

# Obstacles in Implementation of the Immoral Traffic (Prevention) Act, 1956 in Letter and Spirit

Md. Arif Wadood

Faculty of Law Jamia Millia Islamia New Delhi-110025

E-mail: [arifwadood@gmail.com](mailto:arifwadood@gmail.com)

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**Abstract**—Human trafficking is one of the most heinous crime and brazen abuse of human rights in the world that tears apart the very soul of the victims i.e. women and children. The sexual exploitation is the major cause of the trafficking, which is illegal yet the third most lucrative business the world over. Prostitution are also construed to be the oldest profession in the world by those who try to concoct it as inevitable part of society that in turn get attached to the trafficking for sexual exploitation. However, The United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949), and the Convention on the Elimination of all Forms of Discrimination Against Women (1979) among others are the major tools which denounce and try to eliminate trafficking. India too, came up with a legislation to curb this menace with various stringent provisions in consonance with the ethos of the constitution of India and International conventions as well. There are obstacles too, however, that lessens the efficacy of the enforcement of the Immoral Traffic (Prevention) Act, 1956 in its letter and spirit. The obstacles that need to be analysed are the lack of legal awareness mainly among officials at grassroots level, the lack of adequate trained manpower to enforce the law, the lack of women police officials, the lack of sensitization of women and children rights, the lack of coordination among agencies between states and across boarder, the lack of special courts and special prosecutors, discrepancy in reporting and estimation, low priority of cases against trafficking among police officials, organised crime of trafficking etc. The enormity of the trafficking in India is such that it has highest number of people in the world that got trapped in modern slavery with 18.35 million victim of force labour viz., prostitution and begging.

**Keywords:** Trafficking. Prostitution. Immoral Traffic (Prevention) Act, 1956.

## 1. INTRODUCTION

Human trafficking is one of the most heinous crime and brazen abuse of human rights in the world that tears apart the very soul of the victims i.e. women and children. The working definition of trafficking which was adopted has been studied in the U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, supplementing the United Nations Convention against Transnational Organised Crime, 2000, to which India is a signatory.[1] It defines trafficking as: “the recruitment, transportation, transfer, harbouring or receipt of persons by

means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.[2] Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or service, slavery or practices similar to slavery, servitude or the removal of organs. According to Phinney (2001), the important factors that perpetuate the trafficking for sexual exploitations are the demand of women’s and children’s bodies in the sex industry, denial of equal rights for women, lack of opportunities for economic and educational advancement for women, the perceived near impunity of the traffickers to exploit the dismal conditions of women and children.[3]

The exact estimation of the victims of trafficking operations cannot be arrived at in context of this organised crime where the nature of the crime itself is clandestine, the trade is secretive, traffickers are dangerous, women and child are vulnerable and silenced. Also, there are many agencies which do not count the crime. This is obvious that the crime of trafficking is hard to see and harder to count. However, ILO (2012) estimated 21 million peoples as victims of forced labour globally and it generates annual profits of US\$ 150 billion. [4] According to David Westwood, the victims in the last 30 years of trafficking in women and children for sexual exploitations are more than 30 million in Asia alone. Globally, this is the third most lucrative illegal business after arms and narcotics. And India is not an exception to it.

The Government of India records (NCRB) shows that the incident of human trafficking in India is showing a rising trend during the period from 2011 – 2015. A total of 3,517 cases were registered in 2011, which rose to 3,554 cases in 2012, to 3,940 cases in 2013, to 5,466 cases in 2014 and to 6,877 cases in 2015. [5] This the registered cases under various sections of IPC and IMTA. However, as per the US Department of States. [6] For the first time, the National Crime Record Bureau’s Crime in India report included data on trafficking investigations, prosecutions, and convictions. The data

demonstrated vigorous efforts to combat human trafficking but reflected a relatively low number of law enforcement action for the scale of trafficking in India and a low conviction rate overall. Moreover, the scope of law enforcement action on forced labour and the range of sentences applied to convicted traffickers remained unclear because the data was not comprehensive. Though the rate of crime has been on the rising trend, it cannot be ascribed to the lack of effective laws against it. The legislations on trafficking in India has been stringent and comprehensive.

## 2. THE LEGAL FRAMEWORK IN INDIA

Article 23(1) of the constitution of India prohibits the trafficking in human beings and forced labour. Under this article, traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. [7] This fundamental right is enforceable against the state and private citizen. There are several provisions in IPC which are of significance against the procurement of minor girls, importation of girls, and labour against the will. Under article 35 of the Indian Constitution of the Suppression of Immoral Traffic in Women and Girls Act, 1956 Suppression of Immoral Traffic in Women and Girls Act 1956, (SITA) was enacted to abolish the trafficking of women and girls. This act was further amended in 1978 and 1986. The amendment of 1986 was drastic and SITA was also renamed as The Immoral Traffic (Prevention) Act 1956. This is a special legislation which exclusively with trafficking.

## 3. THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956

This is the main law dealing with sex work or prostitution in India. It punishes certain actions related to sex work (though not sex work itself). Prostitution denotes the exchange of money for sex. Even though, the act of prostitution is not by itself illegal in India, many related actions are illegal. Carrying on prostitution in certain places (school or hospital for example), persons soliciting' or attempting to tempt a person towards engaging a prostitute (or sex worker), keeping a brothel, living off the earnings of a sex worker, making a person work as a sex worker. [8] The act provides the prevention of immoral traffic in pursuance of the international Convention signed at New York on the 9<sup>th</sup> day of May, 1950. The Act provides stringent provisions to curb this menace. Section 3, provides the punishment for keeping a brothel or allowing premises to be used as a brothel. Convict shall be punished for a rigorous imprisonment ranging between 1 to 3 years with fine up to 2000 rupees. Second and subsequent conviction shall solicit rigorous imprisonment for a term of 2 to 5 years with fine up to 2000 rupees.

Section 4 provides that the punishment for living on the earning of the prostitution over the age of 18 years with a term of imprisonment up to 2 years or fine or both.

Rigorous punishments for 3 to 7 years for procuring, taking person for sake of prostitution are provided under section 5 of the act. Many other sections are there with an objective to curb this act of prostitution with heavy hand and also provides the quantum of punishment for the offenders. [9]

Despite of strong provisions, the heinous crime of traffic for prostitution is on the rising trend. The crime under human trafficking during the year 2015 has increased by 95.5% over 2011. The obvious questions arise are what the factors that are responsible for this crime to be on rising trend even though there are strong legal provisions to abolish it. In other words, what are the barriers or obstacles in an effective implementation of the provisions of The Immoral Traffic (Prevention) Act, 1956.

## 4. THE OBSTACLES

The major obstacles are as follows:

### 4.1 The lack of legal awareness mainly among officials at grassroots level

There is a considerable ignorance about the provisions of law and human rights among both the supervising officers and investigating officers. For example in Bihar the police generally arrested the customers not the sex workers or related traffickers. Many times due to the undue attention given to section 8 of the act and even the trafficked person has been victimised as a criminal. Hence, a judicious decision to distinguish between exploiters and exploited need to made so that no innocent be victimised and at the same time no culprits be spared. Around 30% of supervising officers and investigating officers are found to be aware about the issues related to trafficking. [10]

### 4.2 The lack of adequate trained manpower to enforce the law

The police officials many a time could not tack the traffickers at the very outset even though they had the knowledge of something phishing were going on. The reason for this may be varied. One of the reasons behind this apathy was ascribed to poor intelligence and the other was the law and order problem kept officials so much busy that they did not get enough time to turn up the trafficking.

Hence, a lack of trained, sensitised and oriented towards proper utilisation of the stringent provisions provided by the ITPA seem to be the major obstacle in proper implementation of the Act. The lack of training usually leads to the lack of skills, knowledge, sensitivity and accountability.

### 4.3 The lack of women police officials

By 2015, the percentage of women police in the total strength of police forces in India was only 6.44%. The Availability of adequate women in police is a possible indicator to reduce the vulnerability of women becoming victims of crime. [11]

#### 4.4 The lack of sensitization of women and children rights

The sensitisation of the women and child rights has negative relations with the crime against these vulnerable sections. The rate of trafficking indicates that the lack of sensitivity of the women and child rights is much in our society.

#### 4.5 The lack of coordination among agencies between states and across boarder

The lack of coordination among state police agencies and central law enforcement agencies, various departments like tourism, urban development, and NGOs working on prevention of trafficking and rehabilitations of the victims has negatively affected the cause of prevention of trafficking. The lack of coordination gave ample time to the traffickers to escape from the scene unchecked and also the possibility of rescue of the victims has been reduced.

#### 4.6 The lack of special courts and special prosecutors

The delay in trial, the inability to produce witness by the prosecution negatively affects the victims. The requirements of repetitive appearance of the victims before the trial court aggravate the difficulties of the victim. The lack of special court and special prosecutors, thus, victimise the victims twice. One in the process of trafficking and other in the process of seeking protracted justice.

#### 4.7 Discrepancy in reporting and estimation

The women are afraid to report cases to police, stigma prevailed in society, ignorance of the rights to the women and children are the major factors foe under reporting and under estimation of the crime. Seemingly, more than 50% of the crime is not reported and thus no action was taken. Since the crime of trafficking is mainly a clandestine phenomenon therefore the estimation of the crime is harder without the strong vigilance and intelligence.

#### 4.8 Low priority of cases against trafficking among police officials

The lack of sensitisation and legal awareness among the officials has bearing on the priority they give to it. An urgent action is needed to clear the obstacles that are namely, the law and order problem and other problems are given priority over trafficking. It is also cited that the priority of trafficking remains low or nil because of the diktats of the higher ups.

## CONCLUSION

In spite of the stringent Immoral Traffic (Prevention) Act, 1956, the rising trend of the trafficking in women and children put a question mark on the efficacy of its implementation by the enforcement agencies in its letter and spirit. The obstacles of efficient implementations are to be identified and eradicated. The lack of legal awareness mainly among officials at grassroots level, the lack of adequate trained manpower to enforce the law, the lack of women police officials, the lack of sensitization of women and children rights, the lack of coordination among agencies between states and across boarder, the lack of special courts and special prosecutors, discrepancy in reporting and estimation, low priority of cases against trafficking among police officials. The involvement of the higher ups, the threat perception among the victims against the process of registering the case to getting justice, the social awareness and sensitisation of the issue are also among other important reasons of perpetuation of traffic. The strong political will, efficient enforcement agency, prioritising and sensitising the cases of women and children rights violations among police officials, professionalism and specialisation of the agencies concerned, inter-state and trans boarder cooperation, infrastructural development for mapping the crime and proper rehabilitation of the victims, media involvement are the major actions required to tackle this menace and clear all major obstacles.

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