

Seeing Victims as Victims

By Advocate Michelle Mendonca¹

I. Introduction

The Supreme Court has lamented that “[i]t is highly deplorable and heart-rending to note that many poverty stricken children and girls in the prime of youth are taken to ‘flesh market’ and forcibly pushed into the ‘flesh trade’ which is being carried on in utter violation of all canons of morality, decency and dignity of humankind.”²

Young girls and vulnerable women are being trafficked and forced to prostitute in India’s flesh trade on an epidemic level.³ Brothel keepers and customers brutally abuse them on a daily basis. Because these women and girls are seen as a commodity, they are forced to have unprotected sex with customers, and they are pushed to the center of the AIDS crisis in India.⁴ Indian legislation, along with international law, defines these girls and women as victims; India’s primary anti-trafficking and forced prostitution law reserves the harshest penalties for brothel keepers and traffickers. Despite this strong legislation, the general public remains largely indifferent, even unsympathetic, to their plight.⁵ Today there are more than 2.3 million women and girls in Indian brothels, many of whom were driven into prostitution by extreme poverty.⁶ However, this article will focus on the victims of India’s flesh trade who have been deceived or abducted, and then forced into brothels where they are raped – many every night – for their exploiters’ profit.

This article examines the language and nature of the existing laws that pertain to the victimization of those forced into the flesh trade. Part II describes the stories of two women who experienced extreme trauma in brothels in Mumbai in order to clearly illustrate the moral imperative that such individuals be treated as victims under law. Part III discusses international mandates regarding victim treatment, gives an overview of the Immoral Trafficking (Prevention) Act and examines how these victims are protected by this legislation.

II. Victims of Trafficking

Eighteen-year-old Siddhi⁷ was out of money and desperate for work when she met a woman who promised her steady income in a domestic job.⁸ Instead, the woman betrayed Siddhi and sold her to a brothel

¹ Advocate Michelle Mendonca is the Director of Legal at International Justice Mission (IJM) Mumbai. IJM is a human rights organization that engages in anti-trafficking work. Ryan O’Callaghan worked as a legal intern with IJM Mumbai and contributed to the research and writing of this article.

² *Vishal Jeet v. India*, A.I.R. 1990 S.C. 1412, para.6.

³ See P.M. Nair & Sankar Sen, “A Report on Trafficking in Women and Children in India 2002-2003,” NHRC UNIFEM Volume I, p. 21, available at <http://nhrc.nic.in/Documents/ReportonTrafficking.pdf>.

⁴ Smita Baruah, “Never Mind the Numbers: India’s HIV/AIDS Crisis is Large Enough,” Global Health Council AIDSLink Issue 107, 1 June 2008, available at <http://www.globalhealth.org/publications/article.php3?id=1785>

⁵ P.M. Nair & Sankar Sen, “A Report on Trafficking in Women and Children in India 2002-2003,” p. 232.

⁶ Zahid Shahab Ahmed, “Poverty, Globalization, Social Customs & South Asian Children in Prostitution,” 2005, available at <http://www.humiliationstudies.org/documents/AhmedAsianChildrenProstitution.pdf>

⁷ Victim names in the article are pseudonyms, used to protect IJM clients, but their stories of abuse are from real cases on file with IJM.

⁸ Siddhi’s story is taken from her police statements, along with the article “Five Women Free from Nightmare After Rescue From Brothel,” published in IJM’s *News from the Field*.

keeper for Rs. 50,000/-.⁹ Siddhi had become merchandise, traded by those who stood to profit from her suffering.¹⁰

Siddhi's new reality was a violent and debasing enslavement. The brothel keeper locked her in a dimly lit, single room brothel.¹¹ She was in the third month of a pregnancy when she arrived, so the brothel keeper called a doctor and forced Siddhi to have a crude abortion.¹² Immediately following the abortion, the brothel keeper forced Siddhi to start having sex with customers. Men often requested to have sex with her without a condom.¹³ If Siddhi resisted, the brothel keeper violently beat her in front of the customer and made her comply with their requests. Her spirit broken, Siddhi accepted her fate. For the next seven years, she was sold and violently raped ten to fifteen times a day, frequently beaten, and deprived of even a single glimpse of the sun.¹⁴

The victim in another IJM case, Madhuja,¹⁵ not only had her freedom stolen, but was scarred in a way that she can never erase. When she was 23 years old, an old friend arrived in her village and told Madhuja about incredible job opportunities available in Mumbai. She gave Madhuja the contact number for a woman in the city who would help her find work, and told her that soon she would make Rs. 1,000/- per day.¹⁶ Desperate for money, Madhuja left her village for Mumbai with the hope of a better life. The person she arranged to contact, Padmalochana, met her as she exited the train at Dadar station and took her to a strange building.¹⁷ The reality of her situation immediately became apparent: there was no domestic job waiting for her. She was trapped. Scared for her life, out of money and in a strange city, Madhuja wanted to run but saw no way to escape. Her nightmare began on the first day. She was raped by a man who bought her from Padmalochana for Rs. 170 /-.¹⁸ Padmalochana began forcing her to perform any kind of sex that paying customers requested and would beat her and pull her hair if she refused.¹⁹ She was raped daily, and her customers often did not use condoms. Some men requested unprotected sex; others simply did not want to buy a condom. Madhuja was diagnosed with HIV shortly after her rescue.²⁰ She will live and die with this disease, a constant reminder of the injustice and brutality of the brothel.

These stories are not exceptional among women and girls forced or coerced into the flesh trade. Thousands of women and girls undergo this type of physical and emotional trauma daily in India's brothels. Indian law responds to this crime with the severity it deserves. However, the law needs to be implemented more effectively and the Indian public's perception of these victims needs to change.

III. Victim rights and treatment in Indian and International Law

⁹ Siddhi's police statement.

¹⁰ Siddhi's police statement.

¹¹ "Five Women Free from Nightmare After Rescue From Brothel," published in IJM's *News from the Field*, 2010, p. 1.

¹² Account of Siddhi's abortion is found in her police statement.

¹³ Account of Siddhi being forced to have sex without a condom is found in her police and supplementary statements, on file with IJM.

¹⁴ "Five Women Free from Nightmare After Rescue From Brothel," published in IJM's *News from the Field*, 2010, pg. 2.

¹⁵ Madhuja's name is a pseudonym for a victim in a 2010 case, on file with IJM. Her story is based on her deposition and statements to police and probation officers.

¹⁶ Madhuja's deposition, p. 1.

¹⁷ Madhuja's deposition, p. 1.

¹⁸ Madhuja's deposition, p. 2.

¹⁹ Madhuja's recorded statement to a Probation Officer.

²⁰ Madhuja's deposition, p. 3.

Internationally, the issue of trafficking has garnered unprecedented attention, and both developed and developing nations alike have given increasing priority to establishing preventative and victim relief measures.²¹

The United Nations defines victims as “persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights.”²² This internationally recognized definition refers specifically to “victims of crime and abuse of power.”²³ Tragically, in the cases referenced in Part II and in countless other instances of forced prostitution and sex trafficking in India, the victims suffer each of the elements of abuse in this definition. They are literal slaves: they have no freedom of movement, their captors steal their earnings and they are both sexually and emotionally abused.

In its 2000 Protocol (the “Palermo Protocols”), the United Nations also sets out a detailed though theoretical standard of how victims should be defined, perceived and treated.²⁴ However, like many similar international mandates, practical application of this Protocol around the world has been mixed at best. India, through the Immoral Traffic (Prevention) Act, 1956 (hereafter referred to as “PITA”) and the Indian penal Code, 1860, has sufficiently criminalized human trafficking, but other aspects of the U.N. Protocol, including preventive measures and victim relief,²⁵ have not yet been addressed with such effectiveness.²⁶

The primary Indian anti-human trafficking legislation is PITA.²⁷

In 1956, when the Indian government first enacted PITA, it framed the term *prostitution* in a manner that placed the blame squarely on the victim.²⁸ Section 2(f) defined *prostitution* as “the act of a female offering her body for promiscuous sexual intercourse for hire, whether in money or in kind and whether offered immediately or otherwise.”²⁹ The use of the term “offered” implied that all women in prostitution were there willingly, voluntarily providing their bodies to customers, and failed to consider how outside circumstances might have influenced or forced her to prostitute. Furthermore, the term “promiscuous” created significant obstacles for the prosecution of perpetrators of trafficking in many PITA cases, because courts interpreted it to refer to multiple instances of sexual intercourse with customers.³⁰ As a result, if a trafficking victim was

²¹ Seo-Young Cho *et al.*

²² Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. G.A. Res. 34, 40th Sess, U.N. Doc. A/RES/40/34 (1985), available at <http://www.un.org/documents/ga/res/40/a40r034.htm>.

²³ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. G.A. Res. 34, 40th Sess, U.N. Doc. A/RES/40/34 (1985), available at <http://www.un.org/documents/ga/res/40/a40r034.htm>.

²⁴ See Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, available at http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf [hereinafter U.N. Protocol].

²⁵ U.N. Protocol, Article 6 addresses assistance and protection of victims, while article 9 addresses trafficking prevention, available at

http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf

²⁶ See P.M. Nair & Sankar Sen, “A Report on Trafficking in Women and Children in India 2002-2003,” p. 113.

²⁷ Delhi Administration v. Ram Singh, 1962 AIR (SC) 63, 1962 (68) CrLJ 106 (Supreme Court 1961); <http://www.unhchr.ch/html/menu3/b/treaty11a.htm>.

²⁸ Eastern Book Company, IMMORAL TRAFFIC (PREVENTION) ACT, ALONG WITH SHORT NOTES, 13th Edition, 2003, Notes under Section 2(f)

²⁹ Eastern Book Company, IMMORAL TRAFFIC (PREVENTION) ACT, ALONG WITH SHORT NOTES, 13th Edition, 2003, Notes under Section 2(f), Page 4.

³⁰ *Suseela v. State*, 1982 (88) CrLJ 702 (Madras High Court 1981).

sold and exploited only once, ‘prostitution’ could not be proved, and no one could be held legally accountable for this rape.³¹

The PITA amendment of 1986 resolved these problems through several key changes, including an updated definition of prostitution. Section 2(f) now defines prostitution as “the sexual exploitation or abuse of persons for commercial purposes and the expression, ‘prostitute’ shall be construed accordingly.”³² This revision sets a decisively sympathetic tone in PITA toward India’s women and girls who are engaged in prostitution.

Most of the sections under PITA are directed against brothel keepers and traffickers. Only two sections of PITA (7 & 8) carry any charges against women in prostitution themselves. These sections are designed to keep women in prostitution from working near places of education, business, worship “or such other public place.”³³ The sentences and fines contained within PITA are lenient, especially when contrasted with the punishments against those who have trafficked girls or women. .

In *State v. Gaya*, the Bombay High Court held that PITA “never intended that the women or girls used for such traffic should be liable to punishment.”³⁴ This positive sentiment was echoed in the 2009 Supreme Court case *Guria v. State*, in which the Supreme Court held that “[it] is unfortunate that the Investigating Officers and the Courts ordinarily fail to bear in mind a distinction between the rescued children including girls, on the one hand, and the persons who have been organizing such immoral traffic.”³⁵ This Supreme Court statement suggests that, despite positive advances, instances where Courts implicate victims alongside perpetrators remain an issue in the Indian legal system.

IV. Conclusion

Siddhi and Madhuja suffered beyond what anyone should, and Madhuja is forced to carry the painful burden of HIV for the remainder of her life. Girls in India’s brothels face this oppression daily. Yet, despite national and international law demanding that victims of trafficking be treated as victims, there is much more work to do. Some positive progress has been seen in legislation and the courts, but the severity of the perpetrator’s punishment often pales in comparison to the suffering they inflicted on their victims, and compensation for these exploited girls remains absurdly trivial. In order to meet international standards of victim protection, India needs to utilize its anti-trafficking legislation more effectively. The law is strong and it is the first step to ending sex trafficking in India. The Indian public must follow the example of the legislators and recognize the horrible abuse taking place in the red light districts of their cities. Once the public is made aware of these abuses, they should in turn hold the public justice system accountable when it does not fully enforce the law. Genuine public concern is the first step to true relief for the exploited victims in India’s brothels.

³¹ *Suseela v. State*, 1982 (88) CrLJ 702 (Madras High Court 1981).

³² PITA, Section 2(f).

³³ PITA, § 7(1). “Public place” is defined in Section 2(h) as “any place intended for use by, or accessible to, the public and includes any public conveyance.”

³⁴ *State v. Gaya*, 1960 Cri. L.J. 893 (Bom.), para.4.

³⁵ *Guria v. State*, Criminal Appeal No. 1373 2009 [Arising out of SLP (Crl.) No. 2585 of 2006], para. 9.