

Access to Justice for Victims of Trafficking and Prostitution

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Abstract

This paper talks about the access to justice for victims of human trafficking and prostitution. In this paper we deal with the debate on this burning issue, we discuss the ethical and methodology issue and social – cultural environment, comparative study between countries that have or don't have the legal provision over this law.

The purpose of this paper is- how the justice should be given to victims who suffered the great dilemma by referring certain law, what problem they face in the society and need of implementation to make certain laws.

Object is to ensure that law actually provides justice to victims, which leads to strengthening the faith of citizen in the legality of India and if there are no such provision which provide justice to Indian than there should be need of such laws to be framed.

There are so many legal mechanism in many countries which have been started to support victims and renew the laws, amendment in so many act and also made so many rights which are available to every human being for her/his security against any type of trafficking and business of unchaste.

Some authorities should focus on this issue so that complete remedies should be provide, such as decided by courts, administrative agencies and other competent bodies. Therefore, there are so many benefits and securities are provided to victims and his/her families members.

Provide justice to those victims and survivals that are facing the pain and trauma of trafficking and the prostituted work without his/her will. Basically human trafficking is egregious assault on the freedom and dignity of victims. There are so many protocols to prevent (victim) and punish (accused) trafficking in persons, especially of children's, women and men who are forcefully indulge. In world, almost 90% countries frame laws related to criminology human trafficking and forced prostitution work, but conviction level quit low because of which the victims doesn't get justice and can't access effective remedies for the harm they suffered.

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In this paper, an attempt was made to answer various questions, such as:

1. What is meant by justice and why the right to access to justice considered important?
2. How have the courts interpreted the prostitution under Article 19 (5) of the Constitution of India?
3. How have the courts interpreted the Article 23 (1) The Immoral Traffic (Prevention) Act, 1956?
4. Debate whether the justice should be given to victims of prostitution and human trafficking relate with art 14, 21 of constitution of India?
5. Comparative study and its Analysis?
6. Have there been any problems or hindrances in effectively enforcing the right of victims and what are the possible ways to deal with such issues?

The paper largely focuses on the laws providing justice to victims and suggestions in that respect & analyses the problems encountered in the legal aid movement and propose measures to sort out these issues effectively.

Introduction

It's an always burning issue, the phenomenon focus upon the principle of supply and demand the human used as a commodity for sale and purchase respectively.

Rescued girls and victims are the one who suffered the actual pain and trauma. They can express the actual sentiment in court than anyone else. Their ultimate intention or wish it to see the fear of law in the eyes of traffickers, brothels, wrong doers.

Perspective

The practice of *jogins*, *venkatasins*, *devadasi* is continue in present time which lead to inhumanity and against self-respect lead to prostitution in temple and other charitable institution which is unlawful.

Prostitution and trafficking are those institutes which have existence for thousands of years are so deeply involved in cultures that they become invisible.

There is custom or gender oriented prostitution which view as victims of gender oriented vulnerability. It further lead to inhumanity and against self-respect of prostitution in temple and other charitable institution.

Generally, the commercial sexual exploitation of infant constitutes a form of coercion and violence against children.

There are 3 pioneer and inter-related form of commercial sexual exploitation:

Prostitution, pornography, trafficking for sexual and victims purpose.

Prostitution

In India prostitution is not legalized but in view of some researchers it should be legalize and decriminalize. Prostitution is not offence under law but activities such as running brothel, any act being taken out in public place, pimps etc. are punishable. There are 2,000,000 sex or more workers presently working in India. When female is involved in such activities she can't get the same respect in the society or family, resulting in them continuing with same under social pressure.

Generally, prostitutes suffer or go through bad imposition but after studying on various issues it is found that sex worker must be safe from such abuse.

According to Canvillataylor:

(Director for Lambda legal, a national LGBT rights group) said-

There are indent laws that criminalize exploitation, trafficking, rape. Some sex workers are subject to those abuses. It is going to be difficult for sex workers to complain of a crime being committed because their own dignity may harm.

Example- if there is any married women prosecuted and have family, after her rescue her family won't accept her if they come to know that she was trafficked and work as a prostitute.

Human Trafficking

Human trafficking is the trade of people, mainly of women and children, and does not necessarily involve the movement of the person from one place to another. Initially, labor trafficking was high in ratio but after survey sex trade has wide reach.

Includes-

1. Trade for the reason of forced labor, sexual slavery, or commercial sexual exploitation for the trafficker
2. Removal of organs or tissues, including for surrogacy and ova removal.
3. Occur within a country or trans-nationally.
4. Coercion or commercial exploitation
5. Lack of legal status is a major risk factor in trafficking, independent often precluding victims, return and reintegration.

Research Methodology

As per Data Analysis

\$ 8.4 billion industry deal with prostitution business.

1. Trafficking in India increase by 38.3% in last 5years i.e. 2009 to 2013 – increase from 2848 to 3940.
2. Conviction rate decline in 2009 to 2013 from 1279 decrease to 702.

As per N.C.B.,

1. In 2013- around 65.5% crimes were registered under ITRA, 1956.
2. For minor girls- 31.1%
3. Further analysis- West Bengal is hub of human trafficking, followed by-
 1. Tamil Nadu 549 cases
 2. Andhra Pradesh 531 cases
 3. Karnataka 412 cases
 4. Maharashtra 345 cases

Conferences

1. In Calcutta from 14th – 18th November first national conference of sex worker took place. This talk about important of law made for prostitution.
2. Right of self- discrimination of prostitution in India- India:

3. in NDCRF conference, it is said by president E.jayaraj and general secretary Ravindra Reddy

There was need to bring about greater awareness on responsibility of every organization, including the govt. And official for protection of children's right and individual right.

Foreign view

Sweden: anti-prostitution activists for 1998 law that aimed to protect sex worker by criminalizing their customers. Sex workers are measure of legitimacy shout of legislation would actually discourage trafficking.

Rural Brazilian women are sometimes trafficked into the urban sex industry.

In Thailand men are excluded from trafficking but they are also victim.

In Cambodia & Burma boys are trafficked for commercial purpose as fishing boats.

Brazil has trafficking of girls for sex work from rural to urban areas, whenever males may be sold to work in gold mines of Amazon jungle and children are continuously sold into slavery to work on cocoa plantations.

In China girls are trafficked as brides in impoverished rural areas, which are devoid of marriage age females as a result of china's one child policy and families, preference for baby boy.

Adult who sell sex willingly, with some kind of assistance are not considered trafficking victims under us law.

Indian Views

According to-

1. LolitaKumarManglam

New chairperson said-Legalization of sex trade is contempt of S.C. orders.

2. BhartiDevi

Police get paid to let off traffickers. Regulation will decriminalize trade. The prostitute involved is poor and have few options but they in this practice through middleman.

She further says- legalization prostitution will remove these middleman and intermediaries to earn extra money by keeping as medium to those victims.

3. Shakti vahiniRaviKant, Supreme Court lawyer and president-

She is against the above view and said trafficking and human slaveryis worst form of human right violation. No women should choice this profession out of choice.

Objective

In human trafficking victims suffered a lot, they face various problems in society, such as-

1. Face family rejection
2. Vastly disproportionate rates of violence
3. Homelessness
4. Discrimination in employment, housing, education

Prostitution and human trafficking is not legalizing in India but as per the survey it is legalize in other countries. Due to of lack of money, forcefulness and other factor prostitution was opted by various needy people. Those people trafficked to other country and get exploited.

If India legalizes prostitution then the problem of trafficking ultimately stop and Indian who want to work as professional in this field can't face such difficulty.

Parliament after legalizing it makes various laws which limit the boundary of prostitution.

Therefore the objective to choose this topic is "to make law on prostitution and give justice to victim of human trafficking and prostitutions.

Benefit of Legalizing Prostitution

1. It will control the sex industry.
2. It will decrease clandestine, hidden, illegal and street prostitution.
3. It will protect the women in prostitution as they will have rights.
4. Women involve in prostitution want legalization of sex industry because they are the one who suffers and avail no right. Legalization of prostitution promotes women's health as they can have easy access to medical facilities which they don't have when it is illegal.
5. The immoral traffic (prevention) act, 1956, punishes acts of third-party for.eg.Brothel-keeping, living on the earnings of prostitutes or procuring a person for the sake of prostitution.
6. Legalizing prostitution will result in reduction of sexually transmitted diseases, for sex-workers will be required to maintain health-cards.
7. It would result in elimination of pimps and middle-men, and the task of the police would then be protection of sex-workers, and not extraction of 'protection of money' from them. Enforcing laws against the sexual exploitation of children.

Description of the Research Issues Including Socio-Legal Analysis of the Problem

Prostitution

Sexualization is a popular trend in our culture, which increasingly evident in sexualized imagery and disappoints, is a topical subject of academic and policy analysis and debate. It is

not a socially accepted behavior meaning thereby a practice of women who permits any man who will pay her price to have a sexual intercourse with her.

Wilson v. State³

A prostitute defined as a woman who has given herself up to indiscriminate lewdness.

Prostitution act as a threat to the marriage family institution and law maker think that even after legalizing prostitution it bring a threads which binds the society together will be broken if people free to engage in coitus for pleasure.

Trent v. Commonwealth⁴

Prostitute is defined as women submitting to indiscriminate sexual intercourse, which she solicits.

Does Legalized Prostitution Increase Human Trafficking?

Women indulge illicit sexual intercourse with only one man can't said to be prostitution but if with every man in exchange of money. The motivation they get to indulge in such activity is money purpose or commercial gain.

Essential ingredient:

1. Girl/women /lady offering her body
2. Sexual intercourse
3. For money
4. Regular visit of client is not require.

We only focus on those who are doing illegal trading we want them to penalize but there is need to punish those who demand and want such prostitute. Things can't be cured from one side but they should be cured from both, then only it will show major changes.

Those sold for sex have similar condition as who purchase sex, such things said to be Illinois. Trafficking is driven by poverty: to push the poverty or political and social instability trafficking is influenced by expended would views of victims.

Challenges faced by Victim

1. Threats to family- victim and their family get threat call from traffickers which may cause fatal injury. Even NGO's get threatening calls if they do help.
2. Stigma- victim of prostitution and human trafficking consider a stigma on the society especially minors and unmarried girl. Therefore, they prefer matter to be forgotten rather than filing a complaint.

³652 S.E. 2d 501, 282 Ga. 520.

⁴292 Ky. 735 (Ky. Ct. App. 1942).

3. Corrupt police- even after getting the result on matter of prostitution or human trafficking. Corrupt police bring un-useful evidence which not provide justice to victim.
4. No speedy justice- the average trial complete between 2-6 years which create problem for victims to have a free life.
5. Coverage- the victims whose case files at some other place due to jurisdiction issue has to travel long which is costlier and problematic to face the society.
6. Insensitive environment- judge in court can ask victim some irrelevant question which is against the dignity of victims and irrelevant to know for the case.

Media's Role

It has positive impact but also has a double-edged sword which creates negative impact victims and trials. It is used:

1. To initiate writ petition
2. To apply to public prosecutor when authority are unresponsive
3. Increase awareness of incidence
4. Also get strongly order from judges.

After all these challenges, various NGO's community did out of court settlement and may file fir one NGO consider CR.P.C. As a negative area because it bring victim in danger or traumatic situation during rescue operation and forcibly rescue and detention in poorly-run-govt.

NGOs don't have expertise lawyers for successful prosecution and strategic litigation.

1. Charge- low cost lawyer is difficult to find.
2. Advice- legal advice is requiring from expert which not found at low cost.
3. Support- NGO need support, advice, and resource to help victim by way of legal expertise.

Example: Guria-

1. Supreme Court, describe 'appalling condition' faced by trafficked minor who are faced into prostitution in the brothels within and outside red light areas.
2. Allahabad H.C. – tell about various directions in respect of minor girl/child who trafficked through fake marriage and obtain detention of minor girl kept in police station direction in this regard has been obtained.

PIL is a great measure to deal with such problems and to access justice only limited NGO are expertise to run PIL cases and so it get justice to limited victims at large level. Other than PIL,

writ petition and habeas corpus cases (where victims have been unlawfully detained or missing) also provide effective in obtaining favorable legal outcomes for victims.

By collaborating between NGO's undertaking this would help to increase prosecution rates and improve legal outcomes for victims. Various challenges are-

1. Difficulty in dealing with different legal, police and administrative jurisdiction.
2. Collecting legal aspect for legal notification

From research, an NGO in U.P. seizes the asset in sex trafficking cases worth GDP 3, 00,000 from slaveholders and traffickers. But some NGO's too are unaware about this policy or can say they don't want to tackle the slavery or trafficker in such way due to fear or threat.

Various NGO's monitoring indicators work to-

1. Identify gaps at different stage
2. Calculate wages owed and back wages
3. Track enforcement of legal orders

NGOs also expressed-

1. Need to strengthen or build new case management lead to better trial monitoring and better legal outcomes.
2. Data and trend analysis from previous cases improve legal intervention, sharing of legal strategies, know-how

Impact and Implications

Harm to victims

The harm to prostitute is being caused but it is invisible to the society because they treat such victims as inhuman.

Prostitution is a lucrative form of operation of human beings. Governments protect commercial sex businesses because of dreadful profits.

Social and legal refusal to acknowledge the harm of prostitution is stunning. E.g.- teenage girls were being trafficked at gunpoint from one country to another country.

Counseling and Para-legal support

NGO appoint staff who act as a trainer for victims because they provide counseling or legal support by which victim not get discourage from the offence/ incident and get justice.

On research, it is found that female victim is not comfortable with the male councilors so it would be convenient that same gender councilor should be given. The trying of NGO's is difficult but will definitely achieve great success.

No evidence that “most” or even majority of prostitution have been trafficked. It important to recognize that in past 15 years prostitution was not in routine but presently, several analysts says prostitution has been that socially contracted by way of trafficking prison and there is no objective equivalence between two. When movement across state boarder trafficking of minor and children they punishable under this section. Various NGO have made effort to develop the justice provided to victim and acc. To report they found 36 child labor and 23 bonded labor cases u/s 370 in India but they stick to the files i.e. Fir and charge sheet so the real potential of law is yet to be tested in court.

Trafficking is a big business

There is no standard profile of traffickers, truck drivers and village auntie’s work as medium to run such business.

Possible Outcomes and the Solutions

Legal strategies to combat human trafficking in India

NGO plays an important role but due to limited resources only few victim get legal support, such as:

1. Provide legal assistance
2. Filing a complaint
3. Pursuing claims
4. Opposing bail
5. Preparing the victim: act as a supporter
6. Protect witness or victim
7. Assisting public prosecutor
8. Get compensation for victim under relevant legislation

The new law wider the scope of human trafficking u/s 370 IPC – Criminal Amendment Act, 2013 expanded definition of human right based on United Nations Palermo protocol which India ratified in May 2011. This act holds a strong and significant role such as:

1. Criminalizing a wide range of trafficking related crimes, including trafficking for the purpose of “exploitation of the prostitution of others or other forms of sexual exploitation, forced labor, slavery practices, servitude or the removal of organs”.
2. Criminalizing persons involved at each and every stage of the trafficking chain by defining the trafficking offence as anyone who recruits, transports, harbors, transfers, or receives a person or persons for the purposes of exploitation.

3. Providing increased punishments for offences (e.g. A minimum of 10 years for trafficking a minor for purposes of sexual exploitation) and non-bailable.
4. Making consent of the victim immaterial to establishing the offence of trafficking

Legal strategies to combat prostitution problem in India

Prostitution means surrender of girl's chastity for money. It is not legalize but there are certain provision which indirectly protect the rights of prostitution.

Constitution of India, 1950, pledges to secure socio-economic justice to all its citizens with stated

1. Liberties,
2. Equality of status and opportunity,
3. Assuring fraternity and
4. Dignity to individuals in a united and integrated nation, the republic of India.

Therefore, prostitutes (the "fallen women", as they are often called) too are a part of Indian citizenry, and thus are an integral part of "we the people".

Constitution of India

1. Article 14 provides for equality in general;
2. Article 21 guarantees right to life and personal liberty;
3. Article 15 prohibits discrimination on the grounds of religion, race, caste, sex or place of birth, or any of them;
4. Article 15(3) provides that nothing shall prevent the state from making special provisions for women and children;
5. Article 16(1) provides for equality of opportunity in matters of public employment;
6. Article 23 prohibits human-trafficking and forced labor, making it punishable under the suppression of immoral traffic in women and girls act, 1956
7. Article 39(f) provides that children should be given opportunities & facilities to develop in a healthy manner & conditions which do not put to compromise their dignity and freedom.
8. Article 46- state promote educational & economic interests of women, people of weaker sections ,protect from social injustice & exploitation;
9. Article 51(a)-duty of every citizen to increase scientific temper, humanism, enquiry, reform and to strive towards excellence in all spheres of individual and collective activity to bring nation to higher levels of endeavor and achievement.

Immoral Traffic (Prevention) Act (104 of 1956)

1. Sec 2(f) r/w Sec 372 IPC.

Prostitution is the act of female offering her bodies for promiscuous sexual intercourse for hire (in money or in kind).

2. Sec 2(a)

Brothels consist of houses, rooms, conveyance, place, which use for purposes of sexual exploitation or abuse for the gain of another person or for the mutual gain of two or more prostitutes.

3. Sec. 16

Since commencement of immoral traffic (prevention) act, 1956 – Rehabilitation of sex-workers has been an issue of considerable importance qua which substantial amount of time and efforts have been invested by the apex court.

IPC, 1860 and Juvenile Justice (care and protection of child) act, 2015

1. Sec 372 selling of minor for purpose of prostitution an offence punishable with imprisonment of 10 years and fine.
2. Sec 373 buying of minor for purpose of prostitution an offence punishable with imprisonment for 10 years and fine.
3. Sec 2(14)viii Juvenile Justice (care and protection of children) Act, 2015.
4. Sec 81 and rule 32 of Juvenile Justice (care and protection of children) Act, 2015.

U.D.H.R. (The Universal Declaration of Human Rights)

India being a signatory to the UDHR is obligated to work towards the aspirations that the declaration contemplates.

1. Article 1 - all human beings are born free; equal in dignity & rights.
2. Article 2 - everyone i.e. Prostitutes with their children included are entitled to all rights, freedoms set-forth in the UDHR without any distinction of any kind.
3. Article 3 - right to life, liberty & security of person.
4. Article 4- no one shall servitude; slave trade & sex-trade in any forms.
5. Article 3(1) - right for interest of children.
6. Article 5- to modify social patterns of conduct of men and women with a view to achieve elimination of prejudices and all other customary practices which are based on the idea of the inferiority/superiority of the sexes.
7. Article 12-discrimination against women should end in the field of health-care in order to ensure better health services.

8. Article 13-the state parties should work towards elimination of discrimination against women in all areas of socio-economic life, entitling them to all benefits apropos family life, marital status and right to foster their children in best possible manner.

Recommendations to Improve

1. Access to legal support (direct funding to NGO's)
2. Centralized legal support initiatives
3. Knowledge and training
4. Strategic litigation and procedural reform
5. Data and technology
6. Media
7. Strengthening collaboration and building partnerships
8. Awareness camps
9. Series of national or state based workshops should be convened.
10. Held with key stakeholders example- law enforcement, prosecutor, judges to discuss the issue to deal with the legal problems.
11. Scholarship fund should be given.