

THE TERM “PROSTITUTION” IN THE INTERNATIONAL SCENARIO

Chippy G Krishnan

Assistant Professor, Centre for Legal Studies, Gitarattan International Business School, Rohini, Delhi.

ABSTRACT

The meaning and definition of prostitution and prostitute varies from country to country. Some country addresses prostitution and prostitute as a shameful act by a person who engages themselves in to sexual intercourse for hire in return of money or any need. While some countries like India addresses prostitution as an act by which a person is sexually exploited or abused for commercial purposes. Here the situation is different, they treats the one who engages in sexual activity as victims of prostitution or as an exploited one. So state here tries to rehabilitate the one who is sexually exploited and punishes the one who sexually exploits or abuses for commercial purposes. From time immemorial the issue of prostitution had been a matter of great debate in the world and the legal regime necessary for dealing with it have also underwent drastic changes in many countries. But the most interesting fact is that till now no country has been able to address the issue of prostitution completely.

INDEX TERMS : *Prostitute, Prostitution, International Convention, CEDAW, Women, Trafficking , Exploitation, Discrimination.*

INTRODUCTION

In present world Sex, marriage and prostitution all do exist, but the outlook or attitude of society towards all these is different. In order to combat prostitution we don't talk just about prostitution, we talk about the position of women in society. We have to upgrade it. We all have heard that woman is such a being, who is suffering a lot from womb to tomb. Their rights are violated every day, everywhere in our world. Women are often considered as one in second place in all aspects of life whether it be in education, work, healthcare political or social status. Women can be placed in that group which is always exposed and discriminated and is most

prone to get exploited by others. Though various states have taken measures and passed legislations with regard to that, yet no state throughout the world can be said to have achieved a full enforcement of women's rights.

The Suppression of Traffic in Persons and of the Exploitation of Prostitution of Others, 1949.

How the issue of prostitution should be addressed legally has been in focus of international debate. But until now there is no uniform idea of how it should be legally handled. The issue of very awkward custom of supplying women for flesh trade was prevailing over the world. This issue of flesh trade and degraded status of woman attracted the international community. The League of Nations Commission of Enquiry into Traffic in Woman and Children in the East Report to the Council, 1933 had systematically pointed out the criminal elements involved and the activities related to it and also addressed the traffickers. The ensuing interventions resulted in the passage of the Convention for the Suppression of Traffic in Persons and of the Exploitation of Prostitution of Others, 1949. The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others is a resolution of the UN General Assembly. The preamble of the convention states:

"Whereas prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community"

The convention was approved by the General Assembly on 2 December 1949 and came into effect on 25th of July 1951. When we address the issue of prostitution the most important document related to it is the Convention for the Suppression of Traffic in Persons and of the Exploitation of Prostitution of Others, 1949. This is because it is only in the light of this convention India had passed Suppression of Traffic in Woman and Girls Act, 1956 which is popularly known as SITA.

The Convention mandates all the state parties who are contracting parties to this convention to make two acts punishable. The convention punishes person who procures or entices any person for the purposes of prostitution even if it is with the consent of the particular person.¹ The Convention also mandates the state parties to punish the one who keeps or manages any brothel or finances or aids for a brothel and also punish the one who knowingly lets or gives for rent any building or any part of the building for the purpose of prostitution of others.² States are party to the convention. An additional number of thirteen states had signed

¹ 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.

² . 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.

the convention but they had not yet ratified it. There were a number of earlier conventions that addressed the issue of

As of now, eighty two prostitution and some aspects of forced prostitution, the convention supersedes all those earlier ones. The 1949 Convention charges the signatories with three obligations that is prohibition of trafficking, specific administrative and enforcement measures, and social measures aimed at trafficked persons. The 1949 Convention presents two shifts in perspective of the trafficking problem in that it views prostitutes as victims of the procurers. To fall under the provisions of the 1949 Convention, the trafficking need not be in cross international lines. But some countries have not ratified the Convention at all because of their objection to the presence of the some of the Articles. One of the main reasons the Convention has not been ratified by many countries is because it also applies to voluntary prostitution,³ because of the presence of the term "even with the consent of that person" in Article 1 of the convention. For example, in countries such as Germany,⁴ Netherlands, New Zealand, Greece, Turkey and other countries voluntary prostitution is legal and regulated as an occupation.

The convention also says that the contracting parties should in accordance with its constitution adopt the necessary measures, legislative or other modes which are necessary to ensure the application of provisions of the convention.⁵ India is said to have adopted a tolerant approach to prostitution whereby an individual is free to carry on prostitution provided it is not an organized and a commercialized vice. However, it commits itself to opposing trafficking as enshrined in Article 23 of the Constitution which prohibits trafficking in human beings. India is also a signatory to international conventions such as the Convention on Rights of the Child (1989), Convention on Elimination of all forms of Discrimination Against Women (1979), UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000) and the latest South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2002).

So it is clear from the above analysis that the international convention for the Suppression Of Traffic in Persons and of the Exploitation of Prostitution of Others, 1949 says or tries to address two issues regarding suppression of prostitution. One is exploitation of prostitution and the other is forced prostitution. The convention makes it mandatory for all the signatories to address these these two issues to prostitution, exploitation of prostitution and forced prostitution. Each parties to the convention have to adopt these two things by taking the necessary steps by way of legislation or through other means in accordance with the constitution, so as to ensure an effective implementation of the provisions of the convention.

Forced prostitution and exploitation of prostitution are addressed in the convention. When we look in to the convention Article 1 of the convention states:

“The Parties to the present Convention agree to punish any person who, to gratify the passions of another:

³ . Bantekas, Ilias ; Susan Nash (2003). International Criminal Law 2/E. Cavendish: Routledge. p. 6. ISBN 1859417760.

⁴ . "Prostitution: Sex is their business". The Economist. 2 September 2004.

⁵ . Article 27-Each Party to the present Convention undertakes to adopt, in accordance with its Constitution, the legislative or other measures necessary to ensure the application of the Convention.

(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.”

It is very clear from the wordings of (1) Article 1 that whoever procures or entices or leads away another person for the purpose of prostitution or forces to become a prostitute, can be punished. This means that taking someone forcefully for the purpose of prostitution is a punishable offence. So from this we can arrive at a conclusion that convention says that forced prostitution is to be made punishable. Now when we look in to the last part of (1) of Article 1 of the Convention it says that even if the person who procures, entices or leads away another for the purpose of the prostitution, with the consent of person it is punishable. This means that the convention is looking to punish the person who forces others for the purpose of prostitution irrespective of the fact that there is consent or not.

Now when we look in to the wordings of (2) of Article 1 the convention says about punishing the one who exploits the prostitution of another person. The later part of (2) of Article 1 also says that even though exploitation of prostitution of others is done with the consent of that person it will still be a punishable act. So the convention says that exploitation of prostitution is punishable irrespective of the fact that the concerned person is willing to get exploited for prostitution. But one thing to be noticed here is that nowhere in the convention ‘exploitation of prostitution’ is not defined.

So the convention says that exploitation of prostitution and forced prostitution are to be suppressed making both punishable. Both these words though seems different in some sense, in reality there is no much difference.⁶ This is because in both these case there is elements of exploitation. Here comes the problem because the convention says that even if a person is willing or not forced prostitution and exploitation of prostitution is prohibited. A person will surely be forced in to prostitution or exploited it can be seen in some countries prostitution per se is not prohibited but what is prohibited is the exploitation of the prostitution.

Now when we look in to the wordings of Article 2 of the convention states:

“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.”

This shows that the convention punishes the third parties like the one who keeps or manages or knowingly finances or takes part in financing of a brothel and whoever knowingly lets or rents a building or

⁶. DRC SEEMA

any part of it for the purposes of prostitution is also punishable. This means that along with the one who exploits for prostitution and forces for prostitution whoever aids for prostitution is also considered as an offender can also be punished.

Now when on analyse both Article 1 and Article 2 of the convention one can see that though the term prostitution is not defined we can very well infer the meaning of prostitution from the wordings of the Convention. The convention says about punishment for '*forced prostitution*'. From here it is very clear that in the convention does not say that prostitution *per se* is illegal or is to be punished. But what is said in the convention is that forcing one with or without consent of that person is a punishable act. So it is very obvious that in the convention prostitution means an act by which a person hires his or her body for sexual intercourse in return of any money or kind.

The convention also says that '*exploitation of prostitution*' is also punishable. This means whoever exploits others for the purpose of prostitution either with or without the consent of that person is punishable. From her it is clear that in the convention does not says about punishing for prostitution but what is made punishable is exploitation of prostitution. So it very obvious from this that in the convention prostitution is used in the sense that it is an act by which a person hires his or her body for sexual intercourse in return of money or kind.

The convention also says that anyone who '*maintains a brothel or anything for the purpose of prostitution*' one who '*let's or gives for rent any building or part of it for prostitution*' is also punishable. Here also the convention says that third parties like brothel keepers or brothel or brothel keepers or one who lets or rents his or her building for the purpose of prostitution is considered as an offender. So the convention punishes not the act of prostitution *per se*. From the above it can very well be inferred that the word prostitution is used in the sense that a person offers his or her body for sexual intercourse for money or in kind. Nowhere in the convention prostitution is said as a punishable offence, whereas its exploitation and forced prostitution is made punishable.

Based on this convention India passed Suppression of Immoral Traffic in Woman and Girls Act in 1956.⁷ The Suppression Immoral Traffic in Woman and Girls Act also did not prohibit prostitution *per se*, but what is prohibited is its exploitation. The Act defines prostitution as an act of female offering her body for promiscuous sexual intercourse for hire, whether in money or in kind.⁸ The word prostitute was defined in the Act as female who offers her body promiscuous sexual intercourse for hire, whether in money or in kind.⁹ But after that drastic changes happened resulting in the amendment of SITA in 1976 and later on further amendment in 1986 and renaming of the SITA in to The Immoral Traffic Prevention Act 1956. There is now change in the definition of prostitution and prostitute. So in India at present prostitution itself means an act of exploiting another sexually for commercial purposes. This will be discussed in detail in the next chapter of this dissertation.

⁷ . Herein after referred to as SITA

⁸ . SECTION 2F SITA

⁹ . SECTION 2E SITA

Convention on the Elimination of All Forms of Discrimination Against Women, 1979

The Convention on the Elimination of All Forms of Discrimination Against Women was adopted by the United Nations in 1979¹⁰. It is most popularly known as CEDAW, or called as the Treaty for the Rights of Women. The Treaty provides an international standard for protecting and promoting human rights of women. It is often referred to as a “Bill of Rights” for women. The only international instrument that comprehensively addresses the rights of women within civil, political, cultural, economic, and social life. Thus CEDAW can be said rightly as an international legal instrument specifically designed to protect women from continuing discrimination and human rights violations offers a wide range of action to be pursued by State parties in combating trafficking in women. The CEDAW Convention was adopted by the General Assembly of the United Nations in 1979 based on a draft elaborated by the Commission on the Status of Women. Thus in the year 1981, twenty states deposited their instruments of ratification, the CEDAW Convention entered into force. The Committee on the Elimination of Discrimination against Women which is the CEDAW Committee was subsequently established to monitor the implementation of the CEDAW Convention. As of now, one eighty five countries have ratified CEDAW making it the second-most ratified Convention after the Convention on the Rights of the Child, 1989. The CEDAW Convention is also the convention with the largest number of reservations because of the special nature of some of the provisions. CEDAW has fostered development of domestic violence laws in Turkey, Nepal, South Africa, and the Republic of Korea and anti-trafficking laws in Ukraine and Moldova.¹¹

How the issue of prostitution should be addressed legally has been in focus of international debate. But until now there is no uniform idea of how it should be legally handled. CEDAW mandates the state parties to take all the measures to suppress all forms of traffic in women and exploitation of prostitution of women. CEDAW does not subscribe for prohibition of prostitution per se, it is the exploitation of prostitution that shall be suppressed. The wordings of Article 6 of CEDAW opens up for different interpretations in how to implement the article. States have different views or approaches on prostitution such as regulationist, abolitionist and prohibitionist. Some states have decided to regulate prostitution. In Holland and Germany prostitution is permitted under certain circumstances and in certain areas. There is however no country where prostitution is ranked equal to other professions. CEDAW Convention which consists of 30 articles identifies specific areas of life where women do not yet enjoy full equality with men and requires State parties to eliminate such discrimination by law.¹²

Now the question which we have to ponder on is how the convention will be used to address the issue of prostitution which can be said to be the outcome of trafficking in women. It is very obvious when we look in to the provisions of CEDAW. Article 6 of the Convention requires State parties to suppress trafficking in and exploitation of prostitution of women. However, the strength of the CEDAW Convention lies in its

¹⁰ . Herein after referred to as CEDAW

¹¹ . www.aiusa.org/women

¹² . "Uses of CEDAW in Addressing Trafficking in Women" Shanthi Dairiam, Executive Director available at <http://www.iwraw-ap.org/aboutus/trafficking.htm>

framework of discrimination.¹³ The CEDAW Convention, taken holistically, provides many answers through different articles, when the problem is framed as discrimination. The relation between the CEDAW Convention and trafficking against women can be seen in General Recommendation No.19¹⁴ and its review of state party reports General recommendation No. 19 eleventh session, 1992 violence against women. The General Recommendation 19 of CEDAW says that The Convention in Article 1 defines discrimination against women.¹⁵ The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

So in order in order to realise the full protection and enjoyment of human rights of women, Article 6 of the convention mandates the State parties to undertake measures to suppress traffic in and also the exploitation of prostitution of women, as this impedes the exercise of their human rights.¹⁶

The main objective of CEDAW Convention is to ensure the full protection human rights of woman. It ensures equal participation and protection in political and public life and aims at lifting cultural and traditional burdens placed on women both in public and private life. The CEDAW Convention recognised that women encounter discrimination in law and in all areas of life. As such, it is the first human rights treaty, which goes beyond imposing state obligation in the field of public life to require State parties to undertake a series of measures to ensure equality in private life. CEDAW Convention is the best tool to ensure full and equal participation and enjoyment of rights of women in all spheres of life, thus reducing their vulnerability to abuse and exploitation. The CEDAW Convention highlights measures to be undertaken by State parties to end discrimination in some articles covering three aspects of life of women, civil, political and legal which includes combating trafficking if it is bracketed under the heading of discrimination. Article 21 of the CEDAW Convention permits the CEDAW Committee to make suggestions and general recommendations based on the examination of State reports.¹⁷ However, in practice, the CEDAW Committee has made General Recommendations to all State parties on specific measures as warranted by the CEDAW Convention

Article 6 of the convention says out obligations placed on State parties to take action in various areas, including national legislation. In fact, State obligation extends to other areas such as law enforcement as well as underlying issues, for example the social and economic factors like poverty, unemployment etc. which will render women vulnerable to the exploitation of others.

Like Indian Supreme Court Said in the case of Taslima Nasreen's case that one cannot read and get the right intend of a particular sentence in a book without reading the whole book and that particular sentence should be read along with the other sentences of the book. Here also in the convention in order to ensure a multi-faceted approach to combat trafficking, the CEDAW committee recommends not to make use of one particular CEDAW Convention provision alone, but to use the CEDAW Convention as a

¹³ . Ibid

¹⁴ .CEDAW General Recommendation No.19(4) 4.-The Committee concluded that not all the reports of States parties adequately reflected the close connection between discrimination against women, gender-based violence, and violations of human rights and fundamental freedoms. The full implementation of the Convention required States to take positive measures to eliminate all forms of violence against women.

¹⁵ .ARTICLE 1 CEDAW

¹⁶ . Article 6-States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women

¹⁷ .Article 21 CEDAW

whole and place the problem of trafficking in women within the wider context of discrimination against women.

Trafficking against women is of course a form of discrimination. Some of the rights of women are denied or infringed over the course of the trafficking. Usually when women is deceived or forced to leave their home out of very many factors like economic difficulties like poverty, unemployment then they would not have any other option. The only option left with them are they will be forced to enter in to such a realm which they never wanted or wished to be. This means that there is a need to tackle the root cause of trafficking before addressing the issue of prostitution or the trafficking in woman. CEDAW is an apt tool to start addressing right from the root cause and finding measures for solving it.

General Recommendation No.19 covers the issue of gender-based violence - a human rights violation not explicitly included in the CEDAW Convention. Paragraphs 6 and 7 clarify, however, that all forms of gender-based violence is discrimination and spells out the rights denied to women when they experience gender-based violence.¹⁸ Almost all the rights mentioned in paragraphs 6&7 of the General Comments 19 of CEDAW are violated during the process of trafficking women, thus the definition of gender-based violence applies to trafficking in women. As such, trafficking constitutes discrimination against women. Consequently, many articles of the CEDAW Convention are applicable in relation to the rights violated. In order to identify different levels of discrimination that constitute trafficking one when closely analyse the circumstances surrounding and contributing to trafficking and three stages of trafficking cycle during which women experience discrimination. The immediate as well as deep rooted causes of trafficking and the Manifestations of abuse that women face while they are trafficked as they will reach many realm like prostitution through the channel of trafficking. Inadequate remedies for victims and survivors such as rehabilitation and upliftment in to the society.

But one thing which is to be understood is that placing the fight against trafficking in women through which one may end up in the channel of prostitution within the framework of one particular provision, Article 6 of the CEDAW Convention only does not do justice to the complexity of the issue. Even though there is a clear prohibition of trafficking in women as found in Article 6 of the CEDAW Convention which mandates State parties to take measures to prevent and punish cases of trafficking as well as protect those vulnerable to the practice, the complex array of root causes demands a more comprehensive approach.

¹⁸ . CEDAW General Comments

Para 6. The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

Para 7. Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention. These rights and freedoms include:

- (a) The right to life;
- (b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;
- (c) The right to equal protection according to humanitarian norms in time of international or internal armed conflict;
- (d) The right to liberty and security of person;
- (e) The right to equal protection under the law;
- (f) The right to equality in the family;
- (g) The right to the highest standard attainable of physical and mental health;
- (h) The right to just and favourable conditions of work.

This comprehensive approach requires analysing the different factors contributing to trafficking and subsequently addressing these within the framework of the CEDAW Convention¹⁹

By using the definition of discrimination in Article 1 of the CEDAW Convention, it is possible to identify a wide range of women's rights violated during the process of trafficking, which is the channel through which women reaches the world of prostitution. To remedy these violations, it is suggested to not only invoke Article 6 of the CEDAW Convention, which expressly requires State parties to suppress trafficking in women and exploitation of prostitution of woman but also to use various relevant articles of the CEDAW Convention as well as General Recommendation No.19 so to tackle the main problem.

CONCLUSION

So it is clear from all these that CEDAW convention is trying to suppress trafficking and exploitation of prostitution by making it mandatory to state parties for making those acts punishable. It is thus very clear from all the above analysis that what is trying to prohibit by the CEDAW convention is trafficking in women and exploitation of prostitution. It means prostitution as such is prohibited and but what is prohibited is its exploitation. Whoever exploits the woman for prostitution need to be punished? This means that prostitution should not be punished. So from this meaning of prostitution can be inferred is that it is an act of female offering her body for sexual intercourse for money or kind. Prostitution is used in this sense in Article 6. But the position as of now in India is entirely different under the Immoral Traffic Prevention Act, 1956 because of the recent amendment.

This is because in India now prostitution means exploitation of persons or abuse of persons for the purpose of commercial purpose and the expression prostitute will be construed accordingly so as to point on to third parties like pimps, brothel owners, brothel keepers Etc. Thus in India unlike the earlier definition now the word prostitution itself means exploitation of prostitution and which in other words means immoral traffic in human beings. 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. The legislators have further committed the error by confining the conceptual changes to prostitution and prostitute only and not extending to the rest of the Act.

¹⁹ . . "Uses of CEDAW in Addressing Trafficking in Women" Shanthi Dairiam, Executive Director available at <http://www.iwraw-ap.org/aboutus/trafficking.htm>