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**A STUDY ON WOMEN AND CHILDREN TRAFFICKING: IN  
RELATION TO SEXUAL EXPLOITATION IN INDIA****INTRODUCTION**

The trafficking of women and children in relation to sexual exploitation has emerged as an important social issue in recent times in many parts of India and it is a crime which constitutes a serious violation of a human rights and human dignity of a person. The major reasons by which a person is vulnerable to trafficking is poverty, illiteracy, lack of livelihood options, etc<sup>1</sup>. Therefore, trafficking is a complex phenomenon which usually driven or influenced by social, economic, cultural and other factors due to this many of such factors are specific to individual trafficking patterns and to the state in which it happens<sup>2</sup>. In the Indian constitution Article 23<sup>3</sup>

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<sup>1</sup> Bishwajit G., Trafficking in women and children in India: nature, dimensions and strategies for prevention, vol.13, no.5, The international Journal of Human Rights, Introduction, p.731, 2009, [https://www.researchgate.net/publication/235560679\\_Trafficking\\_in\\_women\\_and\\_children\\_in\\_India\\_nature\\_dimensions\\_and\\_strategies\\_for\\_prevention](https://www.researchgate.net/publication/235560679_Trafficking_in_women_and_children_in_India_nature_dimensions_and_strategies_for_prevention).

<sup>2</sup> Rashmi Singh, Trafficking of Women and Children in India with special reference to Commercial Sexual Exploitation: A psycho-social study of rescued trafficked victims, academia.com, cover page, p.19, 2015, [https://www.academia.edu/14636510/Trafficking\\_of\\_Women\\_and\\_Children\\_in\\_India\\_with\\_special\\_reference\\_to\\_Commercial\\_Sexual\\_Exploitation\\_A\\_psycho\\_social\\_study\\_of\\_rescued\\_trafficked\\_victims](https://www.academia.edu/14636510/Trafficking_of_Women_and_Children_in_India_with_special_reference_to_Commercial_Sexual_Exploitation_A_psycho_social_study_of_rescued_trafficked_victims).

<sup>3</sup> Article 23 of Indian Constitution- PROHIBITION OF TRAFFIC IN HUMAN BEINGS AND FORCED LABOUR-(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any

prohibit Human Trafficking in any form or contravention is illegal. The substantive law like Indian Penal Code, 1980 and the special legislation of the Immoral Trafficking (Prevention) Act, 1956 (ITPA), etc are the legal framework to combat trafficking<sup>4</sup>.

## **ANTI-TRAFFICKING LAWS AND LEGISLATION IN INDIA.**

### CONSTITUTIONAL PROVISIONS:

The Indian Constitution addresses the extensive range of rights for the protection and proper fostering of women. Further, the rights which are covered under the Indian Constitution guarantees the values that is appreciate by the people and also provided to protect the dignity of the individual and helps the people where they can create or develop their personality to the greater extent<sup>5</sup>.

The constitutional provision deals with the trafficking which can be covered under the Article 14<sup>6</sup>, 15<sup>7</sup>, 21<sup>8</sup>, 21A<sup>9</sup>, 23<sup>10</sup>, 39A<sup>11</sup> and these provisions provides the rights to get out of the situation

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contravention of this provision shall be an offence punishable in accordance with law. (2) Nothing in this article shall prevent the state from imposing compulsory service for public purposes and in imposing such service the state shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

<sup>4</sup> Mr. Gary Lewis, Protocol on Inter State Rescue and Post Rescue Activities Relating to Persons Trafficked for Commercial Sexual Exploitation, UNODC and Government of India, cover page, p.6, (2007), [https://www.unodc.org/documents/humantrafficking/India\\_Training\\_material/Protocol\\_on\\_Inter\\_State\\_Rescue\\_and\\_Post\\_Rescue\\_Activities.pdf](https://www.unodc.org/documents/humantrafficking/India_Training_material/Protocol_on_Inter_State_Rescue_and_Post_Rescue_Activities.pdf).

<sup>5</sup> R. M. Kamble, Human Trafficking of Women in India: Issues and Perspectives, vol.09, p.173, p.177,(2019).

<sup>6</sup> Article 14 of Indian Constitution- Equality before Law The State shall not deny to any person equality before the law or equal protection of the laws within the territory of India.

<sup>7</sup> ARTICLE 15 of Indian Constitution- Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. (3) Nothing in this article shall prevent the State from making any special provision for women and children.

<sup>8</sup> Article 21 of Indian Constitution- Protection of life and personal liberty- No person shall be deprived of his life or personal liberty except according to procedure established by law.

<sup>9</sup> Article 21 of Indian Constitution-A Right to education The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

<sup>10</sup> Article 23 of Indian Constitution-Prohibition of traffic in human beings and forced labour (1) 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. (2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any

of trafficking and to fight against such heinous crime.

In *Yusuf v. State of Bombay*<sup>12</sup> it was held that, under Article 14<sup>13</sup> of the Constitution states that “the state shall not deny to any person equality before the law or the equal protection of the legislation within the territory of India”. Even if this Article provides the equality but it does not prevent the state from establishing a reform towards improvement. Thus, Article 15(3)<sup>14</sup> Article 15 which provides that the state can make the special provisions for women and children and this provision cannot be challenged on the ground of contravention of Article 14. Article 23<sup>15</sup> of the Constitution of India, provides that the trafficking in human beings or persons is prohibited and given rights against the exploitation and forced labour and practices which is punishable in accordance with the law.

#### INDIAN PENAL CODE, 1860

The Sir Lord Macaulay drafted the colonial code which is initially dealt with the offence of Human Trafficking under section 370<sup>16</sup> of the code and that was later amended by the criminal law amendment Act, 2013 and there is one more provision added to the code which deals with the exploitation and trafficking that is section 370A<sup>17</sup> of the code. The definition for exploitation

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discrimination on grounds only of religion, race, caste or class or any of them.

<sup>11</sup> Article 39 of Indian Constitution-A Equal justice and free legal aid-The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

<sup>12</sup> *Yusuf v. State of Bombay*, 1954 S.C.R 930.

<sup>13</sup> Article 14, *supra note 6*.

<sup>14</sup> Article 15, *supra note 7*.

<sup>15</sup> Article 23, *supra note 10*.

<sup>16</sup> Section 370 of the Penal Code- the following sections shall be substituted, namely:- 370. (1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by- first – using threats, or secondly- using force, or any other form of coercion, or thirdly- by abduction, or fourthly- by practising fraud, or deception, or fifthly- by abuse of power, or Sixthly- 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, harboured, transferred or received, commits the offence of trafficking.

<sup>17</sup> Section 370A of Indian Penal Code- (1) Whoever, despite knowing, or having reason to believe that a child has been trafficked, employs such child in any form of labour, shall be punished with rigorous imprisonment for a term which shall not be less than five years but which may extend to seven years, and with fine. (2) Whoever, despite

and trafficking is provided under section 370 of Indian Penal code is largely similar with the Trafficking in Persons Protocol which is provided as, if any person for the purpose of exploitation, recruits, transports, harbors, transfers, or receives a person(s) by the purpose of threat, use of force or any type of coercion, by abduction, by deception or fraud, or by power abuse, by inducement, including giving some payment or benefits where the exploitation has to be physical in nature, it can be sexual also. In the offence of trafficking the consent of the victim becomes inconsequential to be determine<sup>18</sup>.

There are various other provisions which dealt under Indian Penal Code for the offence of Trafficking:

1. Abducting, Kidnapping or inducing women to compel her for marriage, etc (Section 366)<sup>19</sup>.
2. For the purpose of prostitution selling the minors, etc (Section 372)<sup>20</sup>.
3. For the purpose of prostitution buying the minors, etc (Section 373)<sup>21</sup>.
4. Wrongful restraint (Section 339)<sup>22</sup>.

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knowing or having reason to believe that an adult has been trafficked, employs such adult for labour, shall be punished with rigorous imprisonment for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.’

<sup>18</sup> ISHANT, Human Trafficking And Fundamental Rights, Legal Service India, (Feb 20, 2021, 8:30 PM), [Human Trafficking And Fundamental Rights \(legalserviceindia.com\)](https://legalserviceindia.com/Human-Trafficking-And-Fundamental-Rights).

<sup>19</sup> Section 366 in The Indian Penal Code- Kidnapping, abducting or inducing woman to compel her marriage, etc.—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, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

<sup>20</sup> Section 372 in The Indian Penal Code- Selling minor for purposes of prostitution, etc.—Whoever sells, lets to hire, or otherwise disposes of any 1[person under the age of eighteen years with intent that such person shall at any age be employed or used for the 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 of either description for a term which may extend to ten years, and shall be liable to fine.

<sup>21</sup> Section 373 in The Indian Penal Code- Buying minor for purposes of prostitution, etc.—Whoever buys, hires or otherwise obtains possession of any 1[person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, of knowing it to be likely that such person will at any age be] employed or used for any purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

5. Wrongful confinement (Section 340)<sup>23</sup>.
6. Mental tortured/harassed/assaulted (Section 351)<sup>24</sup>.
7. Outraged of her modesty (Section 354)<sup>25</sup>.
8. Raped/Gang Raped/Repeatedly raped (Section 375)<sup>26</sup>.

## SPECIAL LEGISLATION

### PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

The Act has been enacted to strengthen the various legal provisions for the protection of children from the sexual abuse and exploitation. This is the first Act which has been passed to introduce the issue of sexual offences against children as it is increasing day by day. The Act defines a child below the age of 18 years and it provide protection to all the children under the age of 18 years from the offences such as sexual assault, pornography, sexual harassment. The Act deals with various punishment given for the offences like sexual assault, etc which range from simple to rigorous of varying periods along with the fine decided by the court<sup>27</sup>.

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<sup>22</sup> Section 339 of the Indian Penal Code- Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction, in which that person has a right to proceed, is said wrongfully to restrain that person.

<sup>23</sup> Section 340 of Indian Penal Code- wrongful confinement- whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said wrongfully to confine that person.

<sup>24</sup> Section 351 of the Indian Penal Code -“Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

<sup>25</sup> Section 354 in The Indian Penal Code- Assault or criminal force to woman with intent to outrage her modesty.— Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

<sup>26</sup> Section 375 of Indian Penal Code: A man is said to commit rape when he has sexual intercourse with a women under any of the following situations: Against her will, Without her consent, With her consent but the consent was obtained by putting her or any person close to her in fear of death or of hurt, With her consent but the man knows that he is not her husband and the consent was given because the woman believes that he is the man with whom she is or believes herself to be lawfully married, With her consent but at the time of giving such consent the woman was unable to understand the nature and consequences of her consent, With or without her consent, when the woman is below the age of 16 years.

<sup>27</sup> BHUMITRA DUBEY, Child Trafficking and Sexual Abuse, Law Times Journal, (1 march, 2021, 4:36PM), <http://lawtimesjournal.in/child-trafficking-and-sexual-abuse/>.

In the year 2012, Protection of Children from Sexual offences (POCSO) Act, 2012, came into force, which is one of the special law to protect children from sexual abuse and exploitation. It has given precise definitions for different forms of sexual abuse, including penetrative and non-penetrative sexual assault, sexual harassment<sup>28</sup>.

#### THE SUPPRESSION OF IMMORAL TRAFFIC IN WOMEN AND CHILDREN ACT, 1956

The Act in India named as “ The Suppression of Immoral Traffic in Women and Children Act, 1956”(SITA) which was passed in 1956 by the parliament but it came into force in 1958 as a result of India signing the Trafficking Convention. According to SITA, the persons who are called as the prostitutes can practice their business privately but publicly they cannot attract the customers. This Act states that if a women selling her body individually and deliberately for the exchange of material benefits. This Act did not state about the abolition of prostitutes and prostitution as such and to make it as per the criminal offence or punish a person one prostitutes character. Its focal point was to restrain or abolish the traffic in persons for the means of prostitution as an organized means of living. Under SITA, a prostitute means a women who arrested for soliciting under Act could be imprisoned for a year, but a procurer faces only for 3 months. The Act also allowed the prosecution of a person other than the prostitutes only if such person is involved “knowingly” or “willingly” made women to indulge in prostitution. At the end, the Act only described prostitution behind the closed doors was exempted under the Act and because of this exemption and due to this it promoted the inception of bordello. Therefore, due to such defects in the Act, the SITA was amended in 1978 and renamed as Prevention of Immoral Traffic Act (PITA) as well as it received the current title, ITPA which refers as “The Immoral Traffic Prevention Act , 1986”<sup>29</sup>.

#### IMMORAL TRAFFIC (PREVENTION) ACT, 1956

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<sup>28</sup> R. M. KAMBLE, *supra* note 5, at 178.

<sup>29</sup> SHIRSH RAJ, *Laws on Human Trafficking in India*, *Recolb Legal*, (Feb 25, 2021, 6:30 PM), <https://recolblegal.com/laws-on-human-trafficking-in-india/> .

The Immoral Traffic (Prevention) Act, 1956<sup>30</sup> is a law which is made by Parliament under Article 35 of the Indian Constitution for the reason of punishing the acts of trafficking in human beings. Its main object is to combat commercial sexual exploitation and prohibits prostitution. It has provisions for giving rehabilitation and protection to victims of commercial sexual exploitation. The ITPA, 1986 amendment legislation enacted in 1956 for suppressing trafficking as a result of signing by the India of United Nations declaration in New York. The Act was amended twice by the Indian Parliament, in 1978 and 1986. The Act has the object is to protect the rights of the women and children. Under the ITPA, the general provision is that the law is applied on both male and female. Here, if any trafficker trafficked the women for the purpose of prostitution then it will be dealt under the Immoral Traffic Prevention Act but in case a women is selling her body individually, independent and voluntarily for the return of some material benefit then it will not be dealt under ITPA<sup>31</sup>.

In the ITPA, the offences are specific in the circumstances of Commercial Sexual Exploitation. The provisions which dealt with the Commercial Sexual Exploitation are Section 3<sup>32</sup> {*Keeping or*

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<sup>30</sup> Formerly Known as the Suppression of Immoral Traffic in Women and Girls Act, 1956. For a useful Discussion see, *Gaurav Jain v. Union of India*, (1997) 8 SCC 144: AIR 1997 SC 3021.

<sup>31</sup> SHIRSH RAJ, *supra note 28*.

<sup>32</sup>Section 3 of ITPA- Punishment for keeping a brothel or allowing premises to be used as a brothel.—(1) 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 rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees. (2) Any person who— (a) being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or (b) being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is wilfully a party to the use of such premises or any part thereof as a brothel, shall be punishable on first conviction with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with fine. 8 [(2A) For the purposes of sub-section (2), it shall be presumed, until the contrary is proved, that any person referred to in clause (a) or clause (b) of that sub-section, is knowingly allowing the premises or any part thereof to be used as a brothel or, as the case may be, has knowledge that the premises or any part thereof are being used as a brothel, if,— (a) a report is published in a newspaper having circulation in the area in which such person resides to the effect that the premises or any part thereof have been found to be used for prostitution as a result of a search made under this Act; 4 (b) a copy of the list of all things found during the search referred to in clause (a) is given to such person.] (3) Notwithstanding anything contained in any other law for the time being in force, on conviction of any person referred to in clause (a) or clause (b) of sub-section (2) of any offence under that sub-section in respect of any premises or any part thereof, any lease or agreement under which such premises have been leased out or are held or occupied at the time of the commission of the offence, shall become void and inoperative with effect from the date of the said conviction.

*managing* (or assisting in keeping in managing) *a brothel or allowing premises to be used as a brothel* (including vehicle)), Section 4<sup>33</sup>{ *Living on earning of prostitution* (even partly)}, Section 5<sup>34</sup>{ *Procuring, inducing, trafficking, or taking person for the sake of prostitution. Even attempt to procure or take would constitute the offence*}, Section 6<sup>35</sup>{ *Detaining a person in any*

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<sup>33</sup>Section 4 of ITPA-Punishment for living on the earnings of prostitution.—(1) Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of 1 [any other person] shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both 2 [and where such earnings relate to the prostitution of a child or a minor, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years]. 3 [(2) Where any person over the age of eighteen years is proved— (a) to be living with, or to be habitually in the company of, a prostitute; or (b) to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that such person is aiding, abetting or compelling her prostitution; or (c) to be acting as a tout or pimp on behalf of a prostitute, it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meaning of sub-section (1).]

<sup>34</sup> Section 5 of ITPA- Procuring, inducing or taking 4 [person] for the sake of prostitution.—(1) any person who— (a) procures or attempts to procure a 4 [person], whether with or without his consent, for the purpose of prostitution; or (b) induces a 4 [person] to go from any place, with the intent that he may for the purpose of prostitution become the inmate of, or frequent, a brothel; or (c) takes or attempts to take a 4 [person], or causes a 4 [person] to be taken, from one place to another with a view to his carrying on, or being brought up to carry on prostitution; or (d) causes or induces a 4 [person] to carry on prostitution; 5 [shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years: Provided that if the person in respect of whom an offence committed under this sub-section,— (i) is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and (ii) is a minor, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years;] 5 (3) An offence under this section shall be triable— (a) in the place from which a 1 [person] is procured, induced to go, taken or caused to be taken or from which an attempt to procure or take such 1 [person] is made; or (b) in the place to which he may have gone as a result of the inducement or to which he is taken or caused to be taken or an attempt to take him is made.

<sup>35</sup> Section 6 of ITPA-Detaining a 1 [person] in premises where prostitution is carried on.—(1) Any person who detains 2 [any other person, whether with or without his consent],— (a) in any brothel, or (b) in or upon any premises with intent 3 [that such person may have sexual intercourse with a person who is not the spouse of such person], shall be punishable 4 [on conviction, with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years]. 5 [(2) Where any person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offence under sub-section (1). (2A) Where a child or minor found in a brothel, is, on medical examination, detected to have been sexually abused, it shall be presumed, unless the contrary is proved, that the child or minor has been detained for purposes of prostitution or, as the case may be, has been sexually exploited for commercial purposes.] (3) A person shall be presumed to detain a woman or girl in a brothel or in or upon any premises for the purpose of sexual intercourse with a man other than her lawful husband, if such person, with intent to compel or induce her to remain there,— (a) withholds from her any jewellery, wearing apparel, money or other property belonging to her, or (b) threatens her with legal proceedings if she takes away with her any jewellery, wearing apparel, money or other property lent or supplied to her by or by the direction of such person. (4) Notwithstanding any law to the contrary, no suit, prosecution or other legal proceeding shall lie against such woman or girl at the instance of the person by whom she has been detained, for the recovery of any jewellery, wearing apparel or other property alleged to have been lent or



*premises (brothel or any other) where prostitution is carried out}, Section 7<sup>36</sup>{ Anybody who carries on prostitution, or anybody with whom such prostitution is carried on, in the vicinity of public places (which includes hotel, vehicles, etc.)}, Section 8<sup>37</sup>{ *Seducing and Soliciting* for the purpose of prostitution in any public place or within sight of a public place.}, Section 9<sup>38</sup>{*

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supplied to or for such woman or girl or to have been pledged by such woman or girl or for the recovery of any money alleged to be payable by such woman or girl.

<sup>36</sup> Section 7 of ITPA-Prostitution in or in the vicinity of public places.—6 [(1) Any 7 [person], who carries on prostitution and the person with whom such prostitution is carried on, in any premises,— (a) which are within the area or areas, notified under sub-section (3), or (b) which are within a distance of two hundred metres of any place of public religious worship, educational institution, hostel, hospital, nursing home or such other public place of any kind as may be notified in this behalf by the Commissioner of Police or magistrate in the manner prescribed, shall be punishable with imprisonment for a term which may extend to three months.] 1 [(1A) Where an offence committed under sub-section (1) is in respect of a child or minor, the person committing the offence shall be punishable with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.] (2) Any person who— (a) being the keeper of any public place knowingly permits prostitutes for purposes of their trade to resort to or remain in such place; or (b) being the tenant, lessee, occupier or person in charge of any premises referred to in sub-section (1) knowingly permits the same or any part thereof to be used for prostitution; or (c) being the owner, lessor or landlord, of any premises referred to in sub-section (1), or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof may be used for prostitution, or is wilfully a party to such use, shall be punishable on first conviction with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to six months and also with fine 2 [which may extend to two hundred rupees, and if the public place or premises happen to be a hotel, the licence for carrying on the business of such hotel under any law for the time being in force shall also be liable to be suspended for a period of not less than three months but which may extend to one year. [(3) The State Government may, having regard to the kinds of persons frequenting any area or areas in the State, the nature and the density of population therein and other relevant considerations, by notification in the Official Gazette, direct that prostitution shall not be carried on in such area or areas as may be specified in the notification. (4) Where a notification is issued under sub-section (3) in respect of any area or areas, the State Government shall define the limits of such area or areas in the notification with reasonable certainty. (5) No such notification shall be issued so as to have effect from a date earlier than the expiry of a period of ninety days after the date on which it is issued.]

<sup>37</sup> Section 8 of ITPA- *Seducing or soliciting* for purpose of prostitution.—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, wilful 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 attract 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 five hundred rupees, or with both, and in the event of a second or subsequent conviction, with imprisonment for a term which may extend to one year, and also with fine which may extend to five hundred rupees.

<sup>38</sup> Section 9 of ITPA-Seduction of a 2 [person] in custody.— Any person who 4 [having the custody, charge or care of, or a position of authority over, any 2 [person], causes or aids or abets the seduction for prostitution of that 2 [person], 5 [shall be punishable on conviction with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine.

*Seduction of a person in custody* (which include causing or assisting seduction for prostitution of a person in custody)} of Immoral Traffic Prevention Act. Other Sections in the ITPA addresses the definition of the specific terms in prostitution, victims protection, without warrant the police can arrest the person who is involve in the trafficking due to which the trial will be conducted against the said person and furthermore<sup>39</sup>.

In *Abdul Rasheed v. State of Kerala*<sup>40</sup>, it has held that, even if the raid is conducted under the direction of a superior officer and the investigation was conducted and final report was filed by an officer not empowered to do the same, then the entire thing is illegal and the proceeding will have to be quashed, invoking the power under section 482 of the Code of Criminal Procedure. In this case, the observation was done by an officer not an empowered officer<sup>41</sup>.

#### IMMORAL TRAFFIC PREVENTION AMENDMENT BILL, 2006

The Immoral Traffic Prevention Amendment Bill was introduced in the Lok Sabha dated 22<sup>nd</sup> May, 2006. This bill amend the Immoral Traffic Prevention Act, 1956 with the object to combat trafficking and sexual exploitation for commercial purpose. The 2006 bill removes the provision which penalized the prostitutes for soliciting the clients. Instead, this bill penalizes any person who is visiting a brothel for the means of sexual exploitation of trafficked victims. As per the bill all the offences listed need to be tried in camera, the public is not allowed to view the trial. Under this bill, the term “trafficking in persons” is defined along with the provisions provided for punishing any person who is found guilty of the offence of trafficking in persons for the means of prostitution<sup>42</sup>.

#### THE GOA CHILDREN’S ACT, 2003

The Goa Children’s Act is provides for the fully protection and care of children and this Act is a State Legislation. As per the UN Protocol it has the definition of Human Trafficking.

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<sup>39</sup> SHIRSH RAJ, *supra note 28*.

<sup>40</sup> *Abdul Rasheed v. State of Kerala*, 2013 Cri LJ (NOC) 204 (Kerala).

<sup>41</sup> *Shajahan v. State of Kerala*, 2014 Cri LJ 2261 (Kerala).

<sup>42</sup> SHIRSH RAJ, *supra note 28*.

In 2003, this Act was legislated by the State Government of Goa and amended The Goa Children's Act in 2005 after 2 years. This Act discusses regarding the prevention and protection of children from numerous offences such as Commercial Sexual Exploitation, and the violation of Child Rights. The provisions of this Act discuss about the trafficking are Section 8<sup>43</sup> states

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<sup>43</sup>Section 8 of Goa Children's Act- Child Abuse and Trafficking (1) All children should be assured of a safe environment. A safe environment is an environment in which he/she will not be abused in any way and his/her development will be nurtured. 42[(1A) Child Trafficking shall be an offence punishable under this Act. Any person who commits or aids or abets in the child trafficking shall be punishable with imprisonment for a term which may extend to seven years and a fine which may extend to Rs.1,00,000/-]. (2) Whosoever commits any [child abuse or sexual assault] as defined under this Act, shall be punished with imprisonment of either description for a term that may extend to three years and shall also be liable to fine of Rs. 1,00,000/-. Whoever commits any Grave Sexual Assault shall be punished with imprisonment of either description for a term that shall not be less than [ten years] but which may extend to [life imprisonment] and shall also be liable to a fine of Rs. 2,00,000. Whoever commits incest shall be punished with imprisonment of either description for a term that shall not be less than ten years but which may extend to life imprisonment and also a fine which may extend to Rs. 2,00,000/- under Section 375 of the IPC, as laid down by the Supreme Court of India. (3) [In cases of sexual assault on a child, the investigating authorities shall ascertain the need to medically examine the child victim in consultation with the medical authority. In cases of child abuse or grave sexual assault on a child, such medical examination of the victim child shall be compulsorily done.](4) [No person shall reside with or keep with him, either wholly or partly, one or more children who are not related to him by blood, unless prior permission has been obtained by him from the Director after furnishing due information to the Director in the prescribed form. It shall be the responsibility of such person, desirous to reside with or keep child or children not related to him by blood, to inform the Director and to obtain prior written permission from the Director for doing so.] (5) Provided that a period of 3 months from the commencement of this Act will be allowed to inform the Director. (6) [The Competent Authority, the Director and the Special Officers shall have the powers to authorize the Officer-in-charge of the nearest police station or District Inspection Team to inspect and check] the child/children in each case under sub-section (4) and to submit a report with recommendations, if he considers it necessary. (7) [The Competent Authority or the Director or the Special Officer, as the case may be, shall, after considering the report of the police or the District Inspection Team and having been satisfied of the necessity to do so, issue an order to remove the child and place him in a registered Children's Home or a State run Institution.]. (8) Provided further that nothing in this section shall apply to cases where reasonability exists such as when the child/children are staying with their friends or visiting them on holidays for short period, or students are in a group, or the child is legally adopted etc. (9) [Whoever resides with or keeps with himself one or more children not related to him by blood without the prior written permission of the Director or whoever prevents officers from discharging their duties under sub-section (6) shall be punishable with imprisonment for a term which may extend to three years and to a fine which may extend to Rs. 1,00,000/-]. (10) Onus on Establishment. - (a) All Hotels, and other establishments which provide boarding or lodging or any similar facility shall ensure that children are safe and not at risk of child abuse within their premises including all adjoining beaches, parks etc. if they have access from such establishment. (b) No child shall be allowed to enter any room of any hotel or establishment which provides boarding or lodging or any similar facility unless the child is registered as staying in that room with family, relatives or person related by blood. (c) All Hotels and other establishments which provide boarding or lodging or any similar facility shall ensure that no child has access to any internet facilities which are not fitted with filters and to any objectionable material including through film or videos, disc-players, cable or any other medium provided by that establishment. (d) The Owner and the Manager of the hotel or establishment shall be held solely responsible for any [contravention] of this section.[(e) Whoever fails to comply with or contravenes the provisions of this sub-section shall be liable for punishment with imprisonment for a term which may extend to three years and a fine which may extend to Rs. 1,00,000/-]. (12) Any form of soliciting or publicizing or making children available to any adult or even other children for purposes of commercial exploitation is prohibited. This includes hosting websites, taking suggestive or obscene photographs, providing providing materials, soliciting customers, guiding tourists and other clients, appointing touts, using agents, or any other form which may lead to abuse of a child. (13) Whosoever commits the offence of sale of children or aids or abets the sale of a child or the body part/organ of a child, or where there is sufficient reason to believe is keeping a

about “child abuse and trafficking” and Section 9<sup>44</sup> which dealt with the “Commercial Sexual Exploitation and Dedication”. Therefore, these provisions are the main which speaks about the

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child for the purpose of using or selling any body part of the child including its blood, shall be punished by [imprisonment of either description for a period of not less than three years and extendable to seven years and a fine which may extend to Rs. 1,00,000/-.] (14) It shall be mandatory for a developer of photographs or films, if he finds that the photos/films developed by him contain sexual/obscene depictions of children, [to report this to the Officer-in-Charge of the nearest police station], Failure to report the discovery of such photos/films shall attract a penalty of an imprisonment of either description which shall not be less than one year but which may extend to three years and/or a minimum penalty of Rs. 50,000/-. (15) [The District police, airport authorities, border police, railway police and traffic police shall report any suspected case of (a) child abuse or (b) an adult travelling with or keeping a child under suspicious circumstances or (c) sale of children or (d) sexual offence with a child or (e) child trafficking, to the Officer in-charge of the nearest police station who shall immediately take cognizance of such case and proceed with investigation. He shall also report the case to a Special Officer or to the Director for action under sections 14 and 15, if so required.] (16) Sale of children 53[ ] shall be prohibited. For the purposes of this Act, sale of children takes place,— (a) when there is trading, i.e. selling children;(b) when a pregnant mother executes an affidavit of consent for adoption for a consideration;(c) when a person, agency, establishment or child-caring institution recruits women or couples to bear children for the purposes of child trafficking;(e) when a doctor, hospital or clinic official or employee, nurse, midwife, local civil registrar or any other person creates birth records for the purpose of child trafficking; or (f) when a person engages in the act of finding children among low-income families, hospitals, clinics, nurseries, day-care centres, or other child-caring institutions, who can be offered for the purposes of child trafficking. (19) The State shall provide for the setting up of one or more Victim Assistance Units which shall facilitate the child to deal with the trauma of abuse and assist the child in processes involved with appearing as a witness before any Court or authority handling a case of abuse of a child. (20) The State shall carry out child sensitisation programmes for police officers at all levels which shall include an orientation on child rights laws. Child rights laws and methods of handling child abuse related cases shall also be specifically included in the Police Training School curriculum. (21) The State shall undertake child sensitization training for those involved in healing and rehabilitation and other assistance programmes for children who are victims and promote programmes of information support and training for such children. (22) The Tourism Department of the Government shall collaborate with the Travel and Tourism Trade of Goa to evolve a Child Friendly Tourism Code for Goa; (23) The Government shall have the power to appoint persons to go undercover and pose as prospective clients for child prostitutes, as employers of child labour etc. and nothing done in the course of such operations shall be construed as a [contravention] of the provisions of this Act.

<sup>44</sup> Section 9 of Goa Children’s Act-“Commercial Sexual Exploitation and Dedication”— (1) [Commercial sexual exploitation]shall be prohibited. (2) It shall be the duty of the State to remove all [commercially sexually exploited children] from their existing place of exploitation and to ensure that they are rehabilitated and integrated into society. (3) The State shall prepare a comprehensive Plan of Action for this purpose which shall include providing education and livelihood skills to such children and the prevention of [commercial sexual exploitation] (4) Any person who exploits a child for commercial sexual exploitation shall be liable to pay a penalty which may extend to Rs. 1,00,000/- 70[and imprisonment for a term which may extend to seven years]. This will be in addition to any penalty or punishment that may be enforced under any other Act in force. (5) All steps shall be taken at the protective home to restrict or even deny the visiting rights of any one who may be considered to be a perpetrator, including the parent of the child. (6) Notwithstanding any custom or law to the contrary, the dedication of a minor girl child as a devadasi, whether before or after the commencement of this Act, and whether she has consented to such dedication or not, is hereby declared unlawful, void, and to be of no effect and any minor girl child so dedicated shall not thereby be deemed to have become incapable of entering into a valid marriage. (7) Any person who, after the commencement of this Act, abets the performance of any ceremony or any act for dedicating a [minor girl child] as a devadasi or and ceremony or act connected therewith shall, on conviction, be punished with imprisonment of either description for a term which may extend to 3 years and with fine which may extend to two thousand rupees: Provided that where the person referred to in this Section is the parent or guardian or a relative of the [ minor girl child]36 so dedicated, he shall be punishable with imprisonment of either description which may extend to 5 years but which shall not be less than 2 years and with fine which may extend to five thousand rupees but which shall not be less than two thousand rupees.

child trafficking and the other provisions deals with the different issues in relation to the children<sup>45</sup>.

### THE SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989

In the history of India during the period of Kings and colonial India as well, it can be evidently be seen that some marginalized communities have every time faced almost all the crimes due to the social status and stigma which is attached to the community. Such Activities of atrocities have yet not ended in the society. To deal with the offence of human trafficking if the offender knows that victim belongs to these group than The SC and ST( Prevention of Atrocities) Act can be applicable. In case of atrocities that are committed against the people belonging to the community of Schedule Tribes and Schedule Castes provided under Section 3(1)(iii) & (xi)<sup>46</sup> of the Act. The provision contains the several forms of trafficking relating to sexual exploitation of women, forced or bonded labors and if the offence is committed under the definition of section 3 of the Act then punishment of imprisonment shall be imposed of 6 months which may extend to 5 years. Such punishment can be imposed based on the gravity of offence and the authority of the offender.<sup>47</sup>

### **CONCLUSION**

In India, there are many laws as mentioned against the human trafficking of women and children but still no implementation used to be made to follow such laws in a proper manner by which it does not help the women and children to be safe in a society freely. Due to the human trafficking the victims go through the mental and physical scars. Hence, to make the society better for the future generation it is utmost important to help such women and children from getting trafficked and make them aware of such circumstances of trafficking so that our future generation will not

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<sup>45</sup> SHIRSH RAJ, *supra note 28*.

<sup>46</sup>Section 3of The SC and ST (Prevention of Atrocities) Act -Punishments for offences of atrocities.—(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—( iii) forcibly removes clothes from the person of a member of a Scheduled Caste or a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity; (xi) assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty;(xii) being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed, shall be punishable with imprisonment for six months which may extend to five years with fine.

<sup>47</sup> ISHANT, *supra note 18*.

be facing the same issues and it will help make the better society by following each and every laws and procedures against the trafficking.



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