

The Weeping of The Sexually Exploited: Rights to Justice of The Unheard

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Abstract

India, the land of gods and goddesses, a place where young girls are treated no less than a deity and the women of the family are treated as the fortune bestower. Being the land of such sacredness India is no less different to the themes of trafficking and prostitution.

The predicament of trafficking and prostitution targets the young girls between the age group of 10-14 years. Mostly the victims in this case belong to different marginalised communities and tribal distinctions as well as backward socio- economic groups. These young girls are either kidnapped from their homes or are contrived to see the glitz of easy money. However, what these young girls face is far more distinctive than the scintillate that these girls were delineated. These teenagers are pushed into the dark abyss of miseries which often leads to slavery. Mostly the victims in this case belong to different marginalised communities and tribal distinctions as well as backward socio- economic groups.

India has time and again made attempts to curb the ever-increasing problem of sexual exploitation of women through the assistance of different statutes and mandates. In this regard, Suppression of Immoral Traffic in Women and Girls Act (hereinafter “SITA”) of 1956, subsequently amended and renamed the Immoral Traffic (Prevention) Act (hereinafter “ITPA”) of 1986.

In the research paper the researchers would take the opportunity to furthermore emphasize on the appliance of the prevailing laws and amendments on child trafficking and sexual abuse. It would subsume a critical analysis of acts such as Immoral Traffic (Prevention) Act, 1956, etc. All the misdeeds have led to the threshold where it has become the devoir of the decade to introspect these laws and take a supplementary vestige so as to protect the women of our nation.

“People were created to be loved. Things were created to be used. The reason why the world is in chaos is because things are being loved and people are being used.”

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Introduction

Over the previous million years, the race of Homo sapiens (Humans) as a species in itself has evolved into the most civilized league. They developed various social norms and rules for themselves which were considered as supreme for humane existence. However, time and again these social norms are challenged and are faced with different impediments in order to interfere with the proper working of the society. One of these deterrents which have proved to be very destructive for our society is Human Trafficking and Forced Prostitution. Human Trafficking is seen as the second largest juridical issue after Drug and Substance Abuse. This market produces a large amount of profits and therefore it is insurmountable to eradicate it. Trafficking is seen as the fastest growing criminal industry in the world.

Trafficking is basically the modern-day slavery. According to United Nations' Palermo Protocol, "*Trafficking in persons can be defined as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation should include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organ*". In simple words, it means transporting of individuals from one place to another for the purpose of slavery or sexual exploitation. Whereas, Prostitution basically refers to the occupation or profession of performing sexual activities in lieu of money or any other kind of payment.

Women have been a seriously vulnerable part of our excessively male dominated society since the time immemorial. Many women and girls who have been trafficked or prostituted are a victim of child sexual abuse, rape or kidnapping. The punitive conditions that are faced by these females are incomprehensible. These women often die within four years as not more than often they fall into the trap of HIV/AIDS as its fatalities or in other words contract these diseases.

There are various reasons which are responsible for such immoral acts, some of them are:

1. Easy money for the trafficker.
2. Poor socio-economic conditions of the large number of families.
3. Education, skills and employment opportunities of women.
4. Social status of women.

5. Objectifying women.
6. Expansion of sex industry.
7. Media's representation of women as objects.
8. Absence of moral ethics and values in regard to gender equality and patriarchal mind-set.
9. No strict laws against traffickers.
10. Lack of awareness among people in regard to activities of the traffickers.

According to the Report of United Nations Office on Drugs and Crimes, the most common reason for human trafficking (79%) is sexual exploitation. The victims of sexual exploitation are predominantly women and girls more often of tender ages.³ This brutal issue has gone to such an extent that young girls and adolescents in the name of child marriage are being targeted for trafficking. One of the most unnerving facts is that not only women, but some of the males are the victims to trafficking.

India's Predicament Towards Trafficking and Prostitution

Prostitution being an extremely immoral and religiously sinful act has been successfully able to penetrate deeply into the roots of the Indian society throughout all the classes of the society. Everyone ranging from an actor to a truck driver are involved in this reprehensive deed. Prostitution is an \$8 billion a year industry with more than two million prostitutes and 275,000 brothels.⁴ The sex industry in India is century's old, dating back to the British times. The prostitution in India was prevalent in the form of Devadasi system and the act related to this was Hindu Religious and Charitable Endowment Act of 1927, which involved the commitment of young ladies to the god. Those part of devadasis customarily included singers and dancers for the temples and furthermore giving sexual favours to administrators as well as neighbourhood leaders along with rich persons connected with the sanctuary. The prostitution before 1860s was regulated with The Cantonment Act of 1864. It was regulated and formatted on the military basis. The structure was arranged in such a way so as to provide a range of fifteen to twenty women for each regiment of British soldiers, where each regiment had about thousands of soldiers. Categorically speaking, it was seen as another form of slavery.

³UNODC report on human trafficking exposes modern form of slavery, UNODC (Jul. 21, 2018, 10:15 AM), <http://www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html>.

⁴Prostitution in India, FACTS AND DETAILS (Jul. 24, 2018, 11:35 PM), http://factsanddetails.com/india/People_and_Life/sub7_3h/entry-4190.html.

Over the years, India has emerged as a source, destination, and alteration country for trafficking for assorted purposes such as for sexual commercial exploitation and labour. Moreover, it is seen that 90% of the human trafficking was done in India domestically.⁵ India being an underprivileged country and immersed in the state of poverty young women and adolescents from different parts of the country are lured into the glitz and glam of easy money and prerogatives of the world with the promise of well-paid jobs. Such victims of easy money are sent to the abyss of misery and become the targets of sex industry in the way of prostitutes. The other 10% of the human trafficking is done for the purpose of sexual exploitation and young girls from Nepal and Bangladesh are trafficked to India.

Vulnerability governs the lives of the individuals alive aural in the industry. Their bodies and futures are not their own; many of them have been deceived, beaten, sometimes tortured, raped, and threatened with added beatings, mutilation, and afterlife if they try to leave. If a prostitute becomes pregnant, her adolescent will abound up with the aforementioned life. It is not amiss to say that such an adolescent is trafficked into his or her own home.

In India prostitution in private is legal whereas, soliciting and brothels are regarded as illegal. It has been time and again remarked that the sex industry must be legally identified so as to curb the indisputable issue of prostitution and the trafficking of women for the purpose of eliminating it. In India prostitution is looked down upon as a catastrophic part of the society but there also lies an unreeling reality where each day many girls are trafficked and forced into slavery even today in the cloak of prostitution. This is not an insult or attack to the dignity of women or human race but also an insult to the admirable culture of our country. Our cherished culture not only deems women as an important part of the society but it also gives them a higher regard than the men in the society.

The divine are extremely happy where women are respected; where they are not, all actions (projects) are fruitless.

-Manusmriti

“O you who believe! You are forbidden to inherit women against their will. Nor should you treat them with harshness, that you may take away part of the dowry you have given them – except when they have become guilty of open lewdness. On the contrary live with them on a footing of kindness and equity. If you take a dislike to them, it may be that you dislike something and Allah will bring about through it a great deal of good.”

⁵India Has A Sex Trafficking Problem, And It's Worse Than You Think, ILI (Jul. 26, 2018, 6:35 PM)<http://www.ili.ac.in/cstyle.pdf>.

Noble Quran (4:19)

Laws to Curb Trafficking and Prostitution

The supreme law of the land in the way of Constitution guarantees the citizens of India have the right to live peacefully and these are supported by different pillars of our fundamental rights. Primarily the freedom of the citizens is supported by Article 21 of The Indian Constitution, 1950. It reads as, *“Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law.”* It is the fundamental law of the land which inoculates the people of the nation from the delirious act of trafficking. It also elucidates in detail the provisions that no person can be subjected to physical or mental coercion until and unless demarcated within the paradigm of legal justification.

One's liberty isn't meaningful until and unless it is supported by the equality of status that has its essence in Article 14 of the Indian Constitution, 1950. It reads as, *“Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.”*

The aforesaid mentioned provisions are somewhat generic in nature. Article 23 of the Indian Constitution, 1950 specifically prohibits such trafficking. It prohibits, *“traffic in human beings and other similar forms of forced labour.”* This article has the provision for enabling mandates to be enacted by the legislature to prevent trafficking; it was clearly seen in Immoral Traffic Prevention Act, 1956.

It's not only in the fundamental rights that the individuals are protected from trafficking but it's also in the Directive Principles of the State Policy that they have been referred in, Article 39(e) of the Indian Constitution, 1950 *“ensures that the health and strength of individuals are not abused and that no one is forced by economic necessity to do work unsuited to their age or strength.”* Whereas, Article 39(f) elucidates *“childhood and youth should be protected against exploitation.”*

All the articles or provisions in The Indian Constitution, 1950 are not effective unless their essence is incorporated in a specific mandate. Immoral Traffic Prevention Act, 1956 is the only legislation in the state of India which deals with the disturbing issue of trafficking. This act deals with the trade of women and its modus operandi. This act defines 'prostitution' and 'brothel'. It regards keeping a brothel as a punishable offence. Moreover, it includes procuring, inducing or taking a person for prostitution. It also includes special powers of the

police officers to search without warrant where there is a reasonable suspicion to believe that an offence is being carried out under this act. It also elucidates the closure of brothels.

Prostitutes themselves are advancing towards equality and recognition, there are several organisations which are working for such women. All India Network of Sex Workers⁶ is one such organisation. On March 10, 2014, 90 sex workers from 16 states campaigned on the agenda of getting social security and pension.

India as a country should go an extra mile to eliminate the issue of trafficking. Trafficking is not defined anywhere except S. 370 of IPC in any of the mandates or even in the Immoral Traffic Prevention Act, 1956. To curb the problem of trafficking it should first have a proper definition of it so as to have some demarcations. It is with the hope that the bill pending in the parliament has the definition of trafficking.

Mandates to Safeguard the Victims of Trafficking and Prostitution

Looking forward to the social structure along with the stigmas associated with it and its robust influence on the masses of newly born Independent India, the much-anticipated Suppression of Immoral Traffic in Women and Girls Act, 1956 (herein referred as SITA) was enacted by the Indian parliament as it was also a signatory to the United Nations International Convention for the “Suppression of Traffic in Persons and of the Exploitation of Others” of 1950. The primary motive of enacting this legislation was to deal with and curb the rapidly increasing problem of prostitution and trafficking considering the social situations and structure of then India.

Since then SITA has been amended twice in 1978 and 1986 respectively. Through the amendment of 1978 only punishments for certain offences was enhanced. The 1986 amendment changed the name of the Act from SITA to “The Immoral Traffic (Prevention) Act, 1956” (herein referred as ITPA) and also made major changes in the definition of Prostitution along with enhancement of punishment for several offences. This amendment acknowledged the existence of male prostitutes and gave them a legal sanctity, hence making law over prostitution and trafficking gender neutral.

However, one major pitfall of the act which not only questions its morality but also its legal sanctity on the basis on principles of justice, equity and good conscience, and necessitates to put the ITPA to test of reasonability considering several dynamic factors as that of present times, development of human rights, change in social status etc. is that it penalizes the victim itself. Although, criminal sanctions against brothel keepers and prostitution racketeers seem

⁶About AINSW, ALL INDIA NETWORK OF SEX WORKERS (AINSW), (Aug. 02, 2018, 10:04 AM), <http://ainsw.org/about.php>.

to be steps in the right direction, nevertheless penal provisions against women trapped in prostitution yet seem to be a cruel irony. These provisions refute and contravene the basic purpose and soul of the act, which is to safeguard individual women practising prostitution independently against any penal provisions. The women practising prostitution are no criminals and neither do they infringe anyone's rights nor do they harm anyone in any manner. Hence several provisions in the ITPA act unjustly punishes the victim itself instead of helping them in rehabilitation.

Another point which needs to be focused upon is that there are punishments for the victims i:e prostitutes but there are no penal provisions against the exploitative clients. ITPA spurns the significant role that is played by these clients, it fails to check and it rather empowers and encourages them to further exercise brutality against prostitutes especially against women and children. Hence, it is extremely dangerous to place the clients completely outside the scope of penal provisions.⁷

The scenario of rehabilitation of victims of prostitution especially in case of women and children is even worse. The people engaged in prostitution are either treated as criminals or a victim in need of rehabilitation and as having no agency of her own. A person charged under Sections 7 and 8 can be sent to a corrective institution. Under Section 17, a prostitute can be placed in protective care. Under the garb of protection, the Act empowers the law enforcement machinery to arrest, search without warrant, charge and detain the prostitute for long periods.⁸

A person carrying on or forced to carry on prostitution may make an application to the Magistrate to be kept in a protective home or be provided care and protection by the Court. The Magistrate after hearing the applicant and making an inquiry can send the applicant to a protective home, a corrective institution or keep her under the supervision of a person appointed by the Magistrate.

These victims can be sent to protective and corrective homes for indefinite periods and against their will as it is considered a substitute to prison, where the victims as sent more of as a punishment rather than as an opportunity to start a new chapter of life. Hence the victims prefer conviction under the penal provisions rather than rehabilitation. The provisions for rehabilitation under ITPA are vague, and it treats victims as criminals. Protective homes consider the victims who need to be rescued, rather as morally corrupt people who must

⁷*Review of Immoral Traffic (Prevention) Act, 1956*, SHODHGANGA(Jul. 31, 2018, 7:35 PM) http://shodhganga.inflibnet.ac.in/bitstream/10603/124050/11/11_chapter%205.pdf.

⁸*Id.*

immediately be removed from the societal sphere so as to protect the society from public moral deterioration. It also serves public interest by removing and preventing people from practising prostitution whenever they try to engage in it. The concept of rehabilitation in ITPA and the purpose of sending the victims to corrective and protective homes is to transform them into morally upright people.

Hence, the current institutionalized system of rehabilitation must be replaced with facilitative structure of rehabilitation. These victims are in dire need of legal aid and legal counselling which is yet like a dream to them considering the Indian context. The conditions of protective and corrective homes have been documented several times and they barely turn out to be habitable. In the context of ITPA the purpose of placing women in protective homes seems to be directed more towards protecting the public from the potential 'immoral' or 'depraved' influence of such persons rather than protecting them from exploitation and harm.

Conclusion

Human trafficking for the purpose of prostitution is one of the vicious and abhorrent crimes. It not only plays with the grandeur and honor of women but also their innocence. The aforementioned provisions have only protected them from the legal abuses, but what about guarding them in the people's eyes; the eyes which blatantly accuse them of different sins or misdeeds which many of them didn't even choose for.

It has to be understood by the folks of our society that if the prostitutes or sex workers are reprehensible in nature then the men going to these women are equally liable, if not more. If prostitution is a disgraceful act then why only women are considered as a felon and not men. Our society has to change its mentality and understand that it takes two to do a sinful act and if prostitution is not a sinful act then the sex workers should be treated with the same reverence as the men who go to them for sexual favours. Our society has to come out from the blinder of male dominance and patriarchy, it has to acknowledge that the women should be treated with utmost respect and they aren't an object to be bought and sold. It has to be understood by every being that the women are equal to men and not just an article to be used for the purpose of sexual pleasure. It should also be seen that the men who go to the sex workers should have a background check just as the prostitutes have in any of the legal disputes or cases.

The government should acutely acknowledge the severe issue of objectification of women and it should take a supplementary vestige to help the women from the poor masses of the family and it should be seen that they aren't involuntarily forced towards the abyss of

prostitution. And also, different statutes should be introduced other than the Immoral Trafficking Prevention Act, 1956 in reference to prostitution and access to justice for the victims of prostitution. It can be better concluded in:

“Prostitution is really the only crime in the penal law where two people are doing a thing mutually agreed upon and yet only one, the female partner, is subject to arrest.”

-Kate Millett