domestic Labour</li> <li>• *Sales Girls</li> <li>• *Attendant</li> <li>• *Surrogacy</li> <li>•</li> </ul>
Capture (Involuntary)	<ul style="list-style-type: none"> <li>• *Extortion</li> <li>• *Intimidation</li> <li>• *Kidnapping</li> <li>• *Abduction</li> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>*Prostitution</li> <li>*Pornography</li> <li>• *Semi-Sexual</li> <li>• Entertainment Industry</li> <li>* Sale of human organs</li> </ul>	<ul style="list-style-type: none"> <li>• *Intimate Domestic</li> <li>• Attendant</li> <li>• * Begging</li> <li>• * Drug Peddling</li> <li>• *Illegal Surrogacy</li> </ul>

Transfer (Voluntary +Involuntary)	*Enticement *Inducement *Fraud *Concealment of Material fact *Coercion	*Prostitution *Pornography *Semi-Sexual • Entertainment Industry • *Sex Tourism	• *Bonded Labour • * Begging • * Drug Peddling • *Menial labour • Smuggling
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country, followed by Kerala. While Andhra Pradesh had 438 cases registered under the Immoral Trafficking Act, Kerala had 281, Tamil Nadu 235 and Karnataka 250 in the year 2010. Orissa had no cases registered for immoral trafficking as was the case with north-eastern states of Arunachal Pradesh, Nagaland and Tripura.

**Purpose for trafficking female –**

- Prostitution
- Bonded and forced labour
- Beggary
- To use for anti social activities
- To place for low wages at risky environment
- To work for low wages in houses, bars, restaurants, hostel, and database etc.
- For petty pick pocketing and snatching of chains
- To marry forcibly
- To transfer their organs to the needy patients to make money.

**Reasons for trafficking in Female**

- Gender discrimination ( low status ascribed to female)
- Illiteracy
- Poverty
- Unemployment
- Laziness to work hard
- Corruption
- Lacking knowledge in life skills etc

**Other Reasons for Trafficking**

- Suppression of human rights
- Lacking protection from families
- Natural calamities
- High interest debits
- Tourist places
- Migration
- Dowry

The National Commission for Women reported that organized crime plays a significant role in the country's sex trafficking trade and that women and girls who were trafficked in the brothels frequently were subjected to extortion, physical beating or assault and torture, rape and sex abuse, starvation, isolation in dark rooms, injuries, beating with rods, forced to use drugs and drink, multiple rape, mental torture, forced abortion, burning with cigarette butts and terrorised by gangs and criminals. A study of gender reality over the years reveals how violence has been used as a means to subjugate women and keep them in a position of subordination. Trafficking occurs for various purposes like for prostitution, for working in entertainment industry, sweetshops, illegal adoption of children, organ transports, forced marriages, male-order brides, domestic work, forced labour e.g. in construction, drug trafficking, begging, other exploitative forms of work.

Trafficking is now defined as an organized crime and a crime against humanity. In spite of the stringent and rehabilitative provisions of law contained in the Constitution of India 1950; the Immoral Traffic (Prevention) Act, 1956; the Indian Penal Code, 1860 and the Juvenile Justice Act, 2000, it cannot be said that the desired result has been achieved. The Immoral Traffic (Prevention) Amendment Bill, 2006 amends the Immoral Traffic (Prevention) Act, 1956 which was introduced to combat trafficking and sexual exploitation for commercial purposes. The Bill deletes provisions that penalised prostitutes for soliciting clients. It penalises any person visiting a brothel for the purpose of sexual exploitation of trafficked victims. All offences listed in the Bill would be tried in camera; i.e. the public would be excluded from attending the trial. The term "trafficking in person" has been defined with a provision for punishing any person who is guilty of the offence of trafficking in persons for the purpose of prostitution. The Bill constitutes authorities at the centre and state level to combat trafficking. In UNs Protocol contains a number of provisions aimed at preventing trafficking. State parties are required to establish policies, programmes and other measures aimed at preventing trafficking and protecting trafficked persons. The existence of vulnerable situations of inequality and injustice coupled with the exploitation of the victim's circumstances by the traffickers and others cause untold harm to the trafficked victim who faces a multiplicity of rights violations. Accordingly the prevention of trafficking needs to be addressed not only in relation to the source areas but also in the demand areas the transit points and the trafficking routes. Strategies in all these areas have to be oriented towards the specific characteristics of the situation and the target groups.

Trafficking both for commercial sexual exploitation and for non-sex based exploitation is a transnational and complex challenge as it is an organized criminal activity, an extreme form of human right violation and an issue of economic empowerment and social justice. The trafficking of women and children causes untold miseries as it violates the rights and dignity of the individual in several ways. It violates the individual's rights to life, dignity, security, privacy, health, education and redressal of grievances.

While prostitution is not an offence, practicing it in a brothel or within 200m of any public place is illegal. There seems to be lack of clarity on whether prostitution ought to be a legitimate way of earning a living if entered into by choice. One important debate relates to whether in the Bill, the focus should be on prevention of prostitution or on the prevention of trafficking in the larger sense of the term as

covered in International Protocol on trafficking. In the present Act, Section 5, and in the proposed amendments Section 5A & 5B also, deal with procuring and trafficking. Section 6 deals with detention of person in a brothel and Section 11 deals with notification of address of previously convicted offenders under Section 363,365,366A, 366B, 367, 368,370,371,372,373 of IPC; rest of the Act is focussed on prostitutes and brothel owners.

The second issue relates to the offenders to be punished. If the woman/child who is recruited to provide sexual services to the customer and whose earnings are largely extorted by procurers, pimps and brothel-owners, is as much a victim of the system as a domestic slave or a bonded labourer, then obviously the focus of the law should be prevention, rescue and rehabilitation and on providing viable alternative livelihood for her; because otherwise she must serve or starve. There is no doubt that she is being exploited by traffickers or others. The offenders should be punished. Neither the present Act nor the amendments, address the question of prevention of trafficking at the source or the question of economic or emotional rehabilitation of the victim. The present Act has some provisions ( such as Section 7,8,10,10A,18,20) which is seeking to identify offenders in brothels inevitably lead to further harassment, torture, extortion and deprivation of livelihood of the women constrained to provide sexual services in conditions of extreme exploitation. The amendments seek to remove some of these provisions (Section 8 and 20). But it also introduces a new Clause 5C, which in seeking to penalize the customer, in effect deals a blow on the livelihood of the woman who is not provided with any alternative. At this point, the Act may be more effective if, instead of criminalizing the customer, the process of apprehending, trying and convincing the traffickers, procurers, pimps and brothel owners who receive trafficked women and children is strengthened. The rank of special police officer, who would enforce the Act, is lowered from Inspector to Sub-Inspector. Such powers delegated to junior officers could lead to greater harassment. The Bill constitutes authorities at the centre and state level to combat trafficking. These legal options can be seen as following-

#### **Legal options for Victims of Trafficking**

- **The Constitution of India**

Trafficking is prohibited by the Indian Constitution. The right against exploitation is a Fundamental Right guaranteed by the Constitution of India under Article 23(1) which provides that *“traffic in human beings and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law”*. This right is enforceable against the state and private citizens.

- **The Indian Penal Code,1860** The relevant provisions under the Indian Penal Code are Section 293,294,317,339, 340,341,342,354,361,362,363,365,366,370,371,372,373,375,376,496,498,506, 509 and 511. Of significance are Section 366A, which makes the procurement of a minor girl ( below the age of 18 years) from one part of India to another , punishable, and Section366B, which makes the importation of a girl below the age of 21 years punishable. Section 374 allows the punishment for compelling any person to labour against their will.

- **The Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA)**

This Act was enacted under Article 35 of the Constitution with the object of inhibiting and abolishing trafficking in women and girls. It was also in pursuance of the UN's Trafficking Convention, which India signed on 9<sup>th</sup> May 1950. The Act aimed to rescue exploited women and girls, to prevent the deterioration of public morals and stamp out the evil of prostitution that was rampant in various parts of the country.

- **The Immoral Traffic (Prevention) Act, 1956 (SITA)**

In 1986 SITA was drastically amended and renamed the Immoral Traffic (Prevention) Act, 1956. It is a special legislation that deals exclusively with trafficking. Offences under the Act are:

- \*keeping a brothel or allowing a premises to be used as a brothel (S.3)

- \*living on the earnings of prostitution (S.4)

- \*procuring, inducing or taking persons for the sale of prostitution (S.5)

- \*detaining a person in a premises where prostitution is carried on (S.6)

- \* seducing or soliciting for the purpose of prostitution (S.7)

- \*seduction of a person in custody (S.9)

It also introduced several initiatives including setting-up of Protective Homes to provide protection and services to victims and educational and vocational training to at-risk groups. The Act also provides for the appointment of special Police Officers assisted by women police to investigate trafficking offences and for setting up of Special Courts.

- **The Probation of Offenders Act, 1958**

This Act is aimed at the offenders. Its important features are:

- \*the Act empowers the court to release certain offenders after admonition and place certain other offenders on probation for good conduct and,

- \*it puts a restriction on the court , forbidding the imprisonment of any offender below the age of 21 years, who has not committed an offence punishable with imprisonment for life, unless the circumstances of the case or nature of the offence require that the offender be punished.

- **The Indecent Representation of Women (Prohibition )Act, 1986**

This Act puts a restriction on the publishing or sending by post of books and pamphlets containing indecent representation of women and prohibits all persons from getting involved directly or indirectly in the publication or exhibition of any advertisement containing indecent representation of women in any form.

- **The Child Marriage Restraint Act, 1929**

This Act sets down the legal age for marriage as 18 years for girls and 21 years for boys. The Act empowers the court to issue injunctions prohibiting Child Marriage.

- **The Bonded Labour System (Abolition) Act, 1976**

This Act defines terms such as “advance”, “agreement”, “bonded debt”, “bonded labour”, “bonded labour system” and provides for initiating appropriate action.

- **The Child Labour (Prohibition and Regulation) Act,1976**

The Act prohibits the employment of children in the specific occupations set forth in Part A of the schedule of the Act. It lays down the conditions of work for the children, and as per the Act, no child can work for more than three hours at a stretch after which an interval of rest for at least one hour is stipulated.

- **The Transplantation of Human Organ Act,1994**

The two-fold objectives of this Act are:

- \*to provide for the regulation of removal, storage and transplantation of human organs for therapeutic purposes,
- \*to prevent commercial dealings in human organs.

- **The Information Technology Act,2000**

This Act extends throughout India and also has extra-territorial jurisdiction. Section 67 of this Act penalizes the publication or transmission of any material, in electronic form, which is lascivious or appeals to prurient interests or if its effect in such as to tend to deprave and corrupt persons who are likely to read, see or hear the matter contained or embodied therein.

- **The Juvenile Justice (Care and Protection of Children) Act,2000**

This Act was passed in consonance with the Convention on the Rights of the Child. This Act focuses on providing for the proper care, protection and treatment of the child’s developmental needs and adopts a child friendly approach. Section 29 empowers state governments to constitute Child Welfare Committees (CWC) for such areas as they may deem fit and also outlines the powers to the committees and the procedures to be followed by it. Section 31 gives these Committees the ultimate authority to dispose of the cases. Under Section 34, a state government can establish and maintain children’s home for the care and protection of children independently. Section 39 spells restoration and protection of childhood as the primary objective of the children’s home or shelter.

- **Goa Children’s Act,2003**

This Act addresses several child rights in an integrated manner. The salient features of this Act are:

- \*trafficking given a legal definition for the first time in Indian jurisprudence.
- \*the definition of sexual assault was expanded to incorporate every type of sexual exploitation.
- \*the responsibility of ensuring the safety of children on hotel premises was assigned to the owner and the manager of the establishment.
- \*photo studios are now required to periodically report to the police that they have not shot any obscene photographs of children.

### **Remedial Strategic Interventions**

- \*The strategies should address the issue of livelihood options and opportunities by focussing on efforts to eradicate poverty, illiteracy etc. the women and children should have special packages.
  - \*Education and other services should be oriented towards capacity building and the consequent empowerment of women and children.
  - \* Traffickers should be prosecuted, for eg by booking, attaching their property.
  - \* Protection should be given to the victims. Make strategies to rehabilitate and establish them.
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- \* Natural calamities and manmade disturbances do exacerbate the vulnerability situation. Therefore relief and aftercare programmes need to have specific components focused on the rights of women and children.
  - \* NGOs and police should work together to prevent trafficking. Public awareness campaigns and community participation are key to prevention programmes.
  - \* Strong laws should be made to combat trafficking.
  - \* Gender bias and patriarchal mentality should be removed because they are essential constituents and catalyst of this problem. This manifest itself in several serious violations of human rights of women.
  - \* Creating legal awareness is one of the most important functions of any social action programme because without legal awareness it is not possible to promote any real social activism. Legal awareness empowers people by making them aware of their rights and can work towards strengthening them to develop zero tolerance towards abuse and exploitation.
  - \*Help lines and booths are should be established to help the victims. Ministry of Social Justice and Empowerment is considering collaboration between government agencies and NGOs for setting up help lines and booths
  - \* Comprehensive advisory on preventing trafficking in India has been issued by the government to all States and Union Territories. The Ministry of has been implementing “Ujwala” scheme under which financial assistance is being provided for prevention of trafficking and for rescue, rehabilitation and re-integration of victims of trafficking for commercial sexual exploitation.