

LEGAL LOCK JOURNAL
2583-0384

VOLUME 1 || ISSUE 5

2022

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SLAVERY, HUMAN TRAFFICKING AND PROSTITUTION

Anushka Pandey¹**ABSTRACT**

Slavery, Prostitution and Human trafficking are the vilest crimes of the time. In today's modern era there are many people who are forced to work as slaves and are creating tremendous amount of money for their traffickers. Criminal law focuses on these three aspects i.e., slavery, prostitution and human trafficking. Prostitution and slavery are a kind of modern slavery which comes under trafficking of humans for trading purpose. Human trafficking erodes the security of the person in a state because it is an organized crime. Human rights of trafficked person are breached as they are not given the dignity which our Indian constitution guarantees. They are exploited, raped or often killed. This has been the topic of international security since the late 90s. These three crimes are required to be restrained or else they will affect the human life. People are lowering themselves for money. The main reason behind voluntary prostitution and slavery is the deficiency of money. In most cases they are economically weak so they sell their bodies in exchange of money. For such accelerating rate everyone should be educated and well recruited so that financial problems can be reduced.

SLAVERY

The concept of slavery is not new in our country. It has been in the society since centuries and some scholars have asserted that this practice is as old as the human civilization. It's a framework in which humans are treated as property of others. Usually, lower class were included in this.

In the case of *Mohammad Ali Al Gitar v. State of U.P.*², the meaning of slavery was made clear, "buying or disposing of any person as a slave- whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished".

Slavery allows the human ownership, selling or buying just as any commodity in the market. It is usually carried on through a unilateral arrangement between the slave and the master whereby he is treated as chattel of the owner not being able to withdraw himself from the agreement. Most forms of slavery are clear-cut involuntary and involve the compulsion of the enslaved,

¹ The author is a student at Lloyd Law College, Noida.

² *Mohammad Ali Al Gitar v. State of U.P.*, Special Appeal No. 559 (2015).

there also exists voluntary slavery entered into by the enslaved to pay a debt or to obtain money. In the course of human history, slavery was a typical feature of civilization, legal in most societies, but it is now outlawed in most countries of the world, except as a punishment for a crime.

In the case of *State of Gujarat and Another v. Hon'ble High Court of Gujarat*³, it was held that no one shall be seized in slavery and all its other forms shall also be forbidden; no one shall be kept as slave nor any one is required to work as forced or bonded labor.

Types of Slavery

- **Bonded Labor**

Bonded labors are also called Debt bondage. In this type of slavery, the person keeps himself as the collateral against a loan instead of a valuable item, where they are bound to work against their will unless the amount of loan is repaid. This often forms a ferocious cycle as the loan is itself not repayable. And it is passed on generations after generation.

- **Chattel Slavery**

In this type humans are purchased and sold in the market just like any other commodity where the slave has no means of escaping. They are forced to be a servant for their lifetime and often any children born to them are also considered as slave for the rest of their life. This practice is an utmost disgrace to human dignity.

- **Forced Labor**

Because of their economic conditions labors are forced by their masters to work. The labor is under compulsion, threat, violence or any other type of punishment. In this type of slavery, the person is forced to work under the influence of third party.

*Dhanurjaya Putel and another v. State of Orissa*⁴, in this case when a person was put to labor for 18 hours and was only given a sum of Rs. 30/-, is not a freedom of expressing his grievance against the exploitation. Thus, this was the correct example of modern slavery. Court said that this totally fulfils the requirement of the word's 'slave' and 'slavery'.

- **Forced Marriage and Sex Slavery**

³ State of Gujarat and Another v. Hon'ble High Court of Gujarat Civil Appeal No. 8443-44/83 (1998).

⁴ Dhanurjaya Putel and another v. State of Orissa 2002 II OLR 412.

This type of slavery is very common in some parts of the world for sexual purposes. Women and teenage girls are forced into this type of slavery by forcing them to marry older men who have a rich status in the society. Females are forced to live as their wives and to fulfil the fantasies of their husbands. They are used as sex slaves whereby they are abused and tortured, physically, mentally and sexually.

Provision

International Laws has abolished slavery. There are many treaties, conventions and declarations which deal slavery. In *Universal Declaration on Human Rights (1948)*⁵, it guarantees that no individual should be held in slavery. Slavery in all of its forms should be eliminated. International Laws have implemented many protocols such as Protocol to the Abolition of Slavery. Moreover, International Covenant on Civil and Political Rights (ICCPR), guarantees that slavery should not be faced by any person. The Human Rights Committee, under the United Nations further oversees and monitors slavery and collects data to make new laws.

In India, Slavery was abolished by *The Indian Slavery Act, 1843*⁶ whereby the slaves in custody of East India Company were freed. In 1860, the Indian Penal Code came into being and it effectively brought slavery to an end as it made a provision declaring that an enslavement of human beings a criminal offense. Further, in the constitution, Article 23 in The Constitution of India, 1949 deals with prohibition of traffic in human beings and forced labour. Additionally, India has also implemented the Bonded Labour (Prohibition) Act, 1976 which prohibits bonded and forced labour.

In the case of *Bandhua Mukti Morcha v. Union of India*⁷, the Supreme Court held that there were large number of workers who were working in the stone mines under the inhuman and unbearable conditions.

HUMAN TRAFFICKING

Human trafficking or modern slavery, is an old problem. Human trafficking is a crime against humanity and also a combined trait of forced labor, slavery and commercial exploitation of people. Its 3rd largest crime in the world after drug dealing and arms trafficking. Human trafficking hinders a person's fundamental right of living the life with dignity and security. It is

⁵ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html>.

⁶ THE INDIAN SLAVERY ACT, 1843, ACT No. V. Of 1843.

⁷ *Bandhua Mukti Morcha v. Union of India* AIR 1984, SC 807.

also a serious threat to global health and security. Globalization has made human trafficking an easier task for the criminal organizations. According to a formal study conducted by International Labour Organisation (ILO), it's billion-dollar industry which is extended all over the globe. It is often observed as one the fastest growing trans-national crimes in the world as trafficking is not isolated in any one particular region. The most common victims of this menace are, females, children, vulnerable groups, etc.

In the case of *U. Gopakumar v. State of Kerala*⁸, the counsel for appellants submitted that accused was habitually engaged in Human trafficking and was further accuse that he used to smuggle large number of persons on daily basis. Thus, in this main ingredient of Section 370 of IPC, 1869 which criminalizes human trafficking were mentioned. In this it was also said that human trafficking is a kind of modern slavery.

UN defines Human Trafficking in three categories: sex trafficking, Labor Trafficking and removal of organs or organ smuggling. Sex trafficking is also one of the kinds of human trafficking. More than half a million women are trafficked every year. Forced labor, debt bondage, involuntary domestic slaves, and organ smuggling are other common forms of human trafficking. Begging is also a kind of human trafficking, the kids we see on roads begging are kidnapped and put in the business of begging by their traffickers. Mostly traffickers and human smugglers prefer kidnapping minors for such criminal activities as they are easy to control. Poverty, social injustice, substance abuse, family breakdown, and homelessness are vital factors for victims.

Provision

Convention on the Abolition of Slavery, came into force in 1957. There have been many international treaties and conventions which deals with Human Trafficking such as protocol to Prevent, Suppress and Punish Trafficking in Persons, protocol against the Smuggling of Migrants by Land, Sea and Air, Child Prostitution and Child Pornography etc. apart from these ILO has articulated various conventions such as Forced Labour Convention, 1930, Abolition of Forced Labour Convention, 1957, Minimum Age Convention, 1973, Worst Form of Child Labour Convention, 1999 etc.

Missions like Stop Trafficking and Oppression of women and children is being in operation since 1998 where the main objective is to break the chain of trafficking and uplifting through

⁸ U. Gopakumar v. State of Kerala, Writ Petition No. 1748/2019.

education facilities, legal movements and rescuing children and women from different kinds of slavery and human trafficking.

In United States, various NGOs, have been established to deal with the problem of child trafficking. The activities of NGOs are integral source for the collection of human trafficking information, local NGOs can help the authorities in finding the such illegal rackets. In 2007, National Slavery and National Human Rights have been widely debated and contested in the Senate and as reminders, January was declared as Human Trafficking month. The 13th amendment of the US constitution made slavery and human trafficking illegal. For the protection of victim, the US Congress passed the *Victims of Trafficking and Violence Protection Act in 2000*⁹.

Through the Immoral Traffic Prevention Act (ITPA), introduced by United Nations International Convention, the Indian government penalizes smuggling or trading of humans for the motive of commercial sex with an imprisonment of 7 years or for life.

In India the bounded labor is also prohibited by Bonded Labor Abolition Act, 1976; Child Labor Act, 1986 and Juvenile Justice Act, 2015. Human Trafficking Act has been also passed. Further under Sections 366(A) and 372 of the Indian Penal Code, it forbids kidnapping and selling of minors into prostitution and take measures to arrest traffickers

Several steps were taken by the state governments too and laws were amended to deal with these issues, for example- *The Punjab Prevention of Human Smuggling Act, 2012*¹⁰.

In *State of Uttarakhand v. Sartaj Khan*¹¹, it was said that the state parties shall establish and maintain direct communication channels for strengthening cooperation among border control agencies. Also, in this the Act *Trafficking Victims Protection Act, 2000*¹² was passed.

Department of Home Minister Affairs also introduced Anti- Trafficking Cell (ATC) in 2006 to work as a common point to communicate and follow up with all the state governments to question the delinquency of human smuggling.

⁹ UNITED STATES. (2000). Victims of Trafficking and Violence Protection Act of 2000. [Washington, D.C.], [U.S. G.P.O.].

¹⁰ The Punjab Prevention of Human Smuggling Act, 2012 (Punjab Act No. 2 of 2013).

¹¹ State of Uttarakhand v. Sartaj Khan, Govt. Appeal No. 139 (2016).

¹² The Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, Division A, 114 Stat. 1464 (2000).

PROSTITUTION

Prostitution, whoredom or harlotry is the practice of engaging in sexual activities in exchange of money or other valuables. A person who works in this field is called a prostitute, or a sex worker. Prostitutes can be a male or a female or even a transgender, however majority are females. Prostitution is sometimes described as sexual services, commercial sex or, hooking. In the English-speaking world it is sometimes referred as "the world's oldest profession". Sometimes it is one's own choice but majority of them are forced into this flesh trade. Prostitution outrages the dignity of a person and violates their fundamental rights too. It conflicts with the basic principle of our Indian Constitution which ensures that everyone is given the right to life with dignity and security.

The laws for prostitution are different from region to region, country to country, although in today's world many favor that prostitution should be legalized as it is an expression of women choice and gender equality because some women choose prostitution as their profession by choice. However, many profess it as leading form of violence against females and children.

Provisions

Worldwide there is an estimation of 40-42 million prostitutes. 80 percent of the world population of prostitutes are female and range in age between 13-25. Prostitution has been termed as incompatible with the basic principles of *Universal Declaration of Human Rights (1948)*¹³ which guarantees to everyone the right to life, liberty and security. The concept of prostitution has been described as accompanying evil of the traffic in persons for the purpose of prostitution are conflicting with the dignity and worth of the humans in the *United Nations Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (1949)*¹⁴. *The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)* mentions that states should take all relevant measures to suppress misuse of prostitution of women.

It's the misbelief in India that prostitution is illegal but the fact it is legal but owning and handling brothel is illegal. The provisions for prostitution were revised in 1986 by *The Immoral Traffic (prevention) Act (ITP)*. It was revised as in 1950 India was supposed to sign a United

¹³ United Nations, pp. art. 21.3.

¹⁴ CHAPTER VII TRAFFIC IN PERSONS 11. a Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

Nations declaration against human trafficking. This Act states that managing a sex racket can be illegal but private prostitution or earning money in exchange of sex might not be illegal.

The meaning of 'brothel' was made clear in the case of *State of U.P. v. Sharda*¹⁵, brothel does not only include a house, room or place used for the purpose of sexual exploitation. But is a place where work of prostitution is being carried out voluntarily by prostitutes. And the girls living in a Kotha works as a prostitute willingly.

The Indian Penal Code, 1860 also deals with prostitution but is confined to child prostitution. But it also includes provisions for kidnapping for seduction, forcing a person into sex, or trading of minors from foreign countries etc. Sections 366(A) and 372 of IPC, 1860 forbids selling of minors and forcing them into prostitution.

In the case of *State (NCT of Delhi) v. Haseena*¹⁶, it was stated that when a minor child is found in brothel, and if found that she has been sexually abused, it is assumed that the child has been imprisoned for the intention of prostitution. The female prosecutor clearly stated that she was forced to do that and even beaten when she refused. Thus, it was sufficient evidence of convicting the suspect for the offence punishable under *Section 5 of ITP Act* in spite of the fact that she cannot be held guilty under *Section 376 and Section 109 of IPC, 1860*.

The models that have been adopted by countries across the globe to deal with the crisis are:

- **Total Prohibition**

In this model all kinds of prostitution such as selling sex, buying sex, etc. are prohibited. As prostitution is a violation of human rights and violation of dignity too. People engaged in prostitution usually are victims of kidnapping or trafficking who are forced in prostitution. This model has been absorbed by Russia, Sri Lanka, Maldives, etc.

- **Abolition**

The concept of prostitution is legal in the system, however the involvement of third party is strictly prohibited. The act of convincing someone to engage in a crime is illegal. This means that the advertisement of prostitutes for their services and availability in exchange of money is totally prohibited.

¹⁵ State of U.P. v. Sharda, Sessions Case No. 96/2013.

¹⁶ State (NCT of Delhi) v. Haseena, Sessions Case No.77/12.

- **Neo-abolitionism**

Also known as the Nordic model, this model decriminalizes selling of sexual favors but criminalizes the act of buying them. This model has been adopted by Iceland, Ireland and Canada etc. Neo- abolitionists are strongly of the opinion that it is sale of human bodies and since people who enter in to this trade are forced, they should not be punished. Thus, the consumers are severely punished. The prostitutes themselves, are unpunished, the customers are committing a crime.

- **Legalization**

The legalization of prostitution states that all the components of prostitution can be lawfully carried out. Thus, selling sex, buying sex, organizing sex, etc. is legal. There are laws to control it. This is usually in highly developed countries, like Netherlands, Austria, Germany, Greece, etc. In Amsterdam, there is an entire area in which prostitution is carried on and there are regulations for the same. The type of regulation, its ambit depends from region to region, country to country. Yoshiwara one of the cities in Japan is licensed and well-known red-light districts created during the early 17th century.

- **Decriminalization:**

Decriminalization states that there is no penalty clause in the statutes for the disobedience of the act. In many countries, the act of prostitution has been decriminalized and there are no punishments for engaging in them, either as consumer or seller. This approach states prostitution as a consensual sexual service provided in exchange of money or valuables. Such a model has been adopted in New Zealand, Australia, Nigeria, Kenya etc., they have adopted the *Amnesty International doctrine*¹⁷ that removing prostitution as an illegal profession and creates a safe and secure environment to work.

CONCLUSION

Slavery, Human Trafficking and Prostitution are one of the most common conspicuous human rights violations that are taking place around the globe at large. They are foundations of the most threatening problems in the world which are so profound that even with the help of global organizations they are uncontrollable. These crimes are not restricted to certain caste, gender,

¹⁷ Decriminalization of Prostitution Policy: Amnesty International Punishes A Dissenting Member, 3(3) Dignity: A Journal of Analysis of Exploitation and Violence, 2019.

religion, community or country rather it is going on all around the world. So, the world should come together to make sure that these issues are nipped at the bud. Thus, to conclude it could be said that effective measures are to be taken where everyone should get educational rights, financial benefits, good medical management, remittances, etc.