

Human Rights of Women and Children:with special reference to trafficking and prostitution

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ABSTRACT:

Be not ashamed women, you are the gates of the body and you are the gates to the soul....

-Walt Whitman

In this century when the whole world is calling for enlightened feminism, India still wallows in its primordial misogyny. In many parts of the country women are still considered to be a burdensome appendage. The term security is defined as "the state of being free from fear or threat" but how applicable is this ideal definition in relation to women or children. Their exploitation in form of prostitution, trafficking and indulgence in different forms of labour as well as their down-trodden status in society is the distressing reality of India. Even though the constitution has given scope for social, economic and political equality in terms of rights and duties, these statures have not yet been properly realized. Every solution to the problem has two aspects attached; one being, the short term and the other long term. India being a "diverse" nation embodies a perfect mixture of culture and tradition forming a rich history. On One hand where some of these adds to the pride of our heritage, others are responsible for its narrow-minded mentality. This paper is going to to analyse

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the root causes of existing problems in terms of women and children exploitation with special reference to trafficking and prostitution.

INTRODUCTION

"Human Trafficking is an open wound on the body of contemporary society, a scourge upon the body of Christ. It's a crime against humanity".

–Pope Francis

"Democracy, development & respect for human rights & fundamental freedoms are interdependent mutually reinforcing"

-Vienna World Conference on Human Rights, 1993

Human Rights, which, by literal meaning itself portray the wide principles and certain ethos that must be kept in mind while dealing with anything related to human beings, it also covers everything in the ambit of man's knowledge and vision. Hence this proves the intensity and gravity of these rights and the way they have to be framed, interpreted, enforced and used. Therefore it is very important to take a noted account of human dignity which is our one of the most crucial intangible needs. The victims to the denial of this very need are women and children. Many a times neutral rules do not take into account the extent to which historical stereotypes and material realities impact on women's lives. And as the suppression and inferiority of women to men begin at childhood, efforts to combat the same problem must begin in a way that they can make a positive impact on them in their formative years itself. While there can be enrichment of children's rights from women's rights, advancement of women's rights can also occur from rights of children. That's why empowering of both women and children is very necessary as the inferiority of women to men starts in childhood so the longed battle of discrimination between women and men must also begin at an early age.

UNICEF was one of the first agencies to introduce the concept of children's rights in its programme of work by incorporating the 1989 United Nation Convention on the Rights of Child (UNCRC) in the 1996 Mission Statement.

The first international consensus on forum for the human rights in consideration to women's rights and children's rights agenda was forged at the World Conference on Human Rights in Vienna in 1993.

"The human rights of women and the girl child are an inalienable, integral and indivisible part of human rights. The full and equal participation of women in political, civil, economic social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community."

-The Vienna Declaration and Platform of Action

FROM THE HISTORICAL PERSPECTIVE

Prostitution: Leading to Trafficking

Prostitution, as has been considered, is one of the oldest professions of the world practiced since the birth of the organized society. It is practiced in almost all the countries and almost every society of the world. In India, the Vedas, as considered the most ancient literature, abounds in the references to prostitution showing well flourished institution. In Indian mythology there are many references of high-class prostitution in the form of celestial demigods acting as prostitutes. Some of them are referred to as Menaka, Rambha, Urvashi, and Thilothamma. They are described as perfect embodiments and heavenly beauty of feminine charms who are greatly profound in music and dance. They used to entertain divinities and their guests in the court of Lord Indra and were also sent to test the real depth, strength of conviction of penance and devotion of great saints (Biswanath, 1984).

In the medieval period importance given to prostitutes became higher. The Muslim rulers with the exception of Aurangzeb bought prostitution into light thus flourishing it under the royal regime. But

the downfall of the Mughal Empire led to the hoards of concubines and harlots out of the royal palaces and thus patronage. Because they were not trained or specialized hence they were at the mercy of the society which acted repulsively to them. Hence due to the economic problem they had no choice but to take recourse to the lax and ill-looking trade of all the trades, the trade of sex.

The trade in its laziest form till the arrival of British but the status of women did not improve during the British regime too, it rather became worse. Conditions continued to deteriorate and in the absence of state control and regulation, prostitution thrived on a large commercial scale. Social taboos and economic hardships of women made them an easy victim to the gangsters of this profession (Biswanath, 1984).

This shows that as the status of prostitutes went down from century to century or from regime to regime they became prone to the exploitation and brutalities of society and hence gradually gave rise to the vulnerability of women. This further led a distinct part of society to become active and hence took advantage of the poor societal norms, disgraced condition of women, exposed vulnerability of girls which took to the aggravated scene of trafficking including selling people for sex trade though it has taken various forms now but for the sake of this essay the writers will not be dealing with all of these now. It has also resulted in the number of sexual crimes especially as that of rape (be it of any kind) because when these trafficked people are forced into sexual activities, at least the first instance of exposing them to unconsensual sex can easily lead to rape and sexual violence continued in their experiences uncountably. This menace has become so rampant and is growing rapidly because of its latent nature and untraceable racket because of a wide global functioning. Thus the growing nature also has led to more stern and grave laws leading to their wide interpretations. The gravity of the crime and of the wide interpretations of laws can be seen by various instances of trafficking and the judgments given for the same. A few of them are as follows as:

In the case of *Vishal Jeet v. Union of India*² the Supreme Court held that

“..... this malady is not only a social but also a socio-economic problem and, therefore, the measures to be taken in that regard should be more preventive rather than punitive. It was of the view that devastating malady can be suppressed and eradicated only if the law enforcing authorities in that regard take very severe and speedy legal action against all the erring persons such as pimps, brokers and brothel keepers. Apart from legal action, both the

²(1990) 3 SCC 318

Central and the State Governments would have an obligation to safeguard the interest and welfare of the children and girls of this country and had to evaluate various measures and implement them in the right direction".

In Chitan J. Vaswani & Anr vs State of West Bengal & Anr³the Supreme Court held that:

"No nation, with all its boasts, and all its hopes, can ever morally be clean till all its women are really free- free to live without sale of their young flesh to lascivious wealth or commercialising their luscious figures. India, to redeem this 'gender justice' and to prescribe prostitution whereby rich men buy poor women through houses of vice, has salved its social conscience by enacting the Act. But the law is so ill-drafted and lacunose that few who follow "the most ancient Profession in the World" have been frightened into virtue and the customers of wine-cum-women are catered to respectably in bars, hotels and night-clubs in sophisticated and subtle ways"

In Union of India v. Kildee Singh⁴the Supreme Court held that:

"Law regulates social interests arbitrates conflicting claims and demands. Undoubtedly, there is a cross cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Friedman in his "Law in Changing Society" stated that, "State of criminal law continues to be as it should be a decisive reflection of social consciousness of society". Therefore, in operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation sentencing process be stern where it should be, and tempered with mercy where it warrants to be."

In Francis Coralie Mullin vs Union Territory of Delhi⁵it was stated that

"Though [prostitution] partially legal it exploits and acts upon many issues which hamper the right to dignified life as enshrined in the constitution."

Therefore, as it has been seen in the mentioned case laws above that how there has been an interpretation of the various laws available to us. All these direct to the fact that the purpose of laws

³AIR 2473, 1976 SCR (2)

⁴ 1974 WLN 176

⁵AIR 1941 SC 746

available is not only to be interpreted literally but figuratively too so as to protect dignity and right to justice of every trafficked person. Because it doesn't take westernization but modernization to give dignified life to people which is seen as an intangible asset to one's life as has been done by the judiciary in many of the landmark cases, few of which have been cited above. Thus, it's about the safety and security of our women and children and hence the traditions and laws must be seen from a more wider and open minded approach to create a shield over such heinous crimes such as the most terrible form of lust i.e. 'rape'.

HUMAN TRAFFICKING- FROM A BIRD'S EYEVIEW

Feminism as widely conceptualized all over to be one of the most the forceful processes to liberate women and provide them an equal footing with men. It is perceived as a situation where the gender factor is no longer seen to be the glass ceiling in leading a life with human dignity and not merely an animal existence is offered if one is born as the "weaker sex". Deemed as one of the oldest professions of the world; as old as the Hindu epics, has gone through any change, if any, is that of being worse than the preceding centuries. Ironically, with the advancement of human minds, the idea/notion of sexuality has deteriorated and has rotten the psychology of the present to such an extent that it has given rise to some shocking cases naming one of the landmark cases such as *People's Union of Democratic Republic v. Union of India*.

The root causes of the same goes back to as far as the traits of gender discrimination can be traced. Considering women as a weaker sex both physically and mentally and thus exploiting them on the basis of their submissive behavior and docile character is one of the common characteristics of the society which has risen the despicable element of trafficking, especially of women as well as children and further forcing them into prostitution be them of any age. The Oxford English Dictionary has defined traffic as 'trade, especially illegal (as in drugs). It has also been described as 'the transportation of goods, the coming and going of people or goods by road, rail, air, sea, etc. The word trafficked or trafficking is described as 'dealing in something, especially illegally (as in the case of trafficking narcotics)'.

According to a BBC report of 2012, 35% of women enter into prostitution before the age of 18 when they are not even capable enough to give consent to the same in India legally.⁶ On the other hand despite legal prohibition, NCRB reported 65,038 missing children in 2012.⁷ In 2010, as reported one in every three missing children were untraced.⁸ Human trafficking is the third largest profitable industry in the world. Child trafficking unlike many other issues is found in both developed and developing nations. Trafficked children are used for prostitution, forced into marriage, illegally adopted, used as cheap or unpaid labor, used for sport and organ harvesting. Trafficking exposes children to violence, abuse, neglect and exploitation. According to UNICEF a child victim of trafficking is "any person under 18 who is recruited, transported, transferred, harbored or received for the purpose of exploitation, either within or outside a country". This undoubtedly is a violation of their right to privacy, right to body and also right to payment which embarks upon them an urge to live with human dignity as per Art.21 of the Indian Constitution. Though there are many laws in relation to trafficking and prostitution but all seem to be in a fogged faucet of mess, in the sense that they provide no or very limited relief to the victims of trafficking and the victims of prostitution.

The Immoral Trafficking Prevention Act (ITPA) 1956 though in some sense allows the carrying of the prostitution but it disregards the intervention of any third party like that of soliciting or running of brothels which in a way terms it as sex- trade. In the light of this act the writers believe that legalizing the same will make the condition of these trafficked people better and to some extent provide them with the sense of self esteem and also the right to dignified life. The same has been analyzed in the essay so forth. Also, because of the latent nature of the trade the enforcement of the laws become tough because trafficking is one of the toughest crimes to track and investigate hence data is hard to obtain. The latest figures estimate that 1.2 million children are trafficked worldwide every year. The total number of cases under the Immoral Traffic Prevention Act,1956 decreased from 11,242 in 2002 to only 2,563 in 2012 probably because in current scenario commercial and domestic trafficking in labour sector is easier than sex trafficking.⁹

But for the same period NCRB data shows an increase in instance of child trafficking for the crimes of 'procurement of minor girls' , 'importation of girls from foreign country', 'selling of girls for

⁶ http://news.bbc.co.uk/2/hi/south_asia/5140526.stm

⁷ www.ncrb.gov.in

⁸ <http://www.eastasiaforum.org/2014/03/06/indias-child-trafficking-epidemic/>

⁹ <http://www.eastasiaforum.org/2014/03/06/indias-child-trafficking-epidemic/>

prostitution and buying of girls for prostitution'. Cases under these crimes collectively increased from 214 to 991. The Hon'ble Court took into cognizance that in 2011 alone 90,654 children went missing with 34,406 children still remaining untraced. However only 15,284 FIRs were registered and investigations were launched.¹⁰

The main focus of trafficking has been mainly on sexual exploitation as discussed so far too, which ignores the recent exploitations such as like begging, bonded labour, industrial works etc. Despite legal prohibition India continues to have 12.66 million child labourers and the conviction rates of such crimes was just 11 percent in 2012.¹¹ It has to be realized that trafficking is just not a socio – political issue anymore as it is more deeply embedded than it looks and the solution lies in a multi-dimensional approach only and not making efforts technically.

LEGAL REGIME RELATED TO ANTI-TRAFFICKING IN INDIA

There are heated arguments and growing awareness among all over the globe to combat the high degree crime of trafficking which has given rise to various rules, laws, conventions and treaties that include large number of countries in their arms. These have emerged to be stern to control the evil in some form or the other in many parts of the world & India too has participated actively in many ways such as:-

In India, there are various laws for anti-trafficking which includes in its wide ambit forced prostitution, begging, sale of human organs, kidnapping and then raping etc. The laws governing all these crimes include the ones at national level whether mentioned in the constitution or constituted by some special act and also at international level which India has ratified and the ones to which India is a signatory. For example: Art.23,¹² Art.24¹³ of the Indian Constitution, Immoral Trafficking Prevention Act 1986 (ITPA) as a special act, Suppression Of Immoral Trafficking Prevention Act, United Nations Convention On Rights Of Child (UNCRC), CEDAW Guidelines 1979 etc which are ratified by India & some others which has been signed by India.

¹⁰ <http://www.bba.org.in/?q=content/supreme-court-india-delivers-landmark-judgement-missing-children>

¹¹ <http://www.bba.org.in/?q=content/supreme-court-india-delivers-landmark-judgement-missing-children>

¹² Prohibition of traffic in human beings and forced labour

¹³ Prohibition of employment of children in factories, etc.

(For the sake of brevity and concise of the reader, the writers have considered to give all the laws and articles in relation to the same as reference as below)¹⁴

CONCLUSION

India is now one of the spotted places among the countries as a destination and an origin for trafficking and prostitution. In the last two decades there has been a gradual rise in cases of trafficking and prostitution because of increased trans- border facility. Yet the country's legal system is weaker as compared to the framework of other countries and a system of unaccountable governance is running even with the existing laws and regulations. There are also many reports where the seriousness of handling such cases is in question. As shown in this essay, trafficking has given only negative aspects to the society, be it any, affecting its right to dignified life with respect to Art 21¹⁵ in many ways. In the limited ambit of this essay the writers have analysed and in opinion assert that legalizing prostitution can indirectly control atleast one aspect of human and child trafficking as it will not only improve working and safety conditions for existing sex workers but will also make engaging in sex business a free choice for those who want to choose prostitution as their viable choice of occupation and which could also improve the condition of how sex workers are looked upon. This, in turn will also make resorting to trafficked women less attractive.¹⁶ The choice to sell one's sexual services for money need not always be forced, but can be a voluntary occupational choice. Thus, the share of trafficked prostitutes willing to voluntarily work in such an illegal market is likely to fall after legalization. Sex businesses wishing to take advantage of the legality of prostitution (instead of remaining illegal) would want to recruit more national citizens or foreigners legally residing with a work permit in the country since employing trafficked foreign prostitutes endangers their newly achieved legal status. Therefore, it is submitted that legalizing prostitution can lead to reduction in instances of rape and thus trafficking. But not merely in discussions but also in our minds it has to be legalized and thus to be seen from all of a different and open point of view as a measure to provide women and children with their rights and giving them

¹⁴ Juvenile Justice Act, 2010, J.S. Verma committee guidelines, International Labour Humanitarian Laws by UN, UNCRC1989, SITA 1949, PITA, International Anti-Slavery pact, Children (Pledging of Labor) Act, 1933, Immoral Traffic (Prevention) Act, 1956, Child Labor (Prohibition And Regulation) Act, 1986, Section 366,360B,372,373,370 of Indian Penal Code

¹⁵Protection to life and personal liberty

¹⁶ Bureau of the Dutch National Rapporteur on Trafficking, 2005; Segrave, 2009

better opportunities. Hence it's not merely about changing the laws or making new ones because there already exists many and more will commence in future but a process of how to use and implement the same is the need of hour.

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