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Policing Prostitution in India: An Examination of Field Experiences at Mumbai¹

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Abstract

India's response to prostitution and sex-trafficking has been Tolerationist following the UN Convention for the Suppression of Immoral Traffic in Persons and the Exploitation of the Prostitution of Others. The purpose behind passing Immoral Traffic Prevention Act, 1956 after the signing of this Convention was to criminalize the exploitation for prostitution and the rehabilitation of those forced into prostitution (Lok Sabha Debates). While the misuse of this Act along with the Police Acts to arrest women soliciting on the streets has been previously documented, this paper draws attention to the cases by the police where they abuse the power this law gives them to simply remove prostitutes from public view without even intending to initiate their rehabilitation. This paper, argues for primacy to be given to the rights of the prostituted, the need to amend the law and also for prostitution and sex-trafficking to not be seen as a law and order problem but to understand it in the larger social context as an interplay of various root causes that need to be tackled.

Keywords: Prostitution, Sex-Trafficking, Police Responses; Abuse of Power; Human Rights, Prevention.

Introduction

Mumbai is the only city in India that established a special court in 2008 to deal with cases of prostitution. The law under which the court was established is called the Immoral Traffic (Prevention) Act, 1956 (ITPA). Although it did not and still does not explicitly define 'traffic' in the title or trafficking, it does cover some aspects of it like induction, detention. But it deals with only one of the many purposes of trafficking. This purpose is of prostitution. I found the need for understanding how prostitution laws were implemented in Mumbai city. This paper is based on a part of my MPhil research.

I came across a group of women in a protective home. I had been visiting this home for a few months to understand the experiences of women who had been 'rescued' under the Immoral Traffic (Prevention) Act, 1956 (Henceforth ITPA). I had heard of cases of belongings left behind at the place of raid, lack of segregation between accused and victim,

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and delays. Since Mumbai set up the country's first special court under the same law in 2008, the cases of women arrested u/s 8 of ITPA was also negligible. This section dealt with soliciting for prostitution and previous research had found a lot of misuse of this section. It looked like all was working well and there were no human rights abuses.

But this group told me an interesting experience. The group of seven women had come to the shelter home only a few days back. This was one of their first long interactions with someone from outside of the protective home. This group of women lived in a slum locality in Mumbai not too far from where they were picked up. But they all lived separate lives, some lived with their families. Every evening they came to a particular local train railway station and solicited independently. Once they got their customers, they went to a nearby lodge where they entertained the customer. They had some regular lodges that they visited. On this particular day, everything was as usual. Police patrolling cars picked them up in twos and threes and took them to the police station. This was not an everyday phenomenon but at least some of the women had experiences of being picked up by the police. The process generally followed was that they would be picked up, charged under Bombay Police Act, 1951 for causing public nuisance and made to pay a fine of around Rs. 1200/- and released from police custody in a few hours.

But today the procedure after the detention was a little different. Two of the oldest women, one of whom also had the highest amount of cash on them were showed as 'madams' or managers and the other seven who I met were shown as victims being forced into prostitution by these women. So there were two accused and seven victims as per the police case. The two were accused of living on the earnings of the prostitution of the other seven.

In this paper, I discuss this and some other cases to highlight some aspects of police's response to prostitution. During the research, I realized that even if such cases did not seem odd on the face of it, from the numbers or the sections used, the law was being misused. One of the advantages with the qualitative methodology used here was this depth that came in. The data looked merely beyond the numbers of cases or sections used to understand how the law was enforced by the police. In the pile of statistics this case would show under section 4 of ITPA that punishes living on the earnings of prostitution of another. But the qualitative methodology allowed me to reach the depth of the case. I also use case studies where these incidents are instrumental (Stake, 2000) to our understanding of the policing of prostitution.

The law as it stands today

The Constituent Assembly debates restricted the discussion around the issue to prostitution and the *devadasi* system. Article 17, which it was then, looked to abolish the *devadasi* system and prostitution as an 'immoral' activity gradually. Although various states and provinces had Acts to counter prostitution as per the requirement of the region, a need was felt to also include this Article in the Constitution given the understanding that this was the gravest problem women were facing then. These arguments resulted in Article 23 of the Constitution as it is today, which prohibits traffic in human beings and forced labor. Article 23 (i), 'traffic in human beings and beggars and other similar forms of forced labor are prohibited and any contravention of this provision shall be an offence punishable

in accordance with law.’ Trafficking is thus a violation of not only the law but also of the constitutional rights of the trafficked.

Post-independence India signed the UN Convention for the Suppression of Immoral Traffic in Persons and the Exploitation of the Prostitution of Others, held at New York on 9th May 1950. Then in 1956 a Central Act was passed which was the Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA). This Act was amended in 1978 and then in 1986 when there was a change in nomenclature of the Act and since then it has been known as the Immoral Traffic (Prevention) Act, 1956 (ITPA). Before the ITPA was passed, in the first half of the twentieth century different parts of the country had their individual Acts to suppress trafficking like in the then Bombay there was the Bombay Prevention of Prostitution Act, 1923. ITPA was the first central legislation on trafficking.

As far as the IPC is concerned, sections 366, 366A and 366B, punish kidnapping, abducting or inducing woman to compel her marriage, etc; procuring a minor girl; importation of girl from foreign country, section 372 punishes selling a minor girl for purposes of prostitution, etc. and section 373 that punishes buying a minor girl for purposes of prostitution, etc. Even if trafficking was not defined in Indian law these sections did cover various aspects of the phenomenon. Recent amendments (Criminal Law Amendment Act, 2013) have added sections 370 and 370A which define and punish trafficking for all reasons and also for sexual exploitation. These sections were amended after the data for this research was collected.

The Indian law follows some aspects of the ‘Abolitionist Approach’ to prostitution (which looks at prostitution as modern day slavery), like the punishing of all those activities that are incidental to prostitution like keeping brothels, buying, selling, inducing, detaining for prostitution, running brothels and living on earnings of a prostitute (Patkar, 2002). But the opinion of the Indian legislators differs from the Abolitionist school mainly on the point that they believed that prostitution could not be eradicated unless there were major social and economic reforms. Even during the amendments the parliamentary debates revolved around the opinion that prostitution cannot be eliminated without eradicating the causes like poverty, gender equality, status of women in our society. The Tolerationist approach continues to dominate the thought of the legislators. D’Cunha (1992) elaborates that the tolerationist approach stems from an assumption that prostitution is as old as human civilization and a necessary social evil. She expresses surprise that though the approach does not criminalize the women the countries that have adopted this perspective have laws that punish soliciting and loitering. legislators, with regards to the protection of women held a very moralistic position while passing the Act in 1956 where the need of shelter homes was felt to ‘correct’ the women or ‘completely wean them from the evil’, need was felt to keep her away from the society. The main aim of ITPA is to punish exploiters.

The objectives of the ITPA are to:

- Punish trafficking for prostitution;
- Punish traffickers;
- Punish persons keeping brothels (Section 3), living off the earnings of a woman (Section 4);
- Punish procuring, inducing and taking a person for the sake of prostitution (Section 5);

- Punish detaining persons in premises where prostitution is carried out (Section 6);
- Punish prostitution in the vicinity of public place (Section 7);
- Punish soliciting for prostitution (Section 8); and
- Provide welfare measures directed towards rehabilitation of prostitutes.
- Special Police Officers are appointed u/s 13 for rescues and investigations.
- Searches without warrant and rescues are carried out u/s 15 and 16. Section 15 lays down the requirement for respectable citizens, women police officers during raid who also have to do the interrogation of the rescued women and girls.
- Section 17 revolves around the custody of women, inquiry into their antecedents with help from social workers and advisory boards.
- Protective homes are set up u/s 21 to rehabilitate the victims of any age.
- Special Courts are to be established u/s 22A and 22AA

Previous Research on law enforcement

ITPA, since its enactment had been misused. Sen and Nair (2005) conducted a landmark national level research bringing out some importing findings. But before that, because of seeing prostitution from a moralistic lens, the law enforcement always tried to remove soliciting women from public view.

The Bombay Prevention of Prostitution Act, 1923 criminalized brothel keeping, living on earnings of prostitute, procurement, importing and detention, pimping as well as soliciting for prostitution. The police did not implement it with as much enthusiasm as the lawmakers. The poor implementation made the lawmakers amend it in 1926 and then in 1930 (Tambe, 2009). The 1930 amendment made the law stricter against brothels and it for the first time adversely affected organized prostitution (Tambe, 2009). With regards to the implementation of this law, Tambe (2009) shows that there were high number of convictions against women in prostitution for soliciting, with even substantial number of cases registered by the police right from the beginning and an increase over the years. On the other hand there were very few convictions under brothel keeping and detention. In fact, the first case of detention was recorded in 1930 and that of managing of brothel was recorded in 1936 by the police with little improvement in this performance till independence.

D’cunha (1987) who did one of the earliest studies found that between 1981 and 1985, 469 brothel keepers and 304 procurers were arrested, but 2696 prostitutes were arrested under section 7(1) of practicing prostitution and 4139 were arrested for soliciting for prostitution and 44663 were arrested under section 110 of Bombay Police Act for behaving indecently in public. Sen and Nair (2005) found a similar trend in their study from 1997 to 2001. 88% of the arrests made under ITPA were of women under section 8 for soliciting and 95% of those arrested were charge-sheeted. 93% of the persons charge-sheeted in sex related trafficking cases were females except in a few states like Jammu and Kashmir, Assam, Madhya Pradesh, Arunachal Pradesh and Haryana. The percentage of females among the convicted persons also showed similar trends in most states. Thus, in the majority of the states that constitute the all-India pattern, almost 90% of the persons convicted under ITPA are women. This highlights the misuse of Section 8 against the women. Instead of protecting the women, which was the intention behind passing of

ITPA, the enforcement agencies have been using section 8 against the women in prostitution.

Svati Shah (2014), through her ethnographic study in Mumbai further gives a glimpse of the purpose behind the police using force against women in prostitution. A police officer told her that they were doing it to keep the streets safe for families living there by removing women soliciting from public view. Here she looks at the police “drawing their legitimacy and authority not only from the legal sanction of their office but also from their particular association with the law as a normative social code.” Hence the need to keep the immoral activity away.

While some sections of the law give police unchecked power to do so, there is little regard for the human rights of the women and girls picked up in the process. It is here that the law fails. There is no legal obligation to rehabilitate those rescued or simply picked up and little check to prevent this abuse of power.

The misuse of ITPA along with the Police Acts to arrest women soliciting on the streets has been previously documented, this paper draws attention to the various attempts of the police to abuse the power this law gives them to simply remove prostitutes from public view without even intending to initiate their rehabilitation.

Cases from Mumbai

In this section, I highlight some cases I came across during the field work for this research. Following from the violations approach to monitoring of human rights violations, that intends to seek out specific violations of recognized rights, the purpose is only to highlight the unique cases and not give a general overview. The violations approach, as elaborated by Deuck et al. (2001) is seen in terms of failure of the State to comply with three different obligations. The obligation to respect- requires the State and all its agents to abstain from doing anything that violates the integrity of individuals or groups or infringes on their freedom. The obligation to protect requires State and state agents to take necessary measures to ensure that they prevent others from violating the rights of individuals and groups. Under the obligation to fulfill the State has the obligation to take measures necessary arrangements to ensure that people have the opportunities to obtain satisfaction of needs that are covered by human rights. The cases discussed in this paper fall under the first category of failure of the State to comply with its obligation to respect (Dueck et. al. 2001). These are examples where the state agents have abused their power while violating the rights of those rescued or arrested.

The data for this paper was collected in the months of May- November 2013. Data was collected through participant observation of the criminal justice procedure with regards to ITPA, in-depth interviews with various stakeholders like the police, prosecutors, judiciary, NGOs and rescued women. This was supplemented by analysis of judgments of 2012 and 2013 passed by the Special ITPA Court in Mumbai.

Before I discuss the cases, it is pertinent to understand the legal process. ITPA cases set the criminal justice system in motion when information of prostitution is received. This may not always be of forced prostitution. A team is formed as per the requirement u/s 15 of the Act that deals with ‘search without warrant’ and a rescue is conducted. The police often call this a ‘raid’. Prayas report on a National Workshop (2004) highlighted how rights are violated during enforcement and implementation of the law especially during rescue and post rescue. In a presentation P. M. Nair, pointed out to the erroneous mindset

of the police who believe in “raid” rather than “rescue” thus making their motive to arrest the criminal rather than rescuing the woman or girl. In the process, their rights are violated as small things like segregation of accused and victim, treating the rescued with dignity are not taken care of. Instead they are dragged out, not fully clothed, thus exploiting them right from there. The establishment of the Special Court means that the issue of protection and shelter of the rescued are also looked into by the same court. There is one government and one private protective home in Mumbai to house those rescued. There is another government home for minor girls.

Case 1:

The criminal justice response in cases of prostitution begins with a rescue. But instead the misuse of section 110 of Bombay Police Act that punishes ‘behaving indecently in public’³ was witnessed by the researcher during a rescue of a trafficked Bengali girl.

As part of the data collection I witnessed some rescue operations. One such was where a team from an NGO had approached the police with a complaint of a missing Bengali girl who had been traced to some area of a traditional red-light area⁴ in Mumbai. The NGO formed a team with the local police and also a small team of policepersons that had come from West Bengal. Three brothels owned/ managed by a certain person were searched. The team was unable to find the girl whose missing complaint had brought everyone to the red-light area.

When the girl was not found, the police dragged out all the women from the brothels which were their houses, took them to the police station and declared that they would now be charged under section 110 of the Bombay Police Act. Some of these women were woken up from their sleep, as we searched in the afternoon. This clearly was not indecent behavior in public.

Later, when I asked the NGO about such happenings, they replied that this was not a unique situation.

Again here, crime statistics would reflect that these women were behaving indecently in public but the real story was something else.

Case 2:

A very interesting fact that came to light during data collection was that, one police officer revealed that if no ‘exploiter’ is found on the spot, then they “*make the oldest two women the managers on paper and arrest them.*” This was reiterated by another officer,

“These near the station, we go out of our way and make cases against them because there are no brothels here, they come on their own. Then pick up 10-15 and show two of them,

³ Section 110: *Behaving indecently in public.* No person shall willfully and indecently expose his person ill any street or public place or within sight of, and in such manner as to be seen from any street or public place, whether from within any house or building or not, or use indecent language or behave indecently or riotously, or in a disorderly manner in a street or place of public resort or in any office station or station house.

⁴ Red-light area is not a legal term but these are areas that houses brothels in the colonial period which were set up or segregated and restricted to certain locales by the British colonizers, where prostitutes entertained mainly British soldiers but also local Indian men.

because this is a lot of nuisance. People complain. They come. Now recently the ones who were caught were like this only. 10 caught, 2 shown as boss and proceed."

And the reason for this as against using Bombay Police Act was,

"those women will be in (custody) for a month or two for verification. That's why they will not come here. That is an important thing. Otherwise if shown as roadside then they are let off on PR bond (Bombay Police Act). And they come back and stand there only."

This fact was reiterated by some of the experiences of the women, including those who were rescued in this very 'raid.' Apparently, the ones shown as rescued did not even know the ones shown as accused. This is a grave violation of the rights of the women and shows the ease with which false cases are made to remove the women from public.

This was the same case discussed in the beginning of this paper. Two of the seven I met in the protective home spoke to me at length at a subsequent meeting. One of them was used to carrying Rs. 1200/- extra everyday she came to solicit. This money she carried in case she needed to pay fine after getting picked up under the Bombay Police Act. Another one had a few experiences of being picked up that way. These women had been picked up in rickshaws, two and three at a time and then taken to the police station. The two arrested were taken to judicial custody later. The ones rescued were released after 21 days once their enquiry u/s 17 was conducted and the Magistrate was assured that they would not indulge in any 'immoral activities.' The words used in the remand orders also had moralistic undertones to them.

Case 3:

In another case it was seen that the wrong accused was charge-sheeted and even though the victim supported the prosecution case on points of proving prostitution and her trafficking, she failed to receive any monetary compensation. This woman had deposed that she was forced into prostitution at the said brothel. The Bangladeshi woman also categorically stated how she was trafficked from Bangladesh and exploited in a brothel in Mumbai. Two women were arrested during this rescue and later charge-sheeted. The trial was also conducted against them. The rescued woman made allegations against another woman. And the charge-sheeted women were two other women and not the manager, nor were the trafficker traced. In fact, the police arrested another woman who was prostituted in the same premises and not the woman who bought her from the trafficker and lived on her earnings. In the end, the place was sealed under section 18 but because of acquittal the woman received no compensation.

Conclusion

Although previous research has shown rampant use of section 8 against women soliciting for prostitution, this was not found in the present research. The use instead of the Police Act was seen. This is in line with previous research. But apart from that it was also clear that the police have somewhere failed to understand and internalize the purpose behind passing of the law, i.e., ITPA Act.

The use of qualitative methods brought out violations that can be missed by statistics on implementation of the law. This is clear from all the three presented cases. While the first

one would have been any other case listed under the cases u/s 110 of the Bombay Police Act, the second and the third case would fall under cases registered under ITPA. These cases would reflect as mere numbers under the Crime Reports. But qualitative research methods could bring out the story behind these numbers.

The acts of the police clearly point to a moralistic implementation of the law with an intention to clean the area of the vice of prostitution with little consideration to rehabilitation of the women being rescued and sometimes falsely accused. This blatant abuse of power very often goes unchecked. Mere issuance of advisories against the use of section 8 has not changed the mentality of the police. In the second case, and in many such cases women are routinely put under protective custody till their enquiries u/s 17 are complete. These are to be completed within three weeks and hence there is little or no effort at rehabilitating the women. Very few of the adult women are kept back because they are adults. But their remand orders do have a line that they would not indulge in immoral activities. The law as such does not criminalize adult women in prostitution by their own volition and if working independently. But they clearly become an eyesore for the State and hence, the police are used to remove them from public. The unchecked power that the law enforces get is seen in the first case discussed here where they could even remove women from inside the brothels (which are their houses) as probably an intimidation tactic, or merely to complete a certain target number of cases.

This paper, hence, argues for primacy to be given to the human rights of the prostituted. Recently, the Ministry of Women and Child Development had introduced a new Bill, Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill 2016. This Bill, although welcomed, has little focus on rehabilitation. The larger focus is on prosecution of the accused. It is important for prostitution and sex-trafficking to not be seen as a law and order problem but to understand it in the larger social context as an interplay of various root causes that need to be tackled. A holistic response is incomplete without focus on root causes.

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