

IMMORAL TRAFFIC : POLICE PERSPECTIVE

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SIN, CRIME OR A SOCIAL EVIL

On a larger perspective, albeit necessary to draw the spirit of this social legislation into the task of enforcement, Prostitution or Immoral Traffic may be considered to be either a sin, or a crime, or a social evil, or perhaps the three put together. Sin is a moral offence while crime an offence against law, and evil is something bad, wicked or slanderous. A policeman enforcing the law as it exists need not go into such details or controversies as he is expected to follow the letter of the law, obediently. The need for a deeper thought, however, arises from the demand that police should act not only as an 'instrument of law' but also as an 'instrument of social change', particularly when enforcing a Social Legislation like Immoral Traffic (Prevention) Act. One, then, also feels obliged to do an appraisal to ascertain whether this law is being implemented in its true spirit to really prevent the evil of prostitution, abuse or sexual exploitation or immoral traffic. The difficulties being experienced in the administration of this Act will, inevitably, indicate certain drawbacks which an enforcement officer encounters day to day.

Viewed historically, prostitution, from being result of a biological necessity having the sanction of the society and at times of religion, has come a long way. Today, in India as elsewhere, it has been accepted to be an evil which the new Indian law intends to prevent and not only suppress. The immoral traffic not only in women and girls, as before, but in all human beings, as the title of the new Act suggest.

CHANGE IN DEFINITIONS

There are significant changes in the definitions (section 2) of the Act, such as, the 'child' means a person less than 16 years of age, a 'minor' between 16 to 18 years of age and a 'major' over 18 years of age. This distinction, as correctly appreciated, finds reflection in the body of the Act. "Prostitution", under the amended Act, means "sexual exploitation or abuse of persons for commercial purpose and the expression prostitute shall be construed accordingly". Prior to 1986, 'prostitution' meant 'act of a female offering her body in promiscuous sexual intercourse for hire where in money or kind is involved'.

Incidentally, the dictionary meaning (Oxford) of a prostitute is 'a woman who offers her body of indiscriminate sexual intercourse, especially for hire'. The amended definition, transgressing the dictionary definition, is a welcome change. Yet, the attempt is not to abolish prostitute or prostitution which still do not constitute criminal offences per se.

CHANGES IN LAW

A new class of enforcement officers, called "Trafficking Police Officer" whom, one would have liked to call anti-trafficking police officers, has been created under the amended Act. This officer

will have powers and functions similar to a 'Special Police Officer' for the purpose of investigating sexual exploitation of persons in more than one State.

Penal provisions against persons living on the earnings of prostitution have been made more stringent. A person over 18 years of age living on such earning may be imprisoned for a term extending to two years, with fine or both. A person living on the earnings of prostitution of a 'child' or 'minor' may be imprisoned for a term not less than 7 years which may be extended up to 10 years. Presumptions may be drawn under Sec.4(2) in respect of such persons living habitually in the company of a prostitute or exercising control or influence over the movements, or acting as pimp or tout on her behalf.

Improvements have been brought in respect of penal provisions relating to the procurement or indictment of persons for the sake of prostitution. The punishment now is rigorous imprisonment for a term not less than 3 years and not more than 7 years, and also with fine. For similar offences in respect of a 'child' and a 'minor' punishment may extend from 7 years to life imprisonment and from 7 years to 14 years respectively. Elaborate changes have been made in the Act to guard against the detention of a person in a premises where prostitution is carried out. Certain presumptions may be drawn in respect of children and women found to be in brothels and there is also a bar against suit, prosecution at the instance of a person by whom she is found detained.

Prostitution in or in the vicinity of a public place is forbidden. Such public places may be notified under the Act, or they may be places of religious worship, educational institutions, hotels, hospitals, nursing homes etc. Places may also be notified by the Commissioner of Police or Magistrate u/s 7 of the Act. The idea behind this provision is to keep certain public places and institutions pure and free from being 'contaminated'. This provision of law makes one think whether this discrimination between place to place on the ground of religion or such other ground is just and proper. Perhaps, such a provision is a by-product of the legal tolerance for the institution of prostitution which is not a crime per se, yet it is condemned as an evil.

A significant change has also been introduced in the proviso of section 8 of the Act. Apart from the seduction and soliciting for the purpose of prostitution being a crime, a man committing such an offence shall also be punished for a period not less than 7 days which may extend to 3 months. Incidentally, section 8 is the most widely applied provision of this Act, easy to enforce and to secure conviction. The law of seduction in respect of a person in custody has correctly been made more stringent, i.e., the punishment shall not be less than 7 years and may extend to life sentence or a term up to 10 years, besides fine.

Certain changes have been made in the procedural law, such as, in respect of searches without warrants (section 15). The Trafficking Police Officer has the powers similar to a Special Police Officer. However, the S.P.O. or T.P.O. are required to call 2 or more respectable inhabitants (at least one of whom shall be a woman) of the locality for such searches. The SPO or TPO may remove persons found at such places, and produce them before a Magistrate. The SPO and TPO are also required to be accompanied by at least 2 women police officers or a lady member of a recognised welfare institution or organisation. Suitable changes have been brought in respect of the immediate custody of such rescued persons.

The amended Act also finds some other changes, such as, a Magistrate is competent to remove any prostitute from a place within his legal limits after following the laid down procedure of law. There are amendments providing the security of records by the courts maintained by protective homes and corrective institutions under this Act. The State Govt. is empowered to set up special courts. The State Govt. is also empowered to direct the summary trial of offences under this Act wherein the limit of sentence does not exceed imprisonment for more than one year. In Delhi, same as in many States and UTs, the amended Immoral Traffic (Prev.) Act has not yet been fully enforced since the State/UT Govts. have not notified framed Rules and accepted it. As such, it is SIT Act as well which is to be seen from the enforcement angle.

ENFORCEMENT OF SIT ACT

The following tables show the cases and disposals of offences under SIT Act in (I) India and in (ii) U.T. of Delhi from the year 1979 to 1982 :-

Yearwise cases/disposal of offences under SIT Act in India

<u>Year</u>	<u>Total persons arrested</u>	<u>Cases convicted</u>	<u>Cases acquitted</u>
1979	14727	12023	1275
1980	16016	14024	1885
1981	17220	13993	876
1982	20937	14559	1149

<u>Year</u>	<u>Total cases registered during the year _____</u>	<u>Total cases disposed off during the year _____</u>	<u>Persons against whom trial completed during the year _____</u>	<u>Persons convicted</u>	<u>Persons acquitted</u>
1979	14196	13298	13247	11855	1392
1980	14308	15909	17377	15209	2168
1981	15658	14869	16377	14681	1696

Yearwise cases/disposal of offences under SIT Act in the Union Territory of Delhi

<u>Year</u>	<u>Total persons arrested</u>	<u>Cases convicted</u>	<u>Cases acquitted</u>
1979	127	151	25
1980	167	68	9
1981	141	63	24
1982	240	90	36

<u>Year</u>	<u>Total cases registered during the year _____</u>	<u>Total cases disposed off during the year _____</u>	<u>Persons against whom trial completed during the year _____</u>	<u>Persons convicted</u>	<u>Persons acquitted</u>
1979	127	132	151	25	25
1980	167	167	68	9	9
1981	141	141	63	24	24
1982	240	240	90	36	36

1979	64	176	286	240	46
1980	115	77	103	90	13
1981	86	87	115	83	32
1982	85	126	302	205	97

This information has been given from the years 1979 to 1982 since the national figures were available only upto 1982. The information has been compiled on year to year basis the cases being at different stages of trial, more with a view to find out how important and useful this law has been? The rate of conviction in respect of the cases and persons appear to be fairly high, decidedly much higher when compared to the convictions in respect of other types of crimes including heinous wherein the conviction rate is much poorer.

ENFORCEMENT OF LAW IN U.T. OF DELHI

The analysis of cases and their disposal for the year 1984 to 1987 in the U.T. of Delhi is being given on the following table :-

Union Territory of Delhi (Disposal of cases)

<u>Year</u>	<u>Cases Challaned reported</u>	<u>Convicted</u>	<u>Acquitted</u>	<u>Pending trial</u>	<u>Pending investigation</u>
1984	61	19	6	36	-
1985	29	3	2	24	-
1986	42	14	-	28	-
1987	23	1	-	19	3

Disposal (of persons)

<u>Year</u>	<u>Persons arrested</u>	<u>Challaned</u>	<u>Convicted</u>	<u>Acquitted</u>	<u>Pending trial</u>	<u>Pending investigation</u>	<u>Discharged</u>
1984	135	135	37	8	90	-	-
1985	75	72	5	4	63	-	3
1986	84	84	28	-	56	-	-
1987	74	72	3	-	69	2	-

The figures of U.T. of Delhi are much more revealing. First, the disposal of cases by courts has been very poor. Only 25 out of 61 cases registered in 1984 have been decided. This delay in decision has, inevitably, denied justice to many and caused irreparable damage to enforcement. Only 5 out of 29 cases registered in 1985 have been decided. Perhaps, following the enforcement of the amended Act special courts will be set up as provided and the situation will improve. The number of cases under SIT Act was highest (61) in 1984 and there has been no appreciable change till 1987, when only 23 cases were registered. The new Act has not been enforced yet in Delhi, hence the changes cannot be seen. The number of arrested persons has come down down over the years and there does not seem

to be any upward change. However, the percentage of women being arrested under the SIT Act has decidedly increased. It is an unpleasant commentary on the quality of enforcement since women have to be mostly considered as the victims of the crime, too.

The sluggish application of SIT Act is partly explained, though not rationally or legally, by the action taken by the police under Section 294 IPC, i.e., the law against the obscene Act in public place. In Delhi from 1984 to 1987, yearwise, 1984 – 178 (95 male and 82 female), 1985 – 143 (83 male and 60 female), 1986 – 307 (179 male and 128 female) persons were arrested. It has covered part of the action which could be taken under SIT Act in public places. This misapplication of law serves little purpose, but in a number of cases taken realistically, it is done.

Section 8 is the most frequently applied provision of this law, and to a much lesser degree section 4 of the Act as well. Although, under the law, there is no choice in the hands of enforcement officer to select his own convenient section of law, in practice, there is always a tendency to stretch the interpretation of the incident and to bring it nearer to the more convenient legal provision. The most common crime under the IT(P) Act and also the easiest to apply is seducing or soliciting for the purpose of prostitution in the public place (Section 8).

CALL GIRLS RACKETS AND THE ACT

The IT(P) Act, same as the SIT Act, have laid more emphasis on the organised prostitution or immoral traffic, i.e., organised in the red light areas and brothel houses. But, the Police Officers who handle the problem of immoral traffic on the streets and in the residential colonies of a big city, like Delhi, frequently come across individual call girls and well organised call girl rackets. These women and others involved take all precautions to by-pass the provisions of law and take the maximum advantage of the gaps. Though a major part of immoral trafficking business concerns the street walkers, it is well nigh impossible to give any exact figures or to conduct a census or take action against these all girls who are operating in the anonymity of the cities with their support system..

RED LIGHT AREAS AND THE ACT

In Delhi, same as in a number of other big and smaller cities, there are well organised Red Light Areas. In Delhi, it is on Swami Shradha Nand Marg, popularly known as G.B.Road. extending from Ajmeri Gate to Farash Khana, is the main organised centre of flesh trade. There are 20 flats of 'dancing and singing girls' in which approximately 1200 girls and women live at any time. While some of them actually stick to the dancing and singing profession, majority are in fact prostitutes. It is easy for the prostitutes, pimps, procurers to carry business and for the customers to find unnoticed access to the flats on the floor above while the normal trade and business goes on in the shops on the ground floors.

Most of the cases investigated are typical. To cite one of such cases : on 27th Dec., 1986, the staff of PS Kamla Market received an information that a woman had brought a 13-year-old girl forcibly in front of kotha No.55, G.B.Road, and she wanted to sell her off. A raiding party was organised and the girl was recovered. She was presently a resident of a South Delhi colony who had been abducted and seduced from the Railway Station by a woman called Asha and her husband Kartar, residents of Usmanpur, Seelampur in East Delhi. From the New Delhi Railway Station, this

girl who had strayed from home for some reason was picked up by a boy, Ashok, when she was going to Gwalior and was brought to Seelampur where Asha and Kartar met her. Kartar and Ashok allegedly raped and subsequently brought her to G.B.Road to sell where she was in a state of shock, too demoralised to raise her voice or to protect herself. Police received timely information and she could be rescued.

REALITIES OF THE TRADE

Such cases are galore in the historical setting of Swami Shradha Nand Marg but they don't form the majority. Majority of cases are of those women and girls who are completely uprooted from their homes and for them, these Red Light areas have become the real homes, albeit forced. The local police parties conduct raids and special checks of all these 'kothas' to isolate and rescue the unwilling inmates. Rarely, voluntary social and women's organisations come forward to join hands with police or offer their services. There is no serious effort to conduct any systematic and deeper study into the lives of the inmates of these flats, to isolate and rescue the unwilling ones – a large number being minors, to wean them away from this life of utter degradation and to help them rehabilitate. Nari Niketan is a temporary home from where many a times these girls go back to the profession, may to some other Red Light areas in some other State. Personal enquiries from a number of girls and women living in these flats yield certain startling revelations. Each one of them has a history of misery back home, in their families and they are unwilling to go back. They feel almost unanimously that they will not be accepted and the life in the red light area is more 'dignified and respectable' for them.

HANDICAPS THAT SEEK CHANGE

Time and again, the enforcement officers, specially those conscious of their legal and ethical responsibilities, are intrigued by the limitations placed on their working. These limitations are related to the law, the legal framework and the overall infrastructure to deal with the problem of immoral trafficking. While the solution does not lie with the police and it is also understood that the solutions cannot be hurried through, it may be useful to know these limitations and handicaps.

The 'customer' is the most important abuser of this system, he is the real offender who creates the demand in the flesh trade. The law needs to be amended to provide for the adequate punishment.

In the ground operations, it is ultimately the policeman who matters in respect of enforcement. He raids the brothel house, conducts searches, makes arrests and collects evidence. Yet, his testimony has the weakest credence in the law. It is very difficult to procure respectable witnesses, specially the women witness, for raids and searches.

The trails are lengthy and the witnesses, already most unwilling to cooperate in such cases are made to wait long hours while the defence counsels seek and get easy adjournments.

The Act provides for the cancellation of licenses of certain categories of premises where the immoral trafficking goes on but such action can't be taken where the trade is carried more freely in restaurants, night clubs, massage parlours and health clubs etc. The cancellation of their licenses and attachment proceedings in respect of these premises may also be provided for. The amended Act, in

many of its provisions, has not been enforced due to lack of requisite legal infrastructure, such as the Advisory Committees, Special courts etc.

The prostitution in the red light area is an essentially inter-State trade. The law should provide for the photography, finger prints and other particulars that may be required in respect of prostitutes, pimps, procurers and others in trade. The trafficking police officers may follow them and find their whereabouts at other places.

There is an acute shortage of shelter homes and they are definitely required to be set up in a much bigger numbers and in a manner conducive to rehabilitating the women and the girls in this trade. Until healthy institutions with proper ethos and facilities are established in adequate number at all these affected places, persons who have fallen in the vicious circle of immoral traffic will continue to be there. Police action by way of enforcement of the Act will remain a half-hearted exercise with no convincing solution to the problem.

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