

## A Look into the Legislation of the Immoral Traffic (Prevention) Act, 1956 (Act No. 104 of 1956)

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**Best Citation** – AKASH MRITHVIN & SHRIHARIHARAN, A Look into the Legislation of the Immoral Traffic (Prevention) Act, 1956 (Act No. 104 of 1956), *ILE CONSTITUTIONAL REVIEW*, 2 (1) of 2023, Pg. 01-04, ISSN - 2583-7168.

### Abstract

One of the oldest professions in the world is Prostitution, as the society evolves this profession turns more into monetary benefit and which further turns into the forced exploitation of young girls. This became the starting stage of profession turning into crime where the forceful exploitation was the basic motive of trafficking of humans as after the arms and drugs, human trafficking became the third largest organised crime in the world. Both internationally and domestically there where millions of people are trafficked every year. Though the constitution of India and penal laws of our country provide certain provisions for the trafficking of humans no certain law was efficient enough to curtail this offence in our country. To provide the international legal framework through which trafficking could be combatted world-wide. According to deal with the problem at the national level countries like India, who have ratified the protocol, are obligated to amend their domestic laws. Indeed looking the prostitutes as the evil professionalism as a common society, the legislative assembly had passed this legislation with the view point of prostitutes as the victims of sexual exploitation, with reference to this key line this paper started to analyse the immoral trafficking (prevention) act 1956 as the legal custodian to seep out the offence from our country.

**Keywords** Prostitutes, exploitation, sex, humans, trafficking, society, legislative, India, constitution.

### I. Introduction

Human Trafficking is an organised crime that creates one of the biggest threats to the Society, it covers various Human Rights violations such as Slavery, forced labour, Organ theft and mostly Sexual exploitation<sup>1</sup>. Prostitution is not the same as Trafficking. According to the Immoral Trafficking (Prevention) Act Prostitution is considered as traffic if an individual is sexually exploited.

**Trafficking** may be defined as “activity of transportation, harbouring or receipts of persons without concern of such individual by threat or use of force, abduction, fraud, deception, abuse of power or vulnerability, for benefits to a person in control of the victim for the purpose of exploitation of such victim, which includes exploiting the prostitution of others, sexual exploitation, slavery or similar practices and the removal of organs.”<sup>2</sup>. The International and National authorities consider this as a threat to the society and make Laws nationally and internationally against such crimes. These laws made by the authorities stand against any kind of Human Trafficking. Which made India to enact **Immoral Trafficking Act, 1956** which penalises any Sexual exploitation or Abuse of individuals.

### II. History and Passing of Bill

On May 9, 1950 the United Nations International Convention for the “Suppression of Women in Traffic in Persons and of the Exploitation in Others “was signed by India and other member

<sup>1</sup> Act Review | Kiran Bhaty

<sup>2</sup> The Daily Guardian | Feroz Pathan

nations in New York<sup>3</sup>. Then this convention was approved by the United Nations General assembly and came to force on 25th of July 1951. In response to this Convention the Indian Parliament passed the suppression of Immoral Traffic in Women and Girls Act, 1956 and was given assent on 30th December 1956. Then in 1986 Suppression of Immoral Traffic in Women and Girls Act, 1956 was amended and renamed as the Immoral Trafficking (Prevention) Act, 1956<sup>4</sup>. The Immoral Trafficking (Prevention) Act, 1956 was the first step towards Criminalising and Penalising any Sexual exploitation in an Individual. Though the name refers to Immoral Trafficking of Persons the provisions are limited to Illegal Sexual exploitation and abuse of such victims and its penalties. This act contains provisions for welfare of victims as Rehabilitation for such victims.

### III. Amendments

The Immoral Trafficking (Prevention) Amendment Bill, 2006 amends the Immoral Trafficking (Prevention) Act, 1956. The Bill was introduced in Lok Sabha on 22 May, 2006. The bill aims to combat trafficking in persons with a purpose of Sexual Exploitation. This amendment bill deletes the provision of penalising prostitutes for soliciting Clients<sup>5</sup>. The Immoral Trafficking (Prevention) Amendment Bill, 2006 defines "Trafficking in persons" which was not defined in the Original Act and also provides penalties for such. The amendment bill introduces in-camera trial proceedings. This Bill speaks about the legality of Prostitution. It does not penalise prostitution but penalises when it is conducted in a brothel that is 200 metres from a public place, hotels, educational institutions, religious places, residential areas, etc. So, this bill does not make prostitution illegal but makes it impossible to carry it legally therefore it creates a confusion whether it is legitimate or not<sup>6</sup>. This bill seeks to penalise a client if such a

client visits a brothel of sexual exploitation of a trafficked person; the client may not be penalised if the person is not a trafficked person. This makes it impossible for a client to know whether such a person is trafficked or not trafficked.

### IV. Critical analysis of the legislation

Let we start with the title of the act which highlights the word 'immoral' which would ultimately bring out the doubt in one's mind that if there is any 'moral' trafficking is there. So, there is a question always prevail why there is the word immoral in the title as of traffic is always considered to be immoral.<sup>7</sup>

The act was intended to be gender neutral as in the 1986 amendment the term 'women' and 'children' were replaced with the word 'person' in the definition clause as well. But moving into the body of the legislation as section 10A deals with the rehabilitation of the female offenders in the corrective institutions.<sup>8</sup>

This act criminalises not only the offences pertaining to sex trafficking but also have the provisions to criminalise transactional phases of voluntary trafficking like soliciting.<sup>9</sup>

Though it was the act of trafficking it deals only on the perspective of prostitution and not to the other offences such as slavery, organ trading, bonded labourers, child labour which are related to human trafficking.<sup>10</sup>

This act provides medical and psychiatric treatment, care and protection, guardianship and education of rescued minor which was clearly specified in Section 17.<sup>11</sup>

<sup>7</sup> <https://www.iilsindia.com/blogs/immoral-traffic/#:~:text=Immoral%20trafficking%20is%20a%20violent,in%20conditions%20of%20forced%20labour.>

<sup>8</sup> Section 10A in The Immoral Traffic (Prevention) Act, 1956 |

<https://indiankanoon.org/doc/80862708/>

<sup>9</sup> Section 8 in The Immoral Traffic (Prevention) Act, 1956 |

<https://indiankanoon.org/doc/27208336/>

<sup>10</sup> An Introduction to Human Trafficking: Vulnerability, Impact and Action |

[https://www.unodc.org/documents/human-trafficking/An\\_Introduction\\_to\\_Human\\_Trafficking\\_-\\_Background\\_Paper.pdf](https://www.unodc.org/documents/human-trafficking/An_Introduction_to_Human_Trafficking_-_Background_Paper.pdf)

<sup>11</sup> Section 17 in The Immoral Traffic (Prevention) Act, 1956 |

<https://indiankanoon.org/doc/115672721/>

<sup>3</sup> United Nations Human Rights Instruments/ 02 Dec 1949.

<sup>4</sup> Immoral Trafficking Act, 1986

<sup>5</sup> <http://www.commonlii.org/in/other/INPRSLS/titab2006lb544/>

<sup>6</sup> Indian Parliamentary Research Service Legislative Summaries | Immoral Trafficking (Prevention) Bill 2006 - Legislative Brief.

## V. Analysis of provisions of the Act

This act provides provisions dealing mainly with prostitution and prohibition of it and also at public places under 25 sections of this Legislation. The Act identifies offences like vicinity of public places and Seducing or Soliciting for the purpose of prostitution and sixteen offences related to the perpetrators of trafficking.<sup>12</sup>

The 1986 amendment shape the statute as the gender neutral as it includes and recognised the male prostitution and male child trafficking. The definition of the term 'prostitution' was also changed as per the section 2(f) of this Act<sup>13</sup>. Under SITA the old definition holds two main elements to constitute prostitution, that there must be sexual intercourse and intercourse is for hire. The new definition removes the term 'promiscuous', 'female', 'for hire' which makes it as gender neutral.

The Gujarat High Court held that, "the Act does not aim at abolishment of prostitutes and prostitution as such and makes it per se a criminal offence or punish a woman because she prostitutes herself, but its purpose is to inhibit or abolish commercialised vice" in **Shanta vs State case**.<sup>14</sup>

Section 18 and 20<sup>15</sup> provide the ultimatum power to the Magistrate as their order are the final one. Where the court said "the section neither conferred on the magistrate unguided power so as to enable him to act arbitrarily, nor did it in anyway put unreasonable restraints on the rights" on the **State of Uttar Pradesh v. Kaushalya case**<sup>16</sup> law over the provision of section 20.

Section 19(1) of the act provides certain power to the wish of the victims on her remedy as per the case of the Supreme Court in **Gurudev Kaur v. State of Punjab**<sup>17</sup>, shows some sensitivity towards the prostitutes, and held that, "where a prostitute who is a major and had not applied for admission in the protective home".

## VI. Constitutionality

Some of the Indian Articles in Constitution provide provision for trafficking.

Let say Article 23<sup>18</sup> of the constitution prohibits "traffic in human beings and other similar forms of forced labour". And Article 24<sup>19</sup> said "No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment."

Where from the directive principles of state policy articulated in Article 39(e) which provides strength and health of women, men and workers, and the tender age of children are not abused. Article 39(f)<sup>20</sup> which imposes a duty on the State to direct its policy towards ensuring that children are given opportunities that childhood and youth are protected against exploitation and against moral and material abandonment.

Some of the inalienable rights to the citizens of the country was provided by the part three of the constitution. This society would always look at them as a women of "easy virtue" and "habitual to sex". The Supreme Court of India, in **State of Maharashtra v. Madhukar Narain Madhikar**<sup>21</sup>, pointed out that, "...even a woman of easy virtue is entitled to privacy. She is equally entitled to the protection of the law, her evidence cannot be thrown overboard."

<sup>12</sup> CRITICAL ANALYSIS OF THE IMMORAL TRAFFIC (PREVENTION) ACT, 1986 | <https://thelawbrigade.com/wp-content/uploads/2019/05/Amaan-Ahmed.pdf>

<sup>13</sup> Section 2 in The Immoral Traffic (Prevention) Act, 1956 | <https://indiankanoon.org/doc/86578091/>

<sup>14</sup> AIR 1967 Guj 211

<sup>15</sup> Section 18 in The Immoral Traffic (Prevention) Act, 1956 | <https://indiankanoon.org/doc/10767096/>

Section 20 in The Immoral Traffic (Prevention) Act, 1956 | <https://indiankanoon.org/doc/182145335/>

<sup>16</sup> AIR 1964 SC 416.

<sup>17</sup> AIR 1963 Pun 369.

<sup>18</sup> Article 23 in The Constitution Of India 1949 | <https://indiankanoon.org/doc/1071750/>

<sup>19</sup> Article 24 in The Constitution Of India 1949 | <https://indiankanoon.org/doc/1540780/>

<sup>20</sup> Article 39(f) in The Constitution Of India 1949 | <https://indiankanoon.org/doc/1139107/>

<sup>21</sup> <https://indiankanoon.org/doc/524900/>

## VII. Suggestions

There are some suggestions that are made by the researcher, though the object of the act is to stand against the Immoral Trafficking that's happening around the globe. The provisions so only focus on sexual exploitation, penalties and other such provisions relating to sexual exploitation. The act is complex itself and contradictory to its own provisions in some places. The act can be made simpler and the provisions can be amended accordingly. There can be provisions focussing on other Trafficking Crimes happening in our Country. There should be separate law enforcing agencies as there are many abuses happening by some of the authorities to the Victims of Sexual exploitation.

## VIII. Conclusion

Here the law remains punitive, instead of being protective. It seems the act is not progressive in the sense of the victims in the flesh market it seems to be more regressive as the persons affected in the trafficking are only subjected to the evil treatment rather than as victims. As the system seeing arresting them as a sinner rather than a victim to be rehabilitated. The view of the legislation should be changed into an empathetic approach towards these victims and strictest measures against the pimps, brothel keepers and immoral traffickers which should be ensured by the legal system as well the society.

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