



TRAFFICKING IN WOMEN/GIRLS IN PROSPECT OF PRIVACY RIGHTS

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Abstract :-The expression ‘Human Trafficking’ generally refers to the illegal and criminal practice of exploitation of human being by use of deception, fraud, violence or coercion by treating them as commodities for financial as well as personal gains. It means the process of trapping of humans for the purpose of trading like a commodity and of sexual slavery, commercial sexual exploitation and forced labour. Anyone can be a victim of human trafficking because of lack of social and legal protection and as per present data; the majority of this crime are women /girls which is about 80% of the total victims.

It is a paradox of Indian civilized society that gender based discrimination and bareness of community support against women starts from their family right from the birth. Women are considered as a burdensome appendage and economic drain. Our society being a male dominated is more crook and crude against women since beginning. Frequently, the women/girls are sold for prostitution trade even in hotels and public resorts which is rampant among backward casts. Now, it has become a grave social issue of dignity and defeating privacy rights of women.

Problem of women is the problem of society as a whole as it affects our society at large. In order to overcome this problem there is urgent need to change the situation which perpetuates gender inequality with a sense of urgency by starting an effective campaign against discrimination and enacting stringent laws. To implement the existing legal instrument in true sense for prevention and combating the offence in issue, effective measures should be taken so that anti- trafficking measures would not adversely affect the dignity and human rights of the victims of trafficking.

KEYWORDS:- Human Trafficking, Criminal, Discrimination, Prostitution, Dignity, gender inequality etc.

1. **Introduction** :-Trafficking in human being is one of most grave and heinous transnational organized guilt against humanity that infringes their dignity, privacy, self- autonomy & exposes them to exploitation. It is a global phenomenon that manifests in the form of sex trafficking, bonded labour and organ trafficking which involves the use of deception, fraud, violence & coercion by human in order to exploit the vulnerable through forceful stripping of their dignity, autonomy and self- respect. It is not easy to prevent and detect the criminals

of trafficking (traffickers) due to its concealed nature. Despite many national and international efforts there is continuous increase in the crime of human trafficking worldwide.

There is no doubt that due to vulnerable position of women / girls in our civilized society, women constitute majority of victims of human trafficking. It is enigma of our society that on one side we worship goddesses Laxmi, Saraswati and Durga while on other side we administer sub-human treatment to the women/ girls. Gender based discrimination against women starts from our family since birth and prevails throughout of her life span as the birth of girl child is greeted with silence and sorrow. A girl is treated as economic drain and burdensome appendage as she crushes her family with dowry expenses. Crimes against women are increasing day by day due to their poor status in independent India. Though after independence women has become more self- reliant, still women is facing the problem of aggression continuously even by powerful persons. Only the mode of such aggression or discrimination has drastically modified.

Prostitution is one of the results of gender based aggression against women. The role of the Government is not satisfactorily in preventing the prostitution even by enactment of Immoral Traffic (Prevention) Act, 1956. In my opinion such Act has not fulfilled its aim in preventing the prostitution but rather it emphasized on trafficking. The Government on its implementation was assured that now on bringing the same; the prostitution will come to an end, but the motive behind it has not been fulfilled and the bed evil of prostitution in the society still exist. It is also observed that the girls / women who are victims of trafficking were pushed towards prostitution. The trafficking of women and young girls has become universal problem at international level as nowadays women is viewed solely as an object of sex and an outlet for man's basic instincts.

2. Women Perception to Gender Discrimination: - Almighty God has made all men and women almost equal. . Also nature nurtures all of us equally. Nature has not made any discrimination among men and women. It is only our society, tradition and our viewpoints that make difference among them by considering separate role for men and women. Generally, a family cart can't work properly and smoothly when its two wheels i.e. one is man and other is woman proceed in the same direction. But, in our present societies, we observe that men are considered superior than women. Traditionally, a woman did not get ant support and encouragement needed for education and to choose their career of her own choice. So, due to these practices of gender discrimination women face social as well as psychological pressures since their adolescence hood. They are also subject to harassment outside the home, even in their own family on many occasions. As a result, they are physically and mentally disturbed. Sometimes They are compelled for mismatch marriage. So, they are compelled to leave their home or become pray of suicide or drug abuse due to this gender indifference. We also observe that such type of gender discrimination is generally plasticized by other females of that family, who are aged to them in order to have dominance in their family affairs.

Thus, there is need of human rights awareness and to improve their level of literacy through mass media, non Governmental organizations as well as in the educational institutes. In this the 21st century, education can be the most potent weapon to change the position of the women in the society, which can be helpful in reducing inequality and functioning as a means of improving their status in the family and society.

3. Various Causes for Trafficking in Women/ Girls: - Human Trafficking is generally another name for modern slavery, wherein the victims involved are forced, coerced, deceived and sexually exploited. Mostly victims are duped into this trade by making false promises regarding better job opportunities. Mostly women are lured into this trade through bait of false marriages. Once they enter into the country of trade their passports are confiscated and left with no option. It is a kind of multi facet threat which robs people of their human right to freedom and privacy.

Persons living in difficult conditions such as poverty, unemployment, and gender based discrimination etc which can become desperate makes them vulnerable to meet basic needs. Traffickers' oftenly prey on weaknesses, unfamiliar circumstances and inexperience and are trained to identify their victims by exercising expert manipulation tactics to persuade, trap and control their victims. Certain situations that create vulnerability are as follows: -

a. Poverty: - Poverty lies at the heart and root cause of human trafficking. Traffickers target vulnerable people as easier to exploit them. Women like widow or single mother struggling to survive with her children, is desperate to meet basic need and is in a vulnerable position. A trafficker, familiar with her situation, might offer

her a job opportunity that enables her to survive with her children. In this condition she may accept his offer and willing to do whatever trafficker asks of her. Thus vulnerability creates opportunity for traffickers.

b. Unemployment: - Traffickers target unemployed youth by offering them job opportunities in another city or country. So, they persuade them to leave their home by making false promises. Once the individual arrives at the destination, traffickers generally confiscate the passport & ID's of the victim. Hence, traffickers use deception to trap their victims.

c. Lack of Education: -Generally women are subject to exploitation by trafficking due to lack of education among women/girls. To eliminate this problem and ensuring women's equality, women empowerment is needed by imparting them proper education. Denial of education to women is akin to denial them equal rights provided by the Constitution to every citizen of India. Women's education is essential for social, economic, cultural as well as political development and transformation of a Nation. Gandhiji also favored women education by saying that It was from the lips and laps of women that the next generation would be educated. Women education is the need of the present time.

d. Displacement: - Due to war, natural disasters like flood, earthquake, cyclone etc and political instability many individuals, even entire families can be compelled to flit their homes and cities & they may experience financial hardship. Such individuals and many children who have lost their parents in the disasters are the main target of traffickers. As they have no guardian to protect them and no safe place to live in. Such persons are more vulnerable to abuse and trafficking.

e. Abandoned Persons: -Persons, who are abandoned, cast out of their homes and youth experiencing homelessness & living in isolation are highly vulnerable to human trafficking. A person who feel alone and unloved and lives in isolation are commonly abused & willing to take a great risk in their life even they may feel comfort living with their traffickers.

f. Greenness, Quackism and Want of knowledge: - Sometimes greenness or quackism may lead people to exploitation. A teenager, who is approached by a trafficker may accept job offered by a trafficker seeing a great opportunity at young age due to want of knowledge. A trafficker will take advantage of his situation.

g. Social and Cultural Practices: -Certain cultural practices such as child marriages, gender based discrimination etc prevalent in some societies may also create a great opportunity for traffickers. A parent may be willing to sell a daughter and exploit her life, while some women/ girls may leave their home willingly due to unequal treatment. Such women/ girls are more vulnerable to abuse and trafficking.

h. Migration or Resettlement: - Migrants using irregular routes are vulnerable to exploitation due to high risk of circumstances and they are easily victimized by the traffickers. Migration generally refers to movement of people from one place to another with an objective mind. Migration of people to urban areas or across borders to find better opportunities for better lives have become a hidden reason for trafficking as such people may be vulnerable to sexual or labour exploitation at their destination.

i. Commercialized sex and cheap labour: - Demand for cheap labour and commercialized sex provide opportunities to traffickers to exploit people. Traffickers can earn large profit by producing goods and services through cheap or free labour and selling them at higher price in the market.

j. Lack of human Rights for marginalized group: - In many countries there is lack of human rights for marginalized groups of the society. So, traffickers can prey these marginalized groups as they lack security of the law enforcement agencies, even to societies they live in.

4. Elements of Human Trafficking: - For occurring the offence of Human Trafficking, the following elements must be present:-

- The trafficker must commit one or more of the following acts i.e.
 - Transport
 - Transfer
 - Harbour
 - Recruit
 - Give/ Receive benefit
 - Control
- He must use at least one or more of the following means i.e.

- Violence or threat of violence
- Coercion
- Abduction
- Deception
- Fraud
- Abuse of power
- The Purpose of Exploitation of human being by another human must manifests in one or more of the following forms
 - sex trafficking
 - smuggling
 - bonded labour/ forced labour
 - organ trafficking for trading like a commodity
 - sexual slavery
 - servitude
 - commercial sexual exploitation

For financial gain or material benefit, in order to exploit the vulnerable through forceful stripping of their dignity, autonomy and self- respect.

Thus, **Human Trafficking= Act +Means +Purpose**

5. Various Stages of Human Trafficking: - It is true that Human Trafficking is an Invisible crime as its signs are oftenly not obvious to the untrained eyes. Traffickers while controlling their victims takes or follows the following steps:-

- i. Bating or Seducing
- ii. Grooming and Gaming
- iii. Coercion and Manipulation &
- iv. Exploitation

i. Bating: -In this stage the vulnerabilities of the potential victim are assessed by identifying their financial, emotional and other needs. Traffickers generally trick and induce their victims by misleading them using deception, fake promising a better life, profitable jobs and presenting them opportunity to make money that actually do not exist. For purpose of luring their victims follows the steps as under: -

- Assessing the right person
- Testing the vulnerability of their victims
- Identifying their requirements
- Keeping them in isolation
- Collecting as much information about them
- Making feel them special

ii. Grooming and Gaming: -Grooming is a process; a trafficker uses to identify and control someone for purpose of trafficking them. In this stage conditioning of the probable victims are applied physically as well as mentally to reset the normal mindset and their behavior. For these purpose traffickers generally uses pomography¹ or sexual activities to groom the victims for their new life. Various stages of sexual grooming includes: -

- Targeting their victim
- Winning their faith before inducing them
- Filling a need and promising her
- Making physical contact and engaging in physical intimacy
- Maintaining a control over them
- Introducing her to illicit drugs under the guise of having fun

¹ Pomography means printed or visual materials that are designed to cause the sexual excitement by showing or describing sexual acts.

iii. **Coercion and Manipulation:** -

- Traffickers usually compel their victims to accept job by applying various forms of deception, coercion or fraud.
- Traffickers also use sexual tactics like threat, blackmailing, intimidation, humiliation and debt bondage to coerce their victims into sex trafficking. For example, traffickers may take their illicit photos and threaten them to make public these photos.
- He may threaten the victim and her family members to make physical harm.
- He plays with her emotion and uses information gained against her.
- Thus, in sex trafficking, coercion may be used by a trafficker manipulating a victim into falling in love with him and then using this relationship as a mean to wield power over him.
- Once he is able to gain the loyalty and trust of the victim, he may ask the victim to sell herself for sex.
- He draws on her drug addiction to make her have sex for drugs or money that make her feel indebted to him.

iv. **Immersion and Exploitation:** - In this stage, the victim commonly accepts the trafficked life as normal. Trauma bonding is completely affected. Victims are not in a position to recognize the victimization even they can be willing participant in the culture of trafficking. The victims, who are under the full control of traffickers, may recruit on behalf of the traffickers and commit masking crimes²

Hence, human trafficking is the universal trade of humans for the purpose of sexual slavery, forced or bonded labour, prostitution or for commercial sexual exploitation for the traffickers. It is a gross violation of human rights of persons that deprives people of their privacy rights. There are many physical as well as psychological effects faced by the victims of human trafficking like depression, anxiety, fear, guilt, shame, memory loss etc.

6. **Phases of Human Trafficking:** - Human trafficking can take place in three phases i.e.

- a. Origin
- b. Transit and
- c. Destination

a. **Origin:** - The human trafficking generally originates from adverse circumstances such as poverty, unemployment, natural disasters, political dissension, war and religious persecution etc in countries of origin. Globalization is also one of that has contributed in trafficking as globalization is a double edged sword as such it has shaped the world's market for the transportation of illegal migrants, affording criminal organizations the ability to expand their network and create transnational routes to facilitate the transportation of migrants. Origin is the place from where victims are recruited.

b. **Transit:** - Transit refers to transportation and transfer of victims of human trafficking for exploitation across the border by means of threat, use of force or by use of other forms of coercion etc. Victims may be moved to the different countries to access commercial sex markets by sea, land or air, openly or covertly, in groups or alone using public or private vehicles. Traffickers' oftenly create transnational routes for their transportation.

c. **Destination:** - Destination is the last phase where the victims are received and maintained for exploitation. Even the victims may also be exploited in the first two phase's i.e. Origin and transit phase. In this phase, negotiation takes place for maximum gains.

7. **Privacy Rights of the victims of Human Trafficking:** -An approach based on privacy rights can be dominant and influential element for purpose of eliminating discriminatory practices against the women victims of trafficking. Right to Privacy is a human as well as fundamental right of a woman. Nobody is allowed to disturb her privacy even her husband against her pleasure and consent.

Article 12 of UDHR³says:- No one shall be subjected to arbitrary interference with her privacy, family, home or correspondence, nor to attacks upon his honour and reputation.”

² Masking crimes are used to hide the trafficking components of criminal activities.

³ UDHR- Universal Declaration of Human Rights

Article 17 of ICCPR⁴, 1968 mandates a similar provision under Article 17. The Right to Privacy is protected under

Article 21 of the Indian Constitution⁵ as a basic right to life and Personal Liberty except according to procedure established by Law. Personal Liberty also includes Right to Privacy as its essential facet.

There are many national as well as international instruments that grant human rights to the trafficked victims also.

Nelson Mandela⁶ has said that, “to deny their human rights is to challenge their very humanity”.

Indian Legal Framework: -In order to fight with this problem, India did not drop back and took various steps to grub this issue. A number of statutes have been enacted for the protection of women/ girls from exploitation.

a. **Constitutional Framework:** - In the **Constitution of India** there are many provisions that provide security to the rights of women/ girls and are also helpful in improving their conditions in the society. Such as:-

- **Article 14 of Constitution⁷** guarantees equality before Law of males and females.
- **Article 15⁸** prohibits discrimination on grounds of sex, besides other factors.
- **Article 15(3)⁹ empowers State** to make special provisions for women and children.
- **Article 16¹⁰** mandates equality of opportunity in matters of public employment of males and females besides other facets of the society.
- **Article 23¹¹** prohibits beggar or forced or bonded labour of men and women.
- **Article 39¹²** of Constitution deals with **DPSP (Directive Principles of State Policy)**. It states and directs its policy towards securing that men and women equally have the right to adequate means of livelihood, that the health and strength of workers, including men and women are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age and strength.

➤ **Article 51-A(e)¹³** mandates Fundamental duty on every citizen of India by saying that it shall be duty of every citizen of India, to renounce practices derogatory to the dignity of women/ girls.

b. **Protection of Rights of Women/ girls under under the Immoral Traffic Prevention Act, 1956:** -In order to deal with the problem of trafficking, the first law was enacted i.e. “**Suppression of**

⁴ **ICCPR**- International Convention on Civil and Political Rights

⁵ **Article 21 of the Constitution of India** provides Protection of life and personal liberty and says No person shall be deprived of his life and personal liberty except according to procedure established by Law

⁶ **Nelson Mandela** was a South African anti-apartheid revolutionary, Political leader who served as President of South Africa from 1994 to 1999.

⁷ **Article 14** of the constitution of India states that the State shall not deny to any person equality before Law and Guarantees equal protection before Law to all males and females

⁸ **Article 15** secures the citizens from every sort of discrimination by the State, on the grounds of religion, race, caste, sex or place of birth or any of them.

⁹ **Article 15(3), the Constitution** of India attempts to deal with protective discrimination. For instance, Article 15(3) makes it possible for the state to create special provisions for protecting the interests of women and children.

¹⁰ **Article 16** discusses about the equal opportunities to be provided to individuals in the matters of public employment.

¹¹ **Article 23** of the Indian Constitution expressly prohibits human trafficking, forced labour and other similar activities. It also states that any violation of this provision will be considered as an offence and the person acting in contravention of the law will be penalized in accordance with the law. Thus, everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. Everyone, without any discrimination, has the right to equal pay for equal work.

¹² **Article 39** mentions the principles of policy that must be followed by the States

¹³ **Article 51A (e)** imposes on every citizen by way of fundamental duty the responsibility to renounce practices derogatory to the dignity of women.

Immoral Traffic in women and girls Act (SITA) which was passed in December, 1956 in pursuance of United Nation Convention for suppression of traffic in person and of exploitation of the Prostitution of others. It was an attempt to reduce this practice instead of eradicating it completely. So, it remained ineffective due to certain loopholes. Thus, Parliament amended it twice i.e. in 1970 and 1986. It was renamed as “**The Immoral Traffic (Prevention) Act 1956**”. Under this Act many penal and prohibitory Provisions have been made against Immoral Trafficking. This Act also provides for punishment of offences of procuring, inducing or taking person for the sake of Prostitution. Though, this legal framework seems to be strong but reality is far away from all this due to certain reasons: -

- + This Act is totally silent on Trafficking of children of Prostitutes, their situation and upliftment in the society.

- + It does not contain provisions to deal with other forms of Commercial sexual exploitation and cross border trafficking.

- + It contains no provisions for rehabilitation of victims.

- + It exempts customers from any criminal liability.

- + It treats a woman in prostitution as an offender and criminalizes woman in prostitution.

- + Due to corrupt practices, in India oftenly protectors are found to be exploiters which results in manipulation and misappropriation of records. Generally police officers accept bribes for not reporting cases and to keep silent on happening of such cases.

c. **The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018**¹⁵: -

- ✓ It evolves a new Law for investigation of all types of trafficking, and for rescue, protection and rehabilitation of trafficked victims.

- ✓ It makes provisions for the establishment of investigation and rehabilitation authorities at District, State as well as National level.

- ✓ It sets up maximum penalties for various offences related to trafficking.

d. **Steps or Initiatives taken by The Ministry of Women and Child Development**

16(MWCD): - In order to check practices regarding Trafficking in women/ girls MWCD has taken various steps such as:-

- i. With the aim of reintegrating and mainstreaming the victims of Trafficking, National Plan of Action to combat the problem of Trafficking and commercial sexual exploitation of women and children, 1998 was started.

- ii. In order to address the issue and to opinion the tactics, Central Advisory Committee (CAB) was constituted.

- iii. Rescue operations whether pre-rescue or post-rescue, of victims of trafficking were published as guidelines for stakeholders.

- iv. For better understanding of the condition and proper responding the suspicious activities, training to all stakeholders such as police, officials etc. has been provided.

- v. For protection of women/ girls in difficult situation, MWCD has established shelter based homes; short stay Homes and Swadhar Homes.

- vi. In order to overcome the problem of cross border Trafficking, MWCD with the ministry of External Affairs has tried to form special task forces.

International Instruments: -

- i. **Palermo Protocol** provides protection from incrimination for unlawful entry into the territory and guarantees right to safety to the victims and ensure them proper and safe place to live. It also guarantees right to Privacy to the trafficked victims that protects identity of the victims with regard to excluding the media and the

¹⁴ “**Suppression of Immoral Traffic in women and girls Act (SITA)** which was passed in December, 1956, was renamed as “**The Immoral Traffic (Prevention) Act 1956**”. Under this Act many penal and prohibitory Provisions have been made against Immoral Trafficking.

¹⁵ The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 was introduced by Women & Child Development Minister Maneka Gandhi., the Bill provides for the rescue, prevention and rehabilitation of the trafficked victims

¹⁶ **The Ministry of Women and Child Development (MWCD)** is a nodal Ministry for the advancement of women and children; the Ministry formulates plans, policies and programmes; enacts/ amends legislation, guides and coordinates the efforts of both governmental and non-governmental organizations working in the field of Women and Child Development.

public from the court proceedings. The basic human right to live with dignity and self autonomy is the essential part of right to life that need to be protected.

ii. **CEDAW (Convention on Elimination of all Forms of Discrimination Against Women), 1979**¹⁷: -Section 11 CEDAW requires States parties to take all appropriate measures to suppress all forms of trafficking in women/girls and exploitation of prostitution against them and to eliminate discrimination against them in the field of employment in order to ensure their right to privacy.

In case of Madhu Kishwar vs State of Bihar¹⁸, the Hon'ble Apex Court after considering the provisions of CEDAW, it was held that it is an integral scheme of the Fundamental Rights as well as Directive Principles.

iii. **In 1997, 9th SAARC Summit**¹⁹, the member States took initiative to have proper administrative as well as Legislative measures to fight or face the problems of trafficking of women/ girls in the region.

iv. **In 2002, in 11th summit of SAARC 20th held at Kathmandu, Nepal**, a convention on prevention and fighting Trafficking in women/ girls prostitution was professed.

v. **The Charter of United Nations**²¹ in its preamble declares reaffirm faith in basic Human Rights, in the dignity and worth of individuals of a Nation, in the equal rights of men and women.

vi. **Trafficking Protocol**²²: - It is a protocol to the United Nations Convention which applies to the prevention, Protection investigation and prosecution of Trafficking offences.

8. **Role of Judiciary**: - we all are aware of the fact that the issue of trafficking is a very sensitive issue worldwide. Indian judiciary has given it more importance while dealing with the cases of trafficking of women/ girls. Our Hon'ble Apex Court and High Courts have delivered many significant verdicts on trafficking and also laid down certain principles, which have positive impact on the approach of judiciary while dealing with the cases of human trafficking

❖ **In the case of People's Union for Democratic Rights Vs Union of India (also known as Asiad case or Asiad Construction workers case)**²³, It is a landmark judgement in which Hon'ble Apex Court while considering the scope and ambit of **Article 23** it was held that scope of **Article 23** is very wide and unlimited and strikes at beggar, traffic in human being and also other forms of forced labour as it is violative of human dignity, privacy and contrary to other basic human values and violative of **Article 21 of Constitution of India** i.e. Right to Life. **Supreme Court** used expressions 'bonded labour and forced labour in **Article 21** to 'Right to live with human dignity'. Hence scope of Article 21 includes right to livelihood along with the right to live with basic human dignity.

❖ **In case of Vishal Jeet Vs Union of India**²⁴, the Hon'ble Apex Court of India has issued directions to set up of advisory committee to take appropriate measures for the security and rehabilitation of victims of forced prostitutions and to take preventive steps to check and prevention from the flesh trade and exploitation of women/ girls.

❖ **In case of Gaurav Jain Vs Union of India**²⁵, Hon'ble Apex Court of India has held that the children of prostitutes have the right to equality of opportunity, right to dignity, care, protection and rehabilitation so as

¹⁷ On 18 December 1979, the Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations General Assembly. It entered into force as an international **treaty** on 3 September 1981 after the twentieth country had ratified it. It is an international legal instrument that requires countries to eliminate discrimination against women and girls in all areas and promotes women's and girls' equal rights

¹⁸ Judgment Dated 11-10-1991 of Supreme Court of India having citation 1992 (1) BLJR 185 , (1992) 1 SCC 102 , [1991]

¹⁹ The ninth summit was held in Maldives on 12–14 May 1997, and was attended by the presidents of the Maldives and Sri Lanka, the prime ministers of Bangladesh, India, Nepal and Pakistan, and the king of Bhutan.

²⁰ The eleventh summit was held in Kathmandu, on 4–6 January 2002, and was attended by the presidents of the Maldives, Pakistan and Sri Lanka and the prime ministers of Bangladesh, Bhutan, India and Nepal.

²¹ The **UN Charter** mandates the UN and its member states to maintain international peace and security, uphold international law, achieve "higher standards of living" for their citizens, address "economic, social, health, and related problems", and promote "universal respect for, and observance of, human rights

²² Protocol to prevent, suppress and punish Trafficking in persons, Especially women and children (Also known as UN TIP Protocol), supplementing the UN Convention Against Transnational Organized Crime (New York, November 2000)

²³ 1982 3 SCC, INSC 67

²⁴ AIR 1990 SC 1412

²⁵ AIR (1997) 8 SCC 114, air 1997 SC 3021

to be part of mainstream of social life and issued directions to set up of advisory committee to formulate a scheme for the rehabilitation of the child prostitutes.

❖ **In case of Prerana Vs State of Maharashtra and others**²⁶, following a raid and rescue operation from a red light area, several young girls and children were rescued and the offenders were arrested. During the pendency of proceedings, girls who were found to be less than 18 years of age were kept in an observation home. A Lawyer (who was also lawyer of the accused) filed an application for the release of these girls on the ground that they were innocent. On his application the girls were released. Prerana, a NGO working with rescued victims of prostitution, filed a petition in the High Court clearing their apprehension that these girls would be handed over to the accused. The Hon'ble High Court while delivering its verdict held that:-

✓ Children rescued from brothels should be treated as “ children in need of care and protection” under the Juvenile Justice (Care and Protection of children) Act, 2000

✓ A lawyer representing the accused should not represent the victims

✓ Drew parallels between the Immoral Traffic (Prevention) Act and the Juvenile Justice (Care and Protection of children) Act, 2000

❖ **Pramod Bhagwan Nayak Vs State of Gujarat**²⁷, , In this case **Hon'ble Court** emphasized on the need of girl education till 12th standard and remarked that, “If the girls are educated and studied, further opportunity can be given by the State Government to earn their livelihood. It is well known that no women/ girls join the profession at their own sweet will. They have to do it under severe compulsion as there is no other alternative to them.”

As per **Section 2(g) of Gujarat Prevention of Anti-social Activities Act, 1985**, detenu activities fall within the Immoral Traffic, which were causing or likely to cause harm, danger to life, property and public health and also immoral trafficking was resulting in spreading sexual diseases such as H.I.V. AIDS etc. Thus, court held that there was no requirement of any documentary evidence to prove that such activities had been dangerous to public health particularly when there was sufficient material on record to show that the detenu was involved in anti-social activities of running brothel or involved in the offence of Immoral Trafficking.

❖ **Orissa Patita Udhar Samiti Vs State of Orissa and Ors**²⁸, . In this case **the Hon'ble High Court of Orissa** directed the State Government to take immediate measures in accordance with the decision of **Hon'ble Apex Court in Gaurav Jain case**. The Court also reasserted from the said verdict that “The society should make reparation to prevent trafficking in women, rescue them from red light areas and other areas in which the women are trapped in prostitution.”

❖ **Geeta Kancha tamang Vs State of Maharashtra**²⁹, this case involves trafficking of a child by the applicant to be a brothel owner/ kee2007 (1) OLR 150 per, who was convicted under **Section 6 of Immoral Traffic (Prevention) Act, 1956 (the ITP Act)** for detaining a minor in the brothel run by her for using her in commercial sex with persons. Several girls were rescued from that place and the prosecution case was made out of trafficking in children. After trial, she was convicted and has undergone a sentence of 14 months. While denying the release of the women trafficker, on mercy grounds. **The Hon'ble High Court** held that trafficking in person is prohibited under **Article 23 of the Indian Constitution**³⁰. Thus, it is a fundamental Right of every citizen of India not to be trafficked as such act constitutes gross violation of the human rights of the victim.

❖ **Budhadev Karmaskar Vs State of West Bengal**³¹, , **In the present case Hon'ble Justices Markandey Katju and Gyan Sudha Mishra gave verdict on August, 2011**, This is a case related to brutal murder of a sex worker. It was held that sex workers are also human beings and no one can be allowed to assault or murder them. A person becomes a prostitute not because she enjoys it but due to poverty. A woman is compelled to indulge in prostitution not for pleasure but because of poverty. Society must have sympathy towards sex workers. Prostitutes also have right to live with dignity under Article 21 of the Constitution of India as a human being their problems need to be addressed.

The Hon'ble Apex Court also issued directions to the Central as well as State Governments to prepare a scheme for the purpose of giving technical/ vocational training to sex workers and sexually abused

²⁶ Bombay High Court, 2002

²⁷ 2006 SC

²⁸ 2007 (1) OLR 150

²⁹ 2014 Bombay H.C

³⁰ ibid

³¹ (2011) 11 SCC 538

women/ girls in India. By doing this she will be able to earn her livelihood by such training and skill instead of by selling her body.

❖ **Prajwala Vs Union of India & ors.**³², on behalf of Prajwala, an anti-trafficking organization, filed a PIL in the Supreme Court of India petitioning the Government to make a 'Victim Protection Protocol' in order to protect the rights of the victims of trafficking and for the rehabilitation of the Women/ girls who have been the victims of trafficking.

Existing statutes are not proper and sufficient to protect the welfare of women/ girls who have been rescued from trafficking and sexual exploitation. The Immoral traffic (Prevention) Act, 1956, allowed authorities to conduct raids on red- light districts and arrest women workers working there. But after paying a penalty they were released in the same conditions where they were exploited by the same persons as before. No provisions were made for their protection and rehabilitation.

The Committee on Prostitution, child prostitutes and the plan of action to combat trafficking and commercial sexual exploitation of women/ girls, Government of India report, 1998 and the Kamat Committee of the National Commission for women report in 2000 constituted recommendations relating to rehabilitation of women/ girls, which were vague and were not properly implemented. In 2003, Govt. of A.P created a detailed policy to face problems of trafficking in women/ girls. It was a big step to eliminate trafficking on National level and protect and help the women victims to start a new life.

❖ **State of Maharastra & Anr Vs Mohd. Sajid Husain Mohd. S. Husain etc.**³³, In this case the victim aged about 15 year was being exploited for prostitution and was taken to many places for the purpose. All accused were charged under Section 376 (rape), 342 (wrongful confinement) read with section 34 and under section 5 of the Prevention of Immoral Trafficking Act. In the present case eight accused persons were 5 police officers, 2 politicians and one owner of the hotel who were absconding.

The Hon'ble Apex court held that Immoral Trafficking is now widespread. Victims are lured, coerced or threatened for the purpose of bringing them into this trade. So, victim should be given proper protection. While granting anticipatory bail, the court must record the reasons and the name of the accused in FIR (**First Information Report under Section 154 of Cr. P.C**). It was also held that the High Court was not right in granting anticipatory bail to the accused persons on the ground that "Prosecutrix was a girl of easy virtue". It showed fuss and flurry over the immoral actions and absconding act of the police personnel.

❖ **In case of State of Maharashtra Vs Madhulkar Narain**³⁴ **High court** observed that it would be unsafe to allow the fortune and career of a Government official to be put in Jeopardy upon the uncorroborated version of a woman, who had admitted her illicit intimacy with another man. But, the **Hon'ble Apex Court** Contrary to this observation held that right to privacy is available even to a woman of easy virtue and no one can invade her privacy as and when he likes. She is entitled to protect her person if there is an attempt to violate it against her wishes. She is equally entitled to the protection of law.

9. Latest Trends: - Latest survey exhibits that mostly women/ girls in India are purchased and sold with impunity and trafficked at other countries from different parts of India at will.. Latest trends relating to trafficking of women/ girls can be seen from the following reports:-

a. UNODC³⁵ Global Report, 2018 on Human Trafficking: - A Global Report on Trafficking in human beings which exposes modern form of slavery and provides latest information on the said crime which shames all of us. As per this report: -

- The most usual Aspect of human Trafficking is sexual exploitation which is about 79%. Generally the victims of sexual exploitation are women/ girls.
- Second most common form of Human Trafficking is Forced Labour about 18%. About 35% of the victims trafficked for forced labors were women and girls. More than half of the victims trafficked for Forced Labours were men.
- Worldwide, about 20% of the Trafficked victims are children.
- Madhya Pradesh recorded the maximum number of cases of missing children while Maharashtra reported the maximum cases of missing women/ girls.

³² (2015) SC, HRLN

³³ 2007 SC

³⁴ AIR (1991) SC 207 (Para 8)

³⁵ UNODC- United Nations Office on Drugs and Crime

- In West Bengal Kolkata is the hub of human trafficking in India & reported the maximum number of missing of both women and girls and was on second position while Indore retained the top position in cases of missing women.

b. **Report by the National Human Rights Commission (NHRC) of India**³⁶: -As per Report of National Human Rights Commission (NHRC) of India,

- India has been coined the world's most dangerous nation for women/ girls. In India between 12000 and 50000 women and girls are trafficked annually from neighboring countries as a part of sex trade or for sexual exploitation.

- Women/ girls are trafficked within the country for the purposes of commercial sexual exploitation and forced marriages. But National Commission for Women in India has criticized it by saying that rape, harassment, trafficking of women cases have risen in India as more cases are being reported, driven by public outrage.

c. **National Crime Records Bureau (NCRB)**³⁷: - According to latest study by the National Crime Records Bureau (NCRB): -

- The maximum cases of Trafficking of women/ girls were found in Mumbai and Kolkata.
- NCRB has collected data related to women/ girls trafficking under the following heads of crime under Indian Penal Code (IPC) i.e. Procurement of minor girls (Section 366-A); Importation of girls from foreign Countries (Section 366-B); Selling women/ girls for prostitution (Section 372) and Buying of girls for prostitution (Section 373).

- As per report of NCRB the common reasons of trafficking in India were sexual exploitation, Organ trafficking, drug peddling, forced marriages, child labour and domestic help.

- In Maharashtra, Every day 105 women go missing and 17 women were forced into flesh trade every week & over 95% of women were trafficked for sexual exploitation through sex trade.

- State of Maharashtra is on second position in abduction cases after Uttar Pradesh.

10. **Suggestions for Preventing the Women/ girls From Trafficking**: -The United Nation Protocol on Trafficking contains many provisions for the prevention of Trafficking of women/ girls. Also State parties are directed to establish tactics and programmes for purpose of preventing trafficking and protecting trafficked individuals. From re-victimization. The women/ girls are forced to work as sex workers undergoing severe abuse, exploitation and violation of their human rights. These women/ girls are most vulnerable group in contracting serious disease like HIV AIDS. The trafficking in women/ girls causes tacit miseries as being violative of right to dignity, right to life, security, health, education, self-respect, redressal of grievances and Right to privacy of the person concerned in many ways. Cases of women/ girls trafficking are rising day by day. In order to overcome this problem following measures should be taken:-

- Problem of women is the problem of society as a whole as it affects our society at large. In order to overcome this problem there is urgent need to change the situation which perpetuates gender inequality with a sense of urgency by starting an effective campaign against discrimination. Since this makes the women more vulnerable that triggers trafficking prevention strategies need to be inclinable accordingly.

- India needs urgently to strengthen its laws in order to protect the women/ girls. Legal awareness programmes should be started as legal awareness empowers people by making them aware of their rights.

- Public awareness campaigns and community participation is must and key to the preventive programme.

- To provide timely help to the victims, help lines and help booths are essential. The Ministry of Social Justice and Empowerment in collaboration with Government Agencies and NGO's is thinking for setting up help lines and help booths for purpose of providing timely assistance to the victims of Trafficking.

³⁶ NHRC also undertakes and promotes research in the field of human rights. It works to spread human rights literacy among various sections of society and promotes awareness of the safeguards available for the protection of these rights through publications, media, seminars, and other means and is responsible for the protection and promotion of human rights, defined by the Act as "Rights Relating To Life, Privacy, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India

³⁷ NCRB was set-up in 1986 to function as a repository of information on crime and criminals so as to assist the investigators in linking crime to the perpetrators based on the recommendations of the Tandon Committee, National Police Commission (1977-1981) and the MHA's Task force (1985).

- At the borders, immigration officials need to be sensitized so that these officials can network with the police and NGO's working on for prevention of trafficking.
- For ensuring effective implementation of the existing statute there is exigency for raising awareness in the criminal justice system of India including judicial officers, medical experts, police officers etc. Also there is need of partnership with NGO's for ensuring law enforcement, prevention, rescue, rehabilitation, reintegration, counseling, social empowerment etc.
 - Certain sound exercises and tactics may be helpful to defeat or handle this issue. Such as:-
 - ✚ Compulsory Birth Registration in vulnerable regions.
 - ✚ Formulating a proper system in order to monitor missing persons across District and State borders.
 - ✚ Construct a database and information on trafficking.
 - ✚ Profiling special and exclusive guidelines for investigation and prosecution of offences relating to trafficking.
 - ✚ Spotting domains where law reforms are needed in area of Trafficking.
 - ✚ Harmony and coordination among various state police departments working in this realm should be developed.
 - ✚ Brothels involved in repeated offences relating to prostitution of women/ girls should be closed permanently.
 - ✚ In order to improve the condition of trafficked victims' facilities should be provided by the Governments.
 - ✚ To provide vocational training to the victims compensation fund to be created for them.
 - ✚ Community vigilant groups should be created in vulnerable regions.

11. Conclusion: - Even if unlawful under Indian Law, the issue of human trafficking remains a significant problem not only in India but all over the world for which women/ girls always pay the ultimate value. It is true that discrimination, inhuman treatment and violence against women/ girls are deep rooted in our Indian civilized society. In Indian society the birth of girl child is considered as a curse, as a result infanticides and sex selective abortions are widespread. Indian Women/ girls are denied to their right to education. Dr. B. R. Ambedkar, the father of Constitution of India has voiced against the denial of the right of education to women/ girls in India.

The problem of trafficking of women is not the problem of one Nation, but it touches every Nation and countless industries all over the universe. The organized crime of women trafficking has attained 'a scary magnitude as the extent of violation of human rights is implausible and unthinkable. Also there is very little awareness among the people about this crime due to its esoteric and bastard nature. Now it has become a breathtaking and staggering issue to arrive at the consensual data.

There are many socialists as well as NGO's working globally to fight with this problem. Due to lack of cohesion and coordination among various agencies involved in rescue operations, we are not able to deal with it properly. The absence of National coordinating and monitoring agencies is a grave obstacle in our justice delivery system and protecting the privacy rights of women/ girls victims of trafficking. Hence, for ensuring human rights of the persons, to achieve effective coordination in preventive strategies, schemes, programmes and policies at Nation level, there is need for National nodal Agency to face the problem of women/ girls trafficking.

*Enthusiasm is the belief that brings about success
We don't need any magic to transform the world
We have enough power to transform the world and imagine better,
A strong desire and attitude is needed to win,
If a man has power to destroy everything then a woman has power to change it,
Dare to enter the darkness to bring them into light, don't let them destroy yourself,
There is need to stand for our rights and justice,
God has made all of us for some purpose,
There is need to attain that purpose at any cost,
Never limit yourself for others limited imaginations.
Have faith in yourself; follow your dreams and passion with entire determination,
A woman with a voice is truly a strong woman,*

*Change things for better and human should not be sold,
A human life is not an object, taking someone means taking away their dreams,
Human trafficking means society cracking.*

