CHAPTER - I

INTRODUCTION

“Human Trafficking” is a global issue of serious concern due to the gross violation of human rights involved in it. The concept of human trafficking can simply be referred as the criminal practice of exploiting human beings by treating them like commodities for profit. Human trafficking as defined by the United Nations (UN) Protocol\(^1\) is “the recruitment, transportation, transfer, harbouring or receipt of persons by means of the 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 the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or service, slavery or practices similar to slavery, servitude or the removal of organs.”\(^2\) It is estimated that around 3 million women in India become victim of trafficking annually in the country and around 40 per cent of these are minors.\(^3\) Trafficking in women and children, though have various dimensions, under Indian context it largely relates to trafficking for commercial sexual exploitation and it seriously affect the human rights of victim of trafficking for sexual exploitation as the victim suffers innumerable, unimaginable and grave miseries at the hands of the traffickers relating to their life, limb, body and mind.

India is extremely affected by trafficking in women and girl children for commercial sexual exploitation. India is a source, destination and transit country for trafficking women and girl children for the commercial sexual exploitation. Studies reveal that number of persons affected by the sex trafficking in women and girl children in India could be between 16 million to 52 million and the annual turnover in sex trafficking is estimated to be over 16 billion Rupees.\(^4\) There are approximately 10 million prostitutes in India\(^5\) and more than 100,000 women in prostitution in Bombay,

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\(^2\) Article 3 of UN Protocol against Trafficking.
\(^4\) Supran. 3
\(^5\) Rebert I. Freidman, “India’s Scheme: Sexual Slavery and Political Corruption Are Leading to An AIDS Catastrophe,” The Nation, 8 April 1996.
Asia’s largest sex industry centre. At least 2,000 women are in prostitution along the Baina beachfront in Goa. There are 300,000 – 500,000 children in prostitution in India. Approximately 20,000 or 20% of women in prostitution in Bombay are under 18. Every day, about 200 girls and women in India enter prostitution and 80% of them are against their will. Bangalore is one of the five major cities in India which together account for 80 percent of child prostitutes in the country. 90% of the 100,000 women in prostitution in Bombay are bonded slaves. It takes up to fifteen years for girls held in prostitution via debt – bondage to purchase their freedom. These figures indicate that the existing Laws are slanted and do not provide effective measures to redress human trafficking for sexual purposes.

Article 23 of the Constitution of India prohibits trafficking in any form. Sub – article 1 of Article 23 provides “Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with Law.” Thus, the Article 23, in addition to prohibiting trafficking makes it an offence punishable under Law. Before the recent amendment of the Criminal Law in February 2013, there were more than 20 provisions in the Indian Penal Code, 1860 (IPC) which dealt with different facets of crimes of human trafficking. Some of the provisions are: a) Sec 363 A of IPC, Kidnapping or maiming a minor for the purpose of begging b) Sec 366 A: Procuring minor girl for sexual exploitation c) Sec 366 B: Importation of girl from foreign country for sexual exploitation d) Sec. 376: Rape and Gang rape. The Immoral Trafficking (Prevention) Act, 1956 (ITP ACT) makes punishable the procuring, inducing or taking person for the sake of prostitution. Sec 3 and 18 of the ITP ACT are relevant in this regard.

However, After the Amendment of Criminal Law in 2013, the major changes brought about in relation to trafficking are found in two sections, namely, section 370

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6 Ibid.
8 Rahul Bedi, ‘Bid To Protect Children As Sex Tourism Spreads,’ London’s Daily Telegraph, 23 August, 1997
9 Supra n. 8
and newly inserted section 370 A. Earlier section 370 of IPC has been totally reframed by the Amendment Act 2013. Earlier Section 370 dealt with buying or disposing of any person as a slave and the section provided “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 with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. “Now the section 370 provides that (1) whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by (i) using threats, or (ii) using force, or any other form of coercion, or (iii) by abduction, or (iv) by practicing fraud, or deception, or by abuse of power, or (vi) by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harbored, transferred or received, commits the offence of trafficking. The explanation further provides that the expression slavery or practices similar to slavery, servitude, or the forced labour or services, slavery or practices similar to slavery, servitude, or the forced removal of organs. The section by way of explanation further makes it clear that the consent of the victim is immaterial in the determination of the offence of trafficking.14

The punishments prescribed are stringent and varies depending on the person/s involved. The section provides that whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.15

The punishments prescribed are stringent and varies depending on the person/s involved. The section provides that whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.16 Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.17 Where the offence involves the trafficking of a minor, it shall be punishable with rigorous

14 Explanation 2, Sec. 370 (1)
15 Sec. 370 (2)
16 Sec. 370 (3)
17 Sec. 370 (4)
imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life.\textsuperscript{18} Where the offence involves the trafficking of more than one minor at the same time, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years but which may extend to imprisonment for life.\textsuperscript{19} When a public servant including police officer is involved in the trafficking of a minor then such public servant shall be punished with imprisonment for life, which shall mean the remainder of that person’s natural life.\textsuperscript{20} If a person is convicted of the offence of trafficking of minors, on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life.\textsuperscript{21}

Thus, from the above it can easily be seen that while the old section 370 of IPC dealt with only buying or disposing of any person as a slave the new section will take in its sweep various kinds of exploitation by way of trafficking of women and children. The term “exploitation” is explained to include prostitution as well. This is in addition to the ITP Act, 1956. The intention of the legislature in including “other forms of sexual exploitation” and “forced labour or services” can be read to address situations where the trafficked persons are used for pornographic purpose or services like massage parlours. The punishments prescribed are different and in varying degrees for persons involved in different stages and with different persons. Further, consent of the victim is not a defense in the case of trafficking if a person is brought with her consent, where such consent is not a defense in the case of coercion, fraud, deception or under abuse of power; the same will amount to trafficking. It is clear that the intention of the legislature is to remedy those adult women who are entrapped at the hands of the traffickers for various promises such as marriage, work, etc. The new section also differentiates the instances of trafficking major persons from minor persons. This differentiation is brought about by providing separate penalty for each with higher minimum sentence for trafficking minor persons. Under the new section

\textsuperscript{18} Sec. 370 (5)
\textsuperscript{19} Sec. 370 (6)
\textsuperscript{20} Sec. 370 (7)
\textsuperscript{21} Punishments for Offences covered in the Protection of Children from Sexual Offences Act are : (i) Penetrative Sexual Assualt (Section 3) – Not less than seven years which may extend to imprisonment for life, and five (Section 4); (ii) Aggravated Penetrative Sexual assault (Section 5) – Not less than ten years which may extend to imprisonment for life, and fine (Section 6); (iii) Sexual Assualt (Section 7) – Not less than three years which may extend to five years, and fine (Section 8); (iv) Aggravated Sexual Assualt (Section 9) – Not less than five years which may extend to seven years, which may extend to seven years, and five (Section 10); (v) Sexual Harassment of the Child (Section 11) – Three years and five (Section 12); (vi) Use of Child for Pornographic Purpose (Section 13) – Five years and five and in the event of subsequent conviction, seven years and fine (Section 14(1))
370 the minimum imprisonment is incorporated to deal with trafficker in minor persons. Another major innovation of the section 370 is the incorporation of enhanced punishment for repeated offender as well as where the offender traffic more than one person at the same time.

The Protection of Children form sexual Offences Act 2012 provides for stringent punishments for sexual offences in children. However, the Act provides little place for trafficking in children. The only provision that can be interpreted to attract trafficking in children under the Act is the penalizing abetment of the offences of sexual assault on children and the punishment prescribed for such abetments are same as that for the commission of the offence. The abetment provision can include the trafficking in children for sexual purposes.

Despite being an affected country, India lacks serious redress mechanism to tackle sex trafficking in women and female children. An important factor which retarded the redress mechanism is the unfriendly nature of police. As any other normal crime of theft, assault or prostitution, the police treated the case of trafficking as simple one. However, after the new amendment, it seems that the police have great role to pay. The section 370 is quite vivid in dealing with persons involved in the trafficking at various stages. Thus, the victim or the relatives of the victim can get sufficient opportunity to redress the crime of trafficking through the police now. Still the attitude of the police will be same as that of earlier.

There is lack of integration between police and the prosecution in trafficking cases which hold back the redress mechanism through court. The prosecutors also the take the case of sex trafficking as a normal case of prostitution and hence, do not pay much attention. Even if the police are serious in some cases, the prosecutor may not take the case seriously and the result is that the traffickers get the advantage than the victim. In order to avoid such discrepancies there must be strong and positive integration by the police and prosecutor in sex trafficking cases. Without such integration, it would be difficult to unearth the organized crime of trafficking for

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22 Punishments for offences covered in the Protection of Children from Sexual Offences Act are: (i) Penetrative Sexual Assault (Section 3) – Not less than seven years which may extend to imprisonment for life, and fine (Section 4); (ii) Aggravated Sexual Assault (Section 5)- Not less than ten years which may extend to imprisonment for life, and fine (Section 6); (iii) Sexual Assault (Section 7)- Not less than three years which may extend to five years, and fine (Section 8); (iv) Aggravated Sexual Assault (Section 9) – Not less than five years which may extend to seven years, and fine (Section 10); (v) Sexual Harassment of the Child (Section 11) – three years and fine (Section 12); (vi) Use of Child for Pornographic Purposes (Section 13) – Five years and fine and in the event of subsequent conviction, seven years and fine (Section 14(1))

23 Section 16 and 17, Protection of Children from Sexual Offences Act 2012.
sexual exploitation. Due to the absence of such integration between police and prosecutor, the organized criminals in the sex trafficking business may escape from the net and go unpunished, and the victim will again be in their trap.

The protection of the victim of trafficking is an important factor whenever a women or child is rescued from the clutches of traffickers. Protection is required at all stages towards the redress of the grievances of the victim because traffickers are organized and may sometimes go to the extent of hushing up the victim. Hence, protection becomes part and parcel of redress mechanism since without protection it would be difficult for the victim to go for redressing the grievances against traffickers.

Trafficking is a highly lucrative business in India as three is great demand for sex due to the societal rigidity annexed with sexual relations. The people involved in such as family members or relatives who sell the girl, the recruiters, the deceivers, the agents, the transporters, brothel owners, hotel/ lodge workers, etc., get pecuniary benefits out of the victim. In fact, all are direct perpetrators of the crime of trafficking. However, very little attention is shown to prosecute the perpetrators in majority cases by the authorities. Thus, the redress mechanism remains a closed door for the victim against perpetrators and the victim in majority cases remain the sufferer. The victim may even be reluctant to make a complaint against perpetrators.

Before the amendment of Criminal Law 2013, the bail provisions in trafficking cases were highly liberal and hence the traffickers got bail easily. This would adversely affect the victims’ redress of grievances due to intimidation or coercion caused by the traffickers on bail even if the victim want to disclose to the court the truth of trafficking and miseries they had undergone. The traffickers on bail also used to intimidate and influence the witness from deposing the truth before the court during trial. Hence, the redress in sex trafficking cases through courts was very rare. However, by the new section 370, trafficking has been made as serious offence under different heads and hence obtaining bail will be a great task for the traffickers. Nevertheless, the conviction in trafficking case is minimal due to a variety of reasons such as police/prosecutor complicity, traffickers escaping during raids, insufficient evidence, witnesses turning hostile, and intimidation by traffickers. Some police treat the victims as perpetrators and do not provide sufficient security to victims and
witnesses who hinder the victim’s testimony and prosecutions. In such cases the redress through court becomes almost impossible.

Section 8 of the ITP ACT punishes seducing or soliciting for the purpose of prostitution. It criminalizes the act of solicitation for prostitution and is being used to arrest and punish women and girls who are victims of trafficking. The Commercial sex workers are left to find clients by some other means not involving solicitation. Seeking clients by soliciting is indispensable for earning a livelihood and this section only aid the police who tend to harass the commercial sex workers by threatening to invoke section 8. A large number of arrest and convictions under the ITP ACT are secured under Section 8. A survey conducted on behalf of National Human Rights Commission (NHRC) on human trafficking for sexual purposes in which data was collected by interviewing 852 police official gave an astounding report. The data had shown that 93% of the arrests were made on women and 90% of those convicted were also women. 40% of the police officials were not aware of the issue of trafficking. Only 6.6% of the police officials had undergone some sort of training / sensitization on the issue. 54.8% police officers give on priority at all to trafficking, 25.3 give it low priority, 12.2% consider it to be a medium priority issue and only 7.7% think it is a high priority issue. Reporting on trafficking appears to be only 40%. This report has shown the pathetic situation of reporting and redresses a mechanism that prevails today in trafficking cases.

Corruption in India plays vital role in retarding the redress measures in trafficking cases. Traffickers have money and trafficking business is profitable and hence, the traffickers play with money in order make the authorities to their side. Corrupt Law enforcement officers reportedly continue to facilitate the movement of sex trafficking victims and protect the traffickers, pimps, brothel keepers; hotel or lodge workers, etc.

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24 Section 8 ITP Act: Whoever, 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. (a) by words, gestures, willful exposure of her person (whether by sitting by a window or on the balcony of a building or house or in any other way), or otherwise tempts or endeavours to tempt, or attracts or endeavours to attracts the attention of, any person for the purpose of prostitution; or (b) solicits or molests any person, or loiters or acts in such manner as to cause obstruction or annoyance to persons residing nearby or passing by such public place or to offend against public decency, for the purpose of prostitution, shall be punishable on first conviction with imprisonment for a term which may extend to six months, or with fine which may extend to one year, and also with fine which may extend to five hundred rupees. Provided that where an offence under this section is committed by a man, he shall be punishable with imprisonment for a period of not less than seven days but which may extend to three months.

Societal attitude subjugate the victim not to escape and bring the traffickers to light. If a victim happens to escape from the clutches of traffickers, she is looked down upon by the relatives, neighbours, and the society at large as a culprit and spoiled girl or women. This is considered to be a shame for her and her family and she becomes a curse for her and her family. Even if the victim gets an opportunity to escape her mental state would be not to escape from the sex working business because she would spoil the image of the family. This attitude weakens the redress mechanism in trafficking cases. Strengthening the mental capacity of the victim, cultivation of confidence in her and good rehabilitation and reintegration of victims can improve the redress mechanism work properly in such cases.

The Immoral Traffic (Prevention) Amendment Bill was introduced in Lok Sabha in 2006 to combat trafficking and sexual exploitation for commercial purposes. Though the sections 5A of the amended Bill seeks to combat trafficking, nevertheless, the Bill do not focus on trafficking in the larger sense of the term. The women and girls are seduced for sexual work and their earnings are extorted by the recruiters, pimps, brothel owners, but the proposed bill does not provide adequate remedy against such extortions. The Bill also does not provide effective remedy for rehabilitating and livelihood of the rescued victims. Rather, Section 5C of the Bill seeks to penalize the customer which would be a blow on the livelihood of the woman who is left with any alternative. Instead of penalizing the customer, the Bill should have provided stringent measures to penalize the trafficker, procurers, pimps and brothel – owners who knowingly receive the trafficked women and girls.

From the above it can be seen that there are many lacunas in the redress of trafficking cases for sexual exploitation. It is in fact a break as the recent criminal Law amendment which provides elaborate provisions defining trafficking and prescribing punishments at different levels, for persons involved at several stages of trafficking. However, the major issue is how effectively the law may be enforced due to reasons such as corruption, police officers indifferent attitude towards trafficking cases, lack of police – prosecutor integrated work, etc. Societal and victims attitude also adversely affect in redressing effectively the trafficking cases for sexual exploitation. The Government should take urgent measures at the Centre and State level by providing effective remedial measures to victims of sex trafficking in women
and girls, make provision for rehabilitation, reintegration, and welfare of victims of sex trafficking. Effective measures must be made time bound to rescue the women and girl children who are entrapped in the sex trafficking business. Scheme of protection should be effectively made to encounter the situation of rescued victims from re-victimization. The traffickers take the undue advantage of vulnerable situation of illiteracy, unemployment and poverty of the victims and hence, measures should be taken to prevent sex trafficking due to such situations. Creating legal awareness is one of the effective mechanisms for redress in trafficking cases because without legal awareness the victim or relatives or neighbours may not be able to take immediate steps to tackle with trafficking cases when it comes to the knowledge of them or even on the suspicious circumstances of trafficking cases. Working together by the police and NGOs plays a vital role in the redress mechanism. In short, the success of redress mechanism in trafficking cases depend on the joint effort of victim, relatives, police, prosecution, NGOs, media and community at large.

1.1 Research Problem:

Trafficking is a complex and multidimensional phenomenon and requires a multidisciplinary approach. Any analysis of the root causes of human trafficking must take into account factors that are specific to India, its socio-economic conditions and its poverty levels.

Human trafficking is a violation of human rights and any strategy to eliminate trafficking should be framed within a human-rights perspective by placing the victim at the centre. A focus that is primarily directed to the prosecution of traffickers has the potential to ignore or minimize the human rights of those who have been trafficked by failing to adequately protect the trafficked women.

The key feature of the present research lies in its study not only of the affected women but also of the courts, police stations and complaints or FIRs regarding related crimes. For easy translation of the recommendations, the concerns have been concretized into formulating policies and programmes. No other report has so extensively in such a comprehensive manner made recommendations for protection, prevention and prosecution simultaneously and also suggested amendments in the Immoral Trafficking (Prevention) Act. The present research study also focuses on the
human rights concerns of workers engaged in the sex trade and the recommendations reflect their concerns and voices without taken a moral stand.

Available literature on trafficking mainly consists of reports of studies, conferences and workshops conducted by international and domestic Non-Governmental organizations. It referred to are the International Labour Organization (ILO) Reports on The Link between Migration and Trafficking and Child Labour and Trafficking.

The present study is carried out to estimate the impact of the Immoral Traffic (Prevention) Act 1956 and the status of Human Trafficking in India. An empirical study was also undertaken by the researcher to know the implementation of the Act and the responses of the victims of Trafficking. The researcher made several recommendations on the basis of the findings in the empirical study and research carried out in the East Godavari District, A.P. India

**1.2 Objectives of the Study:**

1. To systematically analyze the Law and Policy preventing Immoral Traffic in the Indian Society ensuring the Human Rights to the victims of Trafficking.

2. To examine, analyze and evaluate the problems of Human Trafficking and rehabilitation of the victims and the problem of protecting the interest of various state holders.

3. To examine judicial trend towards Immoral Traffic, Prevention of Immoral Trafficking under Human Rights of the victims.

4. To understand the policy of rehabilitation to protect the right to rehabilitation of victims of Trafficking.

5. To understand the need and necessity of building a constitutional theory of right to rehabilitation of the victims of Immoral Trafficking as part of right to life and personal liberty under article 21 and 23 of the Constitution of India and in particular the Human Rights of Girl Child and Woman.
6. To review the effectiveness of the provisions of Immoral Traffic (Prevention) Act 1956 (ITP ACT), Juvenile Justice Act 2000 (JJA), IPC and other Laws for the rescue and post rescue work.

7. To suggest ways to overcome the problems faced by the various Government Functionaries involved in rescue and post rescue work, and

8. To review the policy, schemes and plan for the effective rescue and post rescue works of Trafficked girls and women

1.3 Hypotheses:

1. Whether lack of proper enforcement of the provisions of Immoral Traffic (Prevention) Act 1956 leads to deprivation of Human Rights of the victims of the Trafficking in general under Right to Rehabilitation in particular.

2. Whether lack of speedy and just rehabilitation policy to the victims of Immoral Trafficking.

3. Whether the enforcement of the Immoral Traffic (Prevention) Act 1956 is found defective due to the negligent attitude of the Prosecution Agency (Police).

1.4 Methodology:

In tune with the objective of the study, the researcher adopted both doctrinal and non doctrinal research. Apart from analytical and historical methods, the researcher adopted socio legal research also. A case study of the problem of the victims of the Immoral Trafficking in East Godavari District, A.P. India was conducted for better results.

1.5 Plan of the Study:

For a thematic development, the study is organized into seven chapters.

Chapter – I is Introduction, Chapter – II deals with Immoral Trafficking and its Historical Background, Definition and Dimensions. Chapter – III deals with Immoral
Trafficking and International Human Rights Law. It contains various International covenants in respect of the prevention of trafficking. Chapter – IV deals with Law relating to prevention of Immoral Traffic in India. It explains various laws which are in force in our country to prevent the Human Trafficking. Chapter – V deals with the Role of Human Rights Institutions like National Human Rights Commission, National Commission for Women, National Commission for Child Rights etc., and Non Governmental Organizations to prevent the trafficking and rehabilitation of trafficked persons or victims. Chapter – VI is research study on Socio Legal Aspects on Human Rights violation of Victims of trafficking in Rajahmundry, Peddapuram and Manepalli in East Godavari District, Andhra Pradesh, India which are hubs for prostitution. Chapter – VII deals with Conclusion and Suggestions. The Researcher has made several recommendations basing on his study on the topic.