

Offence Relating To Trafficking Of Body in India

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

Keywords: Trafficking, Indian society

1. Introduction

According to Goa Children Act, “child trafficking means the procurement, recruitment, transportation, transfer, harbouring or receipt of person, legally or illegally, within or across borders, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving payment or benefits to achieve the consent of a person having control over another person, for monetary gain or otherwise”.¹

Immoral trafficking : The recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat, use of force or other forms of coercion, of abduction, of fraud, of deception, abuse of the power, or of a position vulnerability, or of the giving or receiving of payment or benefits to achieve the consent of a person having control over another, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution or other form of sexual exploitation.²

Purpose of trafficking : Trafficking is done for the following purposes : (i) Sexual exploitation, (ii) Forced labour (iii) Services, (iv) Slavery (v) Practices similar to slavery, (vi) Servitude, (vii) Removal of organs, etc. **Commercial Sexual Exploitation(CSE):** (i) Forced prostitution, (ii) Socially and religiously sanctioned forms of prostitution, (iii) Sex tourism, (iv) Pornography, (v) Paedophilia, (vi) Massage parlours, (vii) Bartending, etc. **Labour :** (i) Children are employed and exploited in innumerable number of trades, (ii) Bonded labour, (iii) Domestic work, (iv) Agriculture labour, (v) Construction, (vi) Carpet industry, (vii) Garment industry, (viii) Aqua culture, (ix) kilns, etc. **Illegal activities:** (i) Begging, (ii) Human organ trade, (iii) Drug peddling and smuggling,

(iv) Mock Adoption, (v) False (mock) marriage, etc. **Entertainment :** (i) Circus, (ii) Dance troupe, (iii) Bear bar, (iv) Camel jockey, etc.

The Issues : Forced prostitution and child trafficking is in practice since ages, tourism and entertainment accelerated in recent time. Constitutional guarantees are there, but women are not safe is reality. The element of migration with or without consent to an alien exploitative environment is an essential component of the consent of trafficking. Globalization, Liberalization and Feminization of poverty have only aggravated situation.

Factors of Supply side : (i) Economic marginalization leading to break down of traditional livelihood, (ii) Law status of women and girls in society, (iii) Inadequate educational and employment opportunity due to gender disparities, (iv) Lucrative business with low investment, high monetary returns attracting crime syndicate, (v) Economic disparities with the countries and regions, (vi) Migration of women into labour market, (vii) Traditions and religious practices in some communities of dedicating girl to God and Goddess. (viii) Social conventions like child marriage, polygamy, dowry and social stigma against single, (ix) Erosion of traditional family systems and values, (x) Lack of strong political will and weak law enforcement mechanisms. Etc.

Factors of Demand side : (i) Industrialization, rural to urban migration of particularly males generated demand for commercial sex, (ii) Expanding commercial sex industry, demands for service of sex worker, (iii) Preferences for young and virgin girls because of fear of HIV/AIDS, (iv) Cheap labour of children and women, (v) Male dominated value system in society, and (vi) Sexually Transmitted Disease (S.T.D.) removed by sex with girl before menstrual cycle.

¹ Under section 2 (z) of The Goa Children’s Act, 2003.

² UN Protocol to Prevent, Suppress and Punish Trafficking in Person, especially Women and Children, 2000.

Causes of trafficking : Women and girls who usually trafficked – (i) Poor women and children are the key target group, (ii) Girls from impoverished household in rural areas and urban slums seeking jobs. (ii) Unmarried, divorced, separated or widowed, run away from home, (iv) Ethnic minorities, hill tribes, refugees and illegal migrants are easy victims, (v) Girls having primary education or illiterates, (vi) Young girls running away from home, children from disrupted families and those financially supporting their families, (vii) Women and children who are unaware of their rights, etc.

2. Legal regime :

International level: An overview of selected International Conventions regulating trafficking in human beings is presented as – (i) International Agreement for Suppression of “While Slave Traffic,” 1904; (ii) International Agreement for Suppression of “While Slave Traffic,” 1910; (iii) International Agreement for Suppression of the Traffic of the women and Children, 1921 (prohibits the enticing woman or girl for immoral purpose in another country); (iv) Slavery Convention, 1926; (v) International Labour Organization Forced Labour Convention, 1930; (vi) Universal Declaration of Human Rights, 1948; (vii) Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949; (viii) Supplementary Convention on the Abolition of Slavery, Slave Trade and Institutions and Practices of Slavery, 1956 (Slavery Convention); (ix) Abolition of Forced Labour Convention, ILO, 1957; (x) International Covenant on Civil and Political Rights, 1966; (xi) International Convention on Economic, Social and Cultural Rights (ICESCR) 1966; (xii) Minimum Age Convention, 1973; (xiii) Convention on the Elimination of all forms of Discrimination against Women, 1979 (CEDAW); (xiv) United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984; (xv) Convention on the Rights of the Child, 1989; (xvi) Convention and Protection of Rights of Migrant Workers, 1990 (xvii) The ILO Convention 182 on the Worst Forms of Child Labour, 1998; (xviii) Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women, 1999; (xix) UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000; (xx) Optional Protocol to the Convention on the Rights of Child on the Sale of Children, Child Prostitution and Child Pornography, etc.

Regional level : At the regional level, there have been several initiatives taken by the Governments of South Asia and Asia-Pacific regions. Following are

illustration of their concerted efforts – (i) The Bangkok Accord and Plan of Action to Combat Trafficking in Women, 1998; (ii) Asian Regional Initiative Against Trafficking in Persons, Especially Women and Children, (ARIAT) 2000; (iii) The ASEM (Asia Europe Meeting) Action Plan to Combat Trafficking in Persons, especially Women and Children, 2000; (iv) The Bali Conference Co-chair’s Statement on People Smuggling, Trafficking in Persons and Related Transnational Crime, 2002; (v) SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002.; and (vi) Convention on Regional Arrangement for the Promotion of Child Welfare, 2002.

National Level: The offences relating to Trafficking are covered by IPC and Immoral Traffic (Prevention) Act, 1956.

3. Offences relating to trafficking under IPC:

Kidnapping from lawful guardianship : Whoever taken or entices any minor under 16 years of age if a male, or under 18 years of age if a female, or any person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.³ Any person who takes in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to lawful custody of such child, but not for an immoral or unlawful purpose, is not kidnapping. Punishment for kidnapping : Whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment up to seven years and fine.⁴

Kidnapping, abducting or inducing woman to compel her to marry, etc. : (i) Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse; and (ii) whoever, by means of criminal intimidation or of abuse of authority or any other method of compulsion, induced any woman to go from any place with intent that she may be, or knowing that is likely she will be, forced or seduced to illicit intercourse with another person; shall be punished with imprisonment up to 10 years, and fine.⁵

Procurator of minor girl: Whoever by any means whatsoever, induces any minor girl under the age of 18 years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment up to 10 years, and fine.⁶

³ Section 361 of IPC, 1860

⁴ Section 363 of IPC, 1860

⁵ Section 366 of IPC, 1860

⁶ Section 366-A of IPC, 1860

Importation of girl from foreign country : According to Section 366B of IPC, whoever imports into India from any country outside 'India or from the State of Jammu and Kashmir any girl under the age of 21 years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment up to 10 years and fine.⁷

Selling or buying minor for purposes of prostitution, etc.: Whoever sells, lets to hire, or otherwise disposes; or buys, hires or otherwise obtains possession; of any person under the age of 18 years with intent that such person shall at any age be employed or used for purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment up to 10 years, and fine.⁸

4. Offences under Immoral Traffic (Prevention) Act, 1956:

The Government has enacted a special law on this known as Immoral Traffic (Prevention) Act, 1956 (Act NO. 104 of 1956) w.e.f. 30th Dec, 1956 (in short known as ITPA). Object and reasons of the Act stated in the preamble that "an Act to provide in pursuance of the International Convention signed at New York on the 9th May, 1950, for the prevention of immoral traffic:. Specific offences under this Act are as follows –

Keeping a brothel or allowing premises to be used as a brothel : Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel, shall be punishable on first conviction with RI for 1-3 years and fine up to Rs. 2000 and in the event of a second or subsequent to conviction with RI for 2-5 years and also with fine up to Rs. 2000.⁹

Living on the earnings of prostitution is punishable : Any person over the age of 18 years who knowingly lives, wholly or in part, on the earnings of the prostitution of any other person shall be punishable with imprisonment up to 2 years, or with fine upto Rs. 1000, or with both, and where such earning relate to the prostitution of a child or a minor, shall be punishable with imprisonment for 7-10 years.¹⁰

Procuring, inducing or taking person for the sake of prostitution: Any person who procures or attempts to procure or induces or takes or attempts to take or causes or induces a person to carry on prostitution, shall be punishable on first conviction with RI for a term 3-7 years

and fine up to Rs. 2000. If, any person committed the offence second time, he will be punished with imprisonment for 7 to 14 years. If, the person in respect of whom an offence committed is a child (below the age of 16 years), the punishment shall extend to rigorous imprisonment for a term of not less than 7 years but may extend to life. If, the person in respect of whom an offence committed is a minor (aged 16-18 years); the punishment shall extend to rigorous imprisonment from 7 to 14 years.¹¹

Detaining of a person in premises where prostitution is carried on : Any person who detains any other person, whether with or without his consent in any brothel, or in or upon any premises with intent that such person may have sexual intercourse with a person, who is not the spouse of such person, shall be punishable on conviction, with imprisonment not less than seven years but which may be for life or imprisonment up to 10 years and fine. The court may award less than 7 years with recording of special reason.¹²

Prostitution in or in the vicinity of public place : Any person who carried on prostitution and the person with whom such prostitution is carried on, in any premises or in the vicinity of public place shall be punishable with imprisonment up to three months. Where this offence is committed in respect of a child below 18 years, the person committing the offence shall be punishable with imprisonment not less than 7 years and may extend up to life imprisonment or up to 10 years and fine. The court may award less than 7 years with recording of special reason.¹³

Seducing or soliciting for purpose of prostitution: Whoever, seducing any person for the purpose of prostitution in any public place or within sight of, and in such manner as to be seen or heard from, any public place, whether from within any building or house or not, shall be punishable on first conviction with imprisonment up to 6 months, or with fine up to Rs. 500, or with both, and in the event of a second or subsequent conviction, with imprisonment up to one year, and fine up to Rs. 500.¹⁴

Seduction of a person in custody : Any person who having the custody, charge or care of or in a position authority over any person causes or aids or abets the seduction for prostitution of that shall be punishable with imprisonment of not less than 7 years but which may be for life or up to 10 years and fine. The court may award less than 7 years with recording of special reason.¹⁵

Detention in a corrective institution : Where a female offender is found guilty of an offence of prostitution in or near the public place and seducing or

⁷ Section 366-B of IPC, 1860

⁸ Section 372 & 373 of IPC, 1860

⁹ Section 3 of ITPA, 1956.

¹⁰ Section 4 of ITPA, 1956.

¹¹ Section 5 of ITPA, 1956.

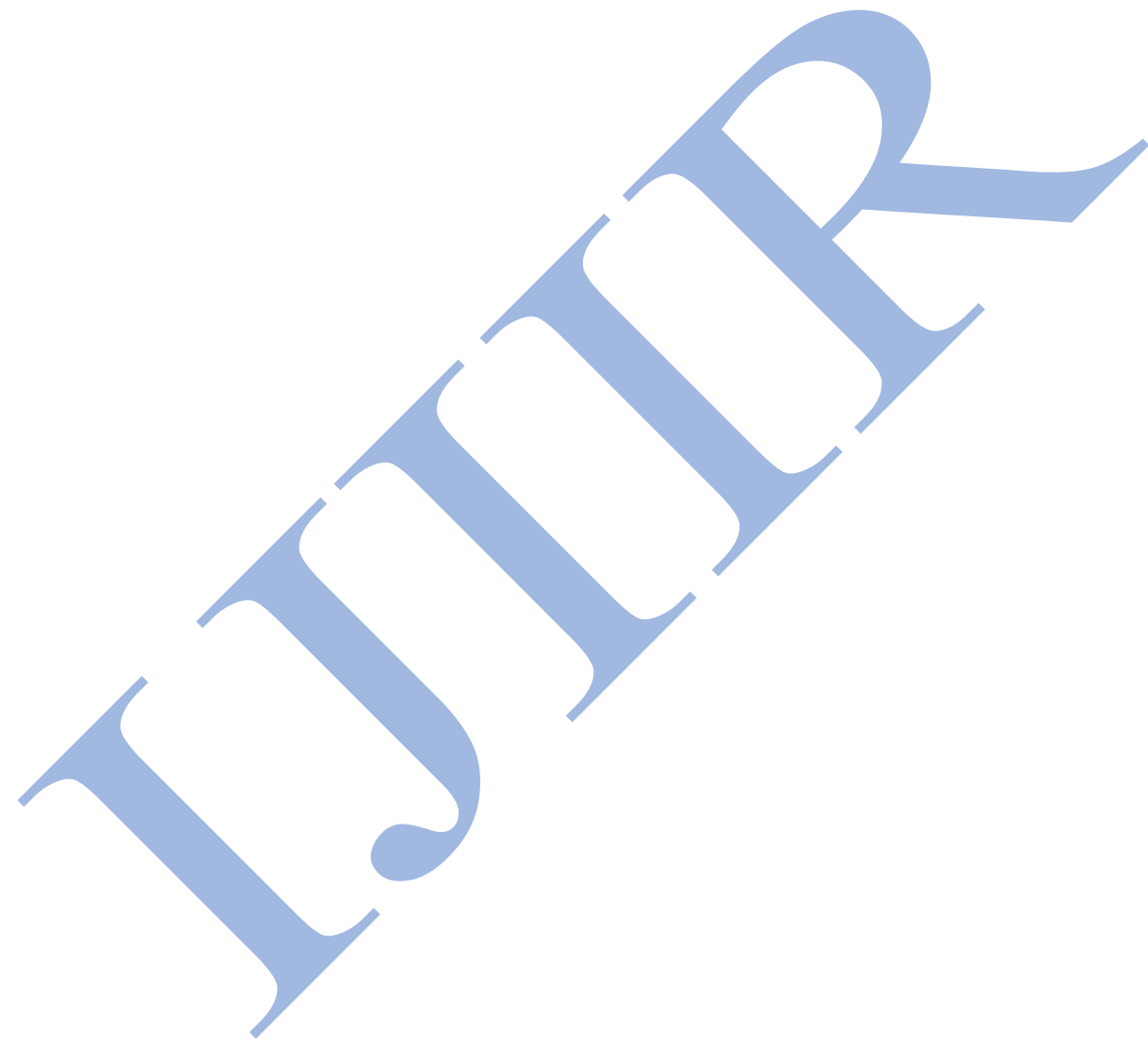
¹² Section 6 of ITPA, 1956.

¹³ Section 7 of ITPA, 1956.

¹⁴ Section 8 of ITPA, 1956.

¹⁵ Section 9 of ITPA, 1956.

soliciting for the purpose of prostitution and the character, state of health and mental condition of the offender and the other circumstances of the case are such that it is expedient that she should be subject to detention for such term and such instruction and discipline as are conducive to her correction, it shall be lawful for the court to pass, in lieu of a sentence of imprisonment, an order for detention in a corrective institution for such term, not being less than 2 years and not being more than 5 years, as the court thinks fit.¹⁶ All offences punishable under the ITPA, 1956 are cognizable offences within the meaning of that Cr. P.C.¹⁷



¹⁶ Section 10-A of ITPA, 1956.

¹⁷ Section 14 of ITPA, 1956.

