

INDIAN STATUTORY SCHEMES WITH RESPECT TO HUMAN TRAFFICKING AND PROSTITUTION

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ABSTRACT

As we know Legislature Executive and Judiciary, the three vital organs of a nation which ensures us all the rights of ours as well as all the issues and problems that we face day today are being properly addressed. In this article we will analyse how far Indian Legislature were able to address the issues relating prostitution and human trafficking. In today's era marriage and prostitution do co-exist, but the morality concept of the society towards all these may vary from person to person and thus today we talk about the position of women in society saying that we have to upgrade and have heard that woman is such a being, who is suffering a lot from womb to tomb¹. So in this article I am trying analyse the various legislations relating to trafficking and prostitution that India being the signatory of many number of International conventions have made to tackle the issues.

INDEX TERMS: *Legislature , Legislation, Women, Human Trafficking , Prostitution , Immoral Traffic Prevention Act , Suppression of Immoral Traffic in Women and Girls Act , NCRB , Victims of prostitution.*

INTRODUCTION

The very issue of prostitution or to say sex work and legal regime which is necessary for curbing it has always been a matter of debate in India like all other countries. Prostitution, including the exchange of sex or sexual activity may be for food, money, drugs, or other commodities ². The Immoral Traffic Prevention Act, 1956 which is the Present law that deals with prostitution was not introduced in India directly by the British but its origins lies in the Contagious Diseases Act which was introduced in 1868. The Contagious Diseases Act, 1868 empowered the colonial state to introduce compulsory medical examinations and

¹. Chippy G Krishnan (2020),” The Term “Prostitution” In The International Scenario” *Journal of Emerging Technologies and Innovative Research*, June 2020, Volume 7, Issue 6, 1186-1187. (www.jetir.org)

². Dalla R. L. (2000),” Exposing the "Pretty Woman" myth: A qualitative examination of the lives of female streetwalking prostitutes” *Journal of Sex Research*, 37, 344-353.

restrict the mobility of one who hires body for sexual intercourse. But later on the Contagious Diseases Act, 1868 was repealed in the year 1886. Even though Contagious Diseases Act, 1868 was repealed the colonial state continued to impose close surveillance of women catering to the British troops³

In 1950 the Government of India ratified an International Convention for the Suppression of Immoral Traffic in Persons and the Exploitation of the Prostitution of others. The Convention says that, traffic in human beings is prohibited and any contravention of the prohibition is an offence punishable by law. Such a law has to be passed by the Parliament as soon as or after the commencement of the Constitution⁴. The Convention requires state parties to punish any person who "procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person", "exploits the prostitution of another person, even with the consent of that person"⁵, or runs a brothel or rents accommodations for prostitution purposes.⁶ It also prescribes procedures for combating international traffic for the purpose of prostitution, including extradition of offenders.

At that time legislation on the subject of suppression of immoral traffic were there only in some States but the laws are neither uniform nor do they go far enough. For example The Suppression of Immoral Traffic Act, 1933 (Bengal Act VI of 1933) that applied to the province of Bengal made it clear to the legislators that it is impossible to eliminate sex trafficking from Indian society without addressing the root causes of poverty, gender inequality and the status of women .So at that period in some States there were no legislation prevailing and so there was no bar on the subject of prostitution or sex trafficking at all. So it was the need of that hour that a central law should be passed which will be applicable to all the sates uniformly and which will be good enough to tackle the problem. Thus came the Suppression of Immoral Traffic in Women and Girl Act, 1956.⁷

Now when we address the issue of prostitution in India we will come across the two specific laws dealing with it

- The Suppression of Immoral Traffic in Women and Girls Act, 1956
- Immoral Traffic Prevention Act, 1956

³ . P. M. Nair ""Trafficking Women and Children for Sexual Exploitation: Handbbook for Law Enforcement Agencies in India" 1996 edition

⁴ Article 35

⁵ . Article 1 -The Parties to the present Convention agree to punish any person who, to gratify the passions of another:

(1) Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person;

(2) Exploits the prostitution of another person, even with the consent of that person. –

⁶ . Article 2- The Parties to the present Convention further agree to punish any person who: (1) Keeps or manages, or knowingly finances or takes part in the financing of a brothel; (2) Knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others.

⁷ .Herein after called as SITA

Suppression of Immoral Traffic in Women and Girl Act, 1956

As mentioned earlier prior to 1956, prostitution was dealt with in accordance with State laws that varied across provinces in their approach towards prostitution. In the light of Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others 1949, India passed Suppression of Immoral Traffic in Women and Girls Act 1956 .The Convention mandated State parties to punish persons profiting from the prostitution of others especially women and children without prejudice to how signatories address prostitutes themselves. It will be better to say that SITA mirrored the UN Convention.

When we look in to the parliamentary debates at the time of passing of SITA one will definitely understand circumstances that led to the particular enactment. The real intention of legislature behind such an enactment can clearly be understood by the amendments that were made to this principal statute in 1978 and later on in 1986 which even led to its renaming.

In 1956 a lot of heated debates occurred with respect to the passing of SITA by Parliament. The very critical question addressed by the parliament while considering the Bill was that, whether prostitution could be eradicated by criminalising sale and purchase of sex. But our legislators were clear about one thing that state could not invade in to prostitution, or sex between consenting adults in exchange for money, as it falls within private realm.

The legislators were very intelligent enough to understand the reality that prostitutes were living under the sole income of commercial sex and therefore without rehabilitating the prostitutes it will be senseless to ban prostitution. The majority opined that prostitution is a social evil and so it could not be eliminated completely but could only suppressed. The Legislature thus made clear its intention of not proscribing prostitution, but restricting its practice and inhibiting it from being carried on a commercial or organized scale.⁸ As a result all the parliamentary debates and the conclusions was that SITA penalised activities incidental to sex work but not prostitution per se.

The very word prostitution in layman's point of view or from society's view point means an act by which a woman offers his or her body for money or luxury and if we construe accordingly prostitute is one who offers her body in return of money. The very same view point was reflected in the Suppression of Immoral Traffic in Women and Girl Act,1956 wherein prostitution was defined as an act of female offering her body for promiscuous sexual intercourse for hire, whether in money or in kind and the word prostitute

⁸ . www.lawyerscollectiveforum.com

was also construed accordingly.⁹ Prostitute means the female who offers her body for promiscuous sexual intercourse for hire, whether in money or kind.¹⁰

SITA did not criminalise prostitution or prostitutes per se but it punished prostitutes under certain circumstances.¹¹ So basically SITA tolerated prostitution by acknowledging that it was a necessary social evil.¹² The definition of prostitution in SITA said only about women folk and it was a major flaw of the Act that it exempted male folk. There were no provisions to punish the client who approaches the prostitutes. Though SITA had provisions to punish pimps, brothel owners and others who are the main culprits there were enough loop holes for pimps brothel owners to escape from the same. Thus because of very many defects SITA was amended in 1978 and later on in 1986 and renamed as The Immoral Traffic Prevention Act 1956.¹³

The Immoral Traffic (Prevention) Act, 1956

Suppression of Immoral Traffic in Women and Girl Act, 1956 was amended in the year 1986 and it was renamed as The Immoral Traffic Prevention Act 1956. The law was intended to limit and abolish prostitution in India by gradually criminalising various aspects of sex work. The purpose of the Act was to abolish commercial vice namely traffic in women, men and children for the purpose of prostitution as an organised means of living.¹⁴ PITA has made drastic changes to SITA.

The main objects of PITA are;

- To preserve the right of not to be exploited by others
- To prevent immoral trafficking.
- To punish traffickers
- To punish persons living under the earnings of women who is being exploited and
- To take welfare measures for rehabilitation of sex workers.

PITA gave the emphasis on pimps, brothel owners and clients and not on the victims of exploitation or trafficking. The Act defines prostitution, brothel, child, corrective institution, public place, protective home and many other things.

One will but for sure find it is quite interesting to note that The Immoral 'Traffic' Prevention Act 1986 does not provide a definition for "trafficking" or "trafficker" or neither provides any punishment for the same. When we talk about preventing immoral

⁹ . section 2(f), SITA - "prostitution" means the act of a female offering her body for promiscuous sexual intercourse for hire, whether in money or in kind.

¹⁰ . SECTION 2(e), SITA- "prostitute" means a female who offers her body for promiscuous sexual intercourse for hire, whether in money or in kind.

¹¹ . Section 7(1), SITA

¹² . Dr J Mahanta, "Silent Decriminalisation of Prostitutes(1956) in India; Cri. L. J. 44

¹³ . Herein after referred to as PITA

¹⁴ . In Re Ratanamala AIR 1965 Madras 31(3)

trafficking we should understand what is trafficking, which is missing in PITA but the contents of trafficking can be seen in new definition of prostitution in the Act¹⁵.

When we look in to the definition of trafficking we will get to know more about India's attitude towards prostitution. Indian Constitution guarantees right against exploitation; traffic in human beings and beggar and other similar forms of forced labour are prohibited Sex Trafficking in India¹⁶

National Crime Records Bureau collects data related to human trafficking under different heads of crimes mentioned in Indian Penal Code (IPC) like :

- Procurement of minor girls,¹⁷
- Importation of girls from foreign country,¹⁸
- Selling of girls for prostitution¹⁹ (Section-372),
- Buying of girls for prostitution²⁰ (Section -373),

and also and also crimes mentioned under PITA and Prohibition of Child Marriage Act, 2006.²¹

So this approach of National Crime Record Bureau itself shows that PITA which was enacted with the objective of preventing the immoral trafficking and punishing the traffickers is not at all self-sufficient to deal with the matter of trafficking in human beings. A trafficked victim is therefore, a victim of multiplicity of crimes, and extreme form of abuse and violation of human rights. The constitution of India, under article 23 specifically prohibits trafficking in human beings. At present the legal regime to trafficking of women and children for commercial sexual exploitation includes the following.

- Indian Penal Code 1860
- The Immoral Traffic Prevention Act,1956.
- Juvenile Justice Care and Protection of Children Act-2000.
- Special laws of various states.
- Rulings of Supreme Court and High Court.

The lack of understanding of trafficking by the legal system could arise from one or more of these factors: first, there is no definition of "trafficking" or "trafficker" under the Act. Therefore, the police and the judiciary do not have an understanding of the complexities involved when a woman is trafficked, the different types of traffickers, and their strategies.

¹⁵ . Supra.n.8.

¹⁶ . Art 23, Indian Constitution-

¹⁷ SECTION 366A, Indian Penal Code, 1860

¹⁸ . SECTION 366B, Indian Penal Code, 1860

¹⁹ . SECTION 372, Indian Penal Code, 1860

²⁰ . SECTION 373, Indian Penal Code, 1860

²¹ . Dr. V. Nirmala, “ Gender Violence-With Special Reference to Human Trafficking” available@
www.journalijar.com.

“ Trafficking in people means recruiting (misinforming or tricking a person by promising a well-paid job) or transporting (moving a person from one place to another) or transferring (changing hands – handing over a person to another trafficker) or harbouring (keeping a person under watch for a certain period of time) or receiving of people from one place to another for the purpose of exploitation. In other words, trafficking occurs when someone is taken from the place where she or he lives (or is from) to another place for the purpose of being exploited. Many times children and women are trafficked for low-paid work or sex. Trafficking can be within a country, for example from rural to urban areas, or across the borders of different countries”²²

If we look in to United Nations definition “trafficking is an activity leading to recruitment, transportation, harbouring or receipt of persons by means of threat or use of force or a position of vulnerability” and almost 80% of human trafficking is done for sexual exploitation.²³ India has been referred to as the “world hub in human trafficking” and the world’s hub in prostitution related human trafficking.²⁴

Now when we look in to the important international conventions or documents like The Convention on the Elimination of All Forms of Discrimination against Women²⁵ which was adopted by the UN General Assembly 1979, states that the signatories should take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women²⁶. Both Convention on Rights of Child, 1989 and Convention on the Elimination of All Forms of Discrimination Against women, 1979; which is often described as international bill of rights for women, highlights that all forms of violence against girls and women, such as trafficking and prostitution must end.

PITA does not distinguish between prostitution and trafficking; instead, trafficking under the Act is addressed merely as prostitution-related activity. The Act never clearly defines human trafficking and limits the crime of procurement to prostitution. Now when we look into the definition of prostitution in PITA the main ingredients of trafficking can be seen, so here what India does is confining trafficking to prostitution. Though the terms prostitution and trafficking are used interchangeably by society and many people it actually is not the one and the same. If one does a good research in the area of prostitution and trafficking one definitely arrive at a conclusion that prostitution is one among the many sites where trafficked people will reach. So it will very wrong to confine trafficking to prostitution. So it can be rightly concluded that trafficking is a process and commercial sexual exploitation is the result.²⁷

²² . UNICEF WEBSITE FOR ADOLESCENTS

²³ .Ramandeep Kaur , “ Human Trafficking in India Must End” available at www.mapsofindia.com .

²⁴ . Santosh Dugal, “India, World Hub in Human Trafficking” available at www.asianews.it.

²⁵.Herein

CEDAW

²⁶ . ARTICLE 6, CEDAW

²⁷ . P.M. Nair, “Trafficking Women and Children for Sexual Exploitation: Handbbook for Law Enforcement Agencies in India”

PITA focuses only on criminalization and punishment, but it does nothing to prevent prostitution or human trafficking. Nowhere in the Act is there any mention of addressing the root cause of the trafficking infrastructure or prostitution and the appropriate preventive measures that must be taken to make youth aware about the dangers of prostitution or the dangers of trafficking.

Long twenty eight years have passed but still we are at the same juncture where trafficking has not been dealt with which is really a biggest flaw of the Act and a biggest blow to India who is a signatory to very many conventions and treaties which addresses the issue of trafficking.²⁸

PITA addressed the issue of prostitution of persons in general unlike SITA which only addressed the prostitution of women and girls. Thus PITA addressed the issue of male and female prostitution. The very definition and concept of prostitution in SITA which was the same notion of Indian society underwent a drastic change in PITA, 1986. PITA defines prostitution as sexual exploitation or abuse of persons for commercial purposes and the expression prostitute shall be construed accordingly²⁹. This is a vast improvement on the earlier definition of prostitution which stated as the act of female offering her body for promiscuous sexual intercourse for hire, whether in money or in kind and where offered immediately or otherwise. The Act has made the earlier prostitute defined under SITA now a victim and the one who is exploited by others for commercial purposes.

Now when we analyse various provisions of PITA we will very well get to know that PITA mainly punishes those acts that are performed by third parties or agents who are the main culprit behind everything. PITA provides for punishment for very many acts like keeping a brothel³⁰, living on the earnings of prostitution³¹, procuring inducing or taking person for prostitution³², detaining a person in a brothel for prostitution, with or without consent³³. The Act also imposes high Penalties where the offences involve children and minors that is the one below 16 years and 18 years.³⁴

Though the Act does not provide sex work *per se* illegal, the Act imposes certain restrictions upon the sex worker and clients by preventing prostitution in public places and the areas notified by the police³⁵, seducing and soliciting³⁶. Pimps and brothel owners can also be prosecuted and punished accordingly under PITA³⁷. The police can conduct searches or make arrests without any warrant³⁸. Special Police Officers are

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29. SECTION 2(f) , PITA

30 SECTION 3 , PITA

31 . SECTION 4, PITA

32 . SECTION 5, PITA

33 .SECTION 6, PITA

34

.SECTION 5, PITA

35. SECTION 8, PITA

36 .SECTION 9, PITA

37 SECTION 15, PITA

38 SECTION 14, PITA

appointed for the proper implementation of the Act locally and Trafficking Police Officers are also appointed at the national level³⁹. Procedures for investigation and arrest including for conducting raids, rescue and search in premises suspected of serving as brothels are also clearly laid down in the Act, overriding general procedure under the Criminal Procedure Code⁴⁰. Magistrates are empowered with special powers to order arrests and removal of persons from any place under his jurisdiction in the interest of general public, direct custody of rescued persons, and closure of brothels and eviction of sex workers⁴¹

Rehabilitation of rescued persons is provided⁴² in the Act. Even though they possess the right to be rescued and rehabilitated if they desire, as well as all the rights which can be enjoyed by every citizen they can rarely invoke these rights, since they cannot easily escape from the brothels, or from the custody of pimps or brothel owners due to very many factors and also yielding to special circumstances like poverty and other social issues. The presence of Kamathipura, Asia's largest red light district, is proof that PITA even though contain stringent provisions is ineffective in reducing exploitation of women.

DEFINITION OF PROSTITUTION AND PROSTITUTE UNDER SITA & PITA: PROBLEMS AND PERSPECTIVE

The Convention for the suppression of Traffic in Persons and of the Exploitation of Prostitution and Others, 1949 casts a duty upon the state parties to punish certain acts like keeping, managing, letting, financing, or letting for a brothel and procuring, enticing or leading away another person for the purpose of prostitution with or without consent and also exploitation of prostitution with or without consent. Even CEDAW mandates the state parties to take appropriate steps to suppress all forms of traffic in women and exploitation of prostitution of women.

When we look in to the old definition of prostitution, SITA, we get to know that prostitution was considered clearly as an act of female offering her body for promiscuous sexual intercourse for hire whether in money or in kind.⁴³ The female who offers her body for promiscuous sexual intercourse for hire, whether in money or in kind is a prostitute.⁴⁴ Even though SITA doesn't penalise prostitution *per se*, the Act tries to regulate and restrict the act of prostitution itself and also prohibit the act under certain conditional circumstances like prostitution in public place, whereas international norms tried to restrict the exploitation of prostitution or forced prostitution only and not the act itself.

The word 'prostitution' was defined in SITA as an act by a female offering her body for sexual intercourse for hire and the word 'prostitute' as a female who engages in promiscuous sexual intercourse for hire. The Act never considered it as an offence. Here also the elements like trafficking, exploitation which are the root causes of

³⁹ .SECTION 13, PITA

⁴⁰ Cr.P.C. 1973

⁴¹ .SECTION 16,17,18&20, PITA

⁴² .SECTION 19,21&23,PITA

⁴³ . SECTION 2(f) , SITA

⁴⁴ . SECTION 2(e), SITA

prostitution and trafficker, exploiter is missing. No emphasis was given in the definition part with respect to the exploitation of persons or trafficking of persons; the very term which can be seen in the name of Act. That is to say the root causes of prostitution like trafficking or other social or economic factors like poverty, unemployment were not at all addressed in the definition part. Thus definition never considered them as a victim but as a culprit. So before the amendment the word prostitute or a woman who engages in sexual activities was considered as a culprit who disturbs the decorum or harmony of the society. While the rest of the Act says something more than what is said in the definition. The Act considered prostitution as an offence if it is done in or in the vicinity of a public place⁴⁵ the activity of Seducing or soliciting for the purpose of prostitution⁴⁶ by prostitutes is also considered as a punishable offence. Keeping a brothel or allowing premises to be used as brothel,⁴⁷ punishments for living in the earnings of prostitute,⁴⁸ punishment for procuring, inducing or taking away a women or girl for the sake of prostitution,⁴⁹ detaining a women or girl in premises where prostitution is carried on,⁵⁰ seduction of a girl or women in custody for prostitution,⁵¹ special police officers are empowered with the power to search without warrant if have reason to believe that offence punishable under this Act have been committed or is about to commit in certain premises,⁵² power of special police officers to rescue a girl from a brothel or to rescue from carrying on prostitution, under the order of a magistrate,⁵³ magistrate can order closure of a brothel or eviction of offenders from particular premises which are within 200 yards of any public place,⁵⁴ magistrate can order removal of a prostitute from a public place.⁵⁵

The above provisions make it clear that the Act tried to prohibit restrict or regulate the very act of prostitution and also prohibited all kinds of exploitation of prostitution and forced prostitution and which in effect made it much broader than what is contemplated under international conventions which only tries to restrict or prohibits exploitation or forced prostitution.⁵⁶

After the amendment⁵⁷ PITA defines prostitution as sexual exploitation or abuse of persons for commercial purpose by third parties like pimps, brothel owners and other⁵⁸ which can be equated to trafficking, which is nowhere defined in the Act. The word

⁴⁵ . SECTION 7, SITA

⁴⁶ . SECTION 8, SITA

⁴⁷ . SECTION 3, SITA

⁴⁸ . SECTION 4, SITA

⁴⁹ . SECTION 5, SITA

⁵⁰ . SECTION 6, SITA

⁵¹ . SECTION 9, SITA

⁵² . SECTION 15, SITA

⁵³ . SECTION 16, SITA

⁵⁴ . SECTION 18, SITA

⁵⁵ . SECTION 20, SITA

⁵⁶ . P.S.SEEMA, "Prostitution – The Unnoticed Dimensions in Indian Legal Scenario"; amity law review, vol 8No.(1), January- June 2012.

⁵⁷ . Amendment Act 42 of 1978

⁵⁸ . SECTION 2(f)

prostitute was also construed accordingly.⁵⁹ The word 'brothel' was also amended so as to replace the word 'prostitution' with word 'sexual exploitation or abuse'.⁶⁰

So if we construe the word 'prostitute' according to new definition of prostitution, prostitute is a person who sexually exploits a person or abuse a person for commercial purpose. Simply prostitute is a person who does the act of prostitution. And to the question who is this 'who'?? the answer definitely is the third parties like pimps, brothel owners, brothel keepers and like ones. The very intention of the legislature behind changing the definition of prostitution and prostitute up to down shows their intention to address the issue of exploitation. If we assess keenly we can understand the ingredients of new definition is very much similar to trafficking or can be equated to trafficking. So now the person who offers body for sexual intercourse is considered as a victim of exploitation or one who is exploited by the third parties like pimps, brothel owners, brothel keepers and others. This means that old prostitute who was considered as a culprit by both the Act and society is not the culprit any more but they are now considered as a victim by the Act; victim of exploitation.

The law now says that a sex worker or a person can legally engage in sexual activity inside one's own house but law says that one cannot solicit or seduce the clients and cannot engage oneself in public places. This means that a person is completely free to use his or her body for promiscuous sexual intercourse for hire for acquiring any of the material gains. It is not expressly prohibited by law. So the question of decriminalisation of the act of offering one's body for hire does not have any relevance now. Earlier that is before the change in definition of prostitution there were debates on going whether to decriminalise or criminalise the prostitution. The question as to whether one can offer body for hire for promiscuous sexual intercourse. Now because of the change in the definition of prostitution and prostitute the issue of '*Decriminalisation of prostitution*' is no more an issue now. This is because decriminalisation of prostitution according to new definition of prostitution means decriminalisation of sexual exploitation or abuse of persons for monetary or other gains by third parties like pimps, brothel owners and others. Decriminalisation of prostitution cannot be permitted as it will be like aiding the traffickers to exploit others sexually and moreover it is prohibited by Indian Constitution⁶¹

Yet another flaw of PITA is that it changed only the definition of prostitution and prostitute from culprit to victim but in rest of the Act the word 'prostitution' & 'prostitute' are used throughout in the old sense itself and so arises the anomalies.

This move of legislature in changing the very concept of prostitution in the eyes of law was a very welcoming one. The legislature was even brain full enough also to change 'women or girl' to any 'person' concept. They were right in understanding present situation that not only females but males are also sexually exploited and is being trafficked for sex.

⁵⁹ . SECTION 2(e) which omitted by Amendment Act 44 of 1986

⁶⁰ . Amendment Act 44 of 1986

⁶¹ . ARTICLE 23, INDIAN CONSTITUTION-

One should clearly understand that on one side there is voluntary sex work or to say prostitution which can be said as a sort of freedom or better argued as freedom exercised by person or a liberty exercised by a person. On the other side it can be a forced prostitution that will be out of trafficking or through coercion or undue influence wherein one will be submitting oneself to the realm of sex trade or trafficking. The submission may be yielding to the external forces or social circumstances that are prevailing around them like poverty, or other economic or social factors.

I personally believe that no women especially Indian women who is moulded with all values and who always hold on tightly all the morals ethics and values of a society would not ever enter into voluntary sex work/prostitution if they would have been able to solve or get hold of many economic insecurities or the poverty which they come across in their long run of life. I think here in the above point lies the very reason behind legislature to change the very definition of 'prostitution' and 'prostitute' by way of an amendment to PITA in 1986 on the influence of CEDAW. But whether the intention of the legislature in changing the very definition have worked out or not is question for which the answer lies right down to the rest of the Act.....

The legislature have committed a big error by confining the conceptual changes only to the definition of 'prostitution', 'prostitute' and brothel and by not extending accordingly the changes to the rest of the Act.

The Act contains provisions relating to penalising prostitutes for soliciting in public places⁶². As we all know soliciting will be done by the person who engages in sexual activity. As of definition the prostitutes that is the third parties like pimps brothel owners brothel keepers etc. who does prostitution can be penalised for soliciting. Here also the legislature intended to penalise the lady who does soliciting as pimps/brothel owners/brothel keepers won't be soliciting. Here also because of change in the concept of prostitution and prostitute contradictions are prevailing.

The Act says that prostitution in or in the vicinity of public place is a punishable offence⁶³ and if a female offender is arrested for this offence she can be detained in a corrective institution.⁶⁴ Here exists a contradiction. According to definition in the Act prostitution means the sexual exploitation or abuse of persons for commercial purposes by third parties like pimps, brothel owners, brothel keepers etc. So the question is when a person is arrested for prostitution in the vicinity of public place who will be detained in a corrective institution..?? and who will be reformed..??the prostitute or the victim of prostitution..?? According to the provisions of the Act the prostitute/the offender is the one who is detained and reformed..! why should one send prostitute/offender to protective homes and be reformed?? The legislature while enacting this particular section was intended to detain the lady who engages in sexual work and reform her completely. But all of a sudden the definition of prostitution and prostitute got changed shifting the focus from the woman to the

⁶² . SECTION 8, PITA

⁶³ . SECTION 7, PITA

⁶⁴ . SECTION 10A, PITA

third party. The rest of the Act was not changed accordingly and thereby rendering the whole section meaningless.

The special police officer or trafficking police officer have power to remove a person if he is found to have been living in prostitution or is carrying on prostitution and produce before magistrate⁶⁵ and magistrate may upon inquiry in to various things like his age, circumstances at home, guardian/parent/husband appoint probationary officers upon Probation of Offenders Act, 1986 and if magistrate feels that the person is in need of care and protection.⁶⁶The magistrate can also sent them to protective homes for particular period and may appoint an officer in regard to minors who is living or carrying on prostitution for education, health, psychiatric treatment⁶⁷Here also lies the contradiction. Whether probationary officer is appointed for prostitute, the offender/third parties as of new definition or the one exploited by way of prostitution/victim of prostitution...?? who is in need of care and protection..?? Who is in need of education and psychiatric treatment?? As of now the section says the probationary officer is appointed for prostitute and minor prostitutes need education, training and psychiatric treatment. Here also the intention of legislature was to appoint probationary officer for woman who engages in sexual work who is need of care and protection and minors who is being sexually exploited need to be educated given training psychiatric treatment and so on. But the change in the definition of prostitute and prostitution happened later. This rendered the whole section meaningless.

The Act also says that certain conditions that are to be observed by magistrate before placing persons rescued under the Act to the parents/guardians/husband should make an investigation to satisfy himself on their genuineness.⁶⁸ Here the section says that magistrate will be looking on the genuineness of husband/parent/guardian of prostitute or person carrying on prostitution which as of now is the prostitute or the offender. What is the need to send the prostitutes/offender/one who exploit others for commercial purpose with the husband/guardian/parent.?. It is clear that the intention of legislature while enacting the principal Act was to rescue the victims of sexual exploitation or the exploited ones. But the change in the definition of prostitution and prostitute made the rest of the Act meaningless. This would not have arisen if the legislature were keen enough to draw down the conceptual changes rest of the Act.

Yet another notable feature of the Act is that a person who is carrying on or is being made to carry on prostitution make an application magistrate so as to keep him in

⁶⁵ . SECTION 15&16, PITA

⁶⁶ . SECTION 17, PITA

⁶⁷ . SECTION 17(5), PITA

⁶⁸.SECTION17-A., PITA- Conditions to be observed before placing persons rescued under Section 16 to parents or guardians .—Notwithstanding anything contained in sub-section (2) of Section 17, the magistrate making an inquiry under Section 17, may, before passing an order for handing over any person rescued under Section 16 to the parents, guardian or husband, satisfy himself about the capacity or genuineness of the parents, guardian or husband to keep such person by causing an investigation to be made by a recognised welfare institution or organisation.

to a protective home and to provide care and protection.⁶⁹ As of section the prostitute/the one who exploits any person for commercial purpose can make an application to magistrate. What does this mean whether the pimps brothel owners and keepers who is the prostitute or who does prostitution can apply to magistrate so that he be kept in protective homes or corrective homes to apply for proper care and protection or to rehabilitate the prostitutes who according to the new definition is the culprit?? What is the need to give a chance for the offenders or prostitutes for applying to be kept in a protective home or to provide with care and protection?? It is very clear that the intention of legislature was to give opportunity for exploited ones or victims of prostitution a chance to apply to magistrate so as keep them in protective homes. But the change in definition to the prostitute and prostitution by the amendment⁷⁰ happened and this rendered the rest of the section meaningless.

Likewise the Act contains several sections which talks about the prostitutes and prostitution as was that before the amendment that is the woman who offers her body for sexual intercourse for hire in money or in kind. As the definition of prostitute and prostitution got changed by 1986 Amendment the definition of prostitution and prostitute got changed shifting the focus from the woman to the third party. The problem exists because legislature confined the conceptual changes only to the definition of 'prostitution', 'prostitute' and brothel and did not extend it accordingly the changes to other provisions of the Act. All these provisions are to be either redrafted or there is a need for complete restructuring. Otherwise the very object behind the Particular legislation will not be achieved and also the welcoming move by our brainy legislators changing the very concept of prostitution in the eyes of law will also go in vain. The Act have failed to prevent traffic or to eliminate trafficking. In order to tackle this anomaly which persists an Amendment to the Act has been proposed by Ministry of Women and Child Development in 2006.⁷¹ But the Bill was lapsed.

The Immoral Traffic (prevention) Amendment Bill, 2006

The amendment to Immoral Traffic (Prevention) Act, 1956 was aimed to combat trafficking and sexual exploitation for commercial purposes and to punish traffickers. There as certain key changes in the Bill. The Bill has attempted to solve some the anomalies in the existing Act after the change in definition of prostitution and prostitute. The bill deletes the provisions related to prosecution of prostitutes soliciting for clients.⁷² The Bill propose to insert definition of trafficking

⁶⁹. SECTION 19, PITA-. Application for being kept in a protective home or provided care and protection by court .— (1) A person who is carrying on, or is being made to carry on prostitution, may make an application, to the Magistrate within the local limits of whose jurisdiction she is carrying on, or is being made to carry on prostitution, for an order that she may be— (a) kept in a protective home, or (b) provided care and protection by the court

⁷⁰ . Amendment Act 44 of 1986

⁷¹ . The Bill was introduced in the Lok Sabha on May 22, 2006. The Bill has been referred to the Parliamentary Standing Committee on Human Resource Development (Chairperson: Shri Janardan Dwivedi).

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⁷² .SECTION 8, PITA 1956.

in persons,⁷³ and punishment thereof.⁷⁴ The Bill also proposed to increase penalties for some offences. The Bill also inserts provisions so as to punish any person visiting a brothel.⁷⁵ Whatever be the offences listed in the Bill would be tried in camera.⁷⁶

Like ways there are very many noticeable changes in the proposed Bill(which was lapsed) so as to tackle some of the anomalies existing in PITA. But it still contains lot of flaws like they failed define the word 'sexual exploitation' and 'commercial purpose'. The Bill propose to impose punishment for trafficking for the purpose of prostitution only but leaves other important issues like trafficking for purpose of child labour, domestic work etc. This shows that Even though the Bill which is yet to pass, came to solve the problems of Existing Act, it is also not a self-sufficient one. This shows that The Immoral Trafficking Act itself is to be amended with great care and caution or else to be redrafted completely in consonance with the changed definition of prostitution and prostitute and also by finding out ways tackle the problem of trafficking and thereby prostitution itself. The legislature have committed a big error by confining the conceptual changes only to the definition of 'prostitution', 'prostitute' and brothel and by not extending accordingly the changes to the rest of the Act.

Trafficking of Persons (Prevention, Protection and Rehabilitation)Bill 2018

Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill 2018 was having good number of provisions which to address the issue of trafficking as well as the rehabilitation of the victims of trafficking. Special provisions were incorporated for the constitution of special courts to address the issue of trafficking.

⁷³ . SECTION 5A "5A, The Immoral Traffic (prevention) Amendment Bill, 2006 -Trafficking in persons.--Whoever recruits, transports, transfers, harbours, or receives a person for the purpose of prostitution by means of, - (a) threat or use of force or coercion, abduction, fraud, deception; or (b) abuse of power or a position of vulnerability; or (c) giving or receiving of payments or benefits to achieve the consent of such person having control over another person, commits the offence of trafficking in persons. Explanation.--Where any person recruits, transports, transfers, harbours or receives a person for the purposes of prostitution, such person shall, until the contrary is proved, be presumed to have recruited, transported, transferred, harboured or received the person with the intent that the person shall be used for the purpose of prostitution. ,

⁷⁴ SECTION 5B, The Immoral Traffic (prevention) Amendment Bill, 2006. 5B. Punishment for trafficking in persons.--(1) Any person who commits trafficking in persons shall be punishable on first conviction with rigorous imprisonment for a term which shall not be less than seven years and in the event of a second or subsequent conviction with imprisonment for life. (2) Any person who attempts to commit, or abets trafficking in persons shall also be deemed to have committed such trafficking in persons and shall be punishable with the punishment hereinbefore described.

⁷⁵ . SECTION 5C.- Punishment for visiting a brothel.--Any person who visits or is found in a brothel for the purpose of sexual exploitation of any victim of trafficking in persons shall on first conviction be punishable with imprisonment for a term which may extend to three months or with fine which may extend to twenty thousand rupees or with both and in the event of a second or subsequent conviction with imprisonment for a term which may extend to six months and shall also be liable to fine which may extend to fifty thousand rupees."

⁷⁶ . Section 22(2)- The Immoral Traffic (Prevention)Amendment Bill 2006- Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974), the trial of the proceedings under this Act shall be conducted in camera

Unfortunately Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill 2018 was lapsed and we are back to the same situation that we are only left with no other alternative other than the provision in Indian Penal Code 1860(Sec. 370& Sec.370A) and the Immoral Traffic (Prevention) Act 1986.

Conclusion

From the above Provisions and Acts enacted by Indian Legislature and of course the lapsed amendment Bills to the existing legislations in India, it is very evident that human trafficking and prostitution issues are not properly addressed and not seriously pondered around. Thus though the definition of prostitution itself contains elements of trafficking, the legislators of India have failed to incorporate the in to the Act, the definition of trafficking and trafficker and the various other provisions relating to ‘victims of prostitution’⁷⁷. Thus it’s high time to either repeal the present Immoral Traffic (Prevention) Act or to do a complete restructuring to existing Act by incorporation certain provisions and by making necessary changes to the existing provisions of the Act.

⁷⁷. Chippy G Krishnan (2020),” The Term “Prostitution” In The International Scenario” *Journal of Emerging Technologies and Innovative Research*, June 2020, Volume 7, Issue 6, 1194.
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