

Justice to Victims of Trafficking and Prostitution: Addressing the Need for Social Integration and Psychological Rehabilitation

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Abstract

Access to justice is considered to be the foremost virtue of any civilized political and legal system. Modern theories of justice administration strongly recommend for an intelligent, easy and progressive mechanism to attain justice. Access to justice is a much broader concept that not only consists of a mechanism and procedures to knock the gates of justice administration institutions but also extension of State support to the people who seek justice. Again, all these approaches read together with the theories on Victimology emphasize the need that justice for victims of crimes includes not only the punishment of perpetrators but also requires reinstating the status quo of the victim in all spheres of life. The problem becomes more acute in cases where the victims are subjected to an intense, continuous and prolonged bodily and psychological exploitations that deeply affects their mental and cognitive abilities and drive them towards 'self-expulsion' from the society. Victims of Trafficking and Prostitution are one such category that requires a deeper attention in respect to the question of access to justice.

The object of this paper is to set and explain the contours of justice for the victims of Trafficking and Prostitution. The author wishes to explain that for these victims the virtue of justice has great psychological and social relevance and it is attained only when they are reinstated and rehabilitated back in society without any mental imprints of their victimization. Considering the vulnerability of victims of these offences i.e. children and women the author argues for creating a system of international standards that would guarantee longitivity and productivity in lives of these victims. Keeping in mind the internationalization of such offences and consequent victimization, the author analyses the key legal instrument that enable these victims to have access to justice. Author shall also study the special procedures of investigation and trail (if any), the compensation schemes for these victims, existing framework for their rehabilitation and the efficacy of all such efforts. Finally the author

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would critically comment upon the needs for reforms and the State approach in achieving them.

Introduction

In this 21st century which is considered to be the era of liberalisation and globalisation where the world is developing at a very fast pace and the people are running to match this pace. We are striving to bring equality, eradicating poverty and improving the standards of living of the people throughout the globe, which is now considered to be one family. There are talks all throughout the world regarding the protection of the basic human rights of the people and the socialist, naturalist and liberals argue that the humans are the most beautiful creation of god, who by virtue of being born as humans are entitled to some basic rights. Each of us is born as equals and we equally have the right to live a dignified right. As this right is not bestowed by anyone on us so no one has the authority to deprive us of these rights. Then the question comes pertaining to the rights of the women who are still not treated equally and still a great percentage of them are trafficked and are forced into prostitution. This industry has been increasing and it has been an alarming concern for the whole world. “Many trafficked persons are trafficked into the international sex trade, often by force, fraud or coercion and it involves sexual exploitation of persons, predominantly of women and girls, involving activities related to prostitution, pornography, sex tourism and other commercial sexual service.”² This problem needs to be redressed at the earliest so that one of the sections of the society who are in a great turmoil can be rescued and further protected.

“Trafficking is often migration gone terribly wrong, which is in addition to the push of poverty or political and social instability, trafficking is influenced by the expanded world views of the victims- the draw of bright lights and big cities.”³ “Many people are fleeing from small towns’ prejudices, dead end jobs, dangerous streets and suffocating families and some poorer people like the idea of being found beautiful or exotic abroad, exciting desire in others.”⁴ This has to be immediately checked and controlled. Further the word trafficking and prostitution is interchangeably used by many, which has in a way created a menace in the society as due to the interchangeable use of these words, it has hampered the efforts to abolish prostitution. These words are closely connected but are not one and the same. Trafficking has a wider connotation attached to it like trafficking of children for buying and selling; trafficking of girls for prostitution etc. “Traffickers routinely beat, rape, starve,

² Yvonne C. Zimmerman, *From Bush To Obama: Rethinking Sex And Religion In The United States’ Initiative To Combat Human Trafficking*, 26 JOURNAL OF FEMINIST STUDIES IN RELIGION 82, 79-99 (2010).

³ David A. Feingold, *Human Trafficking*, 150 FOREIGN POLICY 32, 26-30 (2005).

⁴ Ronald Weitzer, *Sex Trafficking and The Sex Industry: The Need For Evidence- Based Theory And Legislation*, 101 THE JOURNAL OF CRIMINAL LAW AND CRIMINALOLOGY 1345, 1337-1369 (1973).

confine, torture and psychologically and emotionally abuse the trafficked victims”⁵ but not necessarily for prostitution, it may be for forced labour. So the prostitution is a part of it and for prostitution, trafficking is carried out. They both are interconnected. This interconnectedness doesn’t mean that the prostitution cannot be done without trafficking the women. This is where the mistake lies as we are focussing on trafficking only to prevent prostitution and the results are not much satisfactory due to it. As, “Melissa Farley declares, since prostitution creates the demand for trafficking, the sex industry in its totality must be confronted.”⁶

Research Methodology

The research paper is based on doctrinal method of research which includes secondary data such as various Acts, Rules, Regulations, Guidelines, Judgments, Articles, Books and Journals. Analytical, Critical and comparative methods are used as major tools of study in support of the arguments. Researcher has tried to imbibe new ideas to justify the title of the research paper.

Objective of Research Paper

The objective of the research paper includes finding the root cause of the increasing rate of human trafficking and forced prostitution, what impact does it makes on the lives of the victims and how the society reacts towards these victims. The protection at the international forum and in the Indian forum and what all measures should be taken to combat these increasing activities.

Impact on the Lives of Victims and the Societal Approach

The women who indulge in prostitution are always looked down by the members of the society. The people around do not understand the anguish suffered by these prostitutes and being unaware of the reality which led them into the world where they are stuck they just discard them and abuse them. For many “prostitution is inexplicable it is deemed insidious and dangerous, a menace to the social order and legitimate social norms.”⁷ They are considered to be the violators of the societal norms and no one is ready to help them. They are not considered to be the victims but rather are regarded as the polluters of the society, criminals and humans with no dignity, who are to be used and thrown out and from whom the children are to be kept away from.

⁵*Supra Note 3 at 1345.*

⁶*Supra Note 3 at 1343.*

⁷HENDRIK WAGENAAR, HELGA AMESBERGER & SIETSKE ALTINK, DESIGNING PROSTITUTION POLICY 30, (1st ed. 2017).

It can be said that we all as a society are responsible for the situations of these prostitutes or the victims of the trafficking. We have always considered a girl to be a burden on the family, discarded her since her birth and has grown her in the environment where she has to face continuous harassment. She has been grown with the mentality that the males are superior to them and they have to succumb to the needs and wishes of them. She has been taught that she has to learn and look beautiful not for herself but for the society so that she could be married to a good boy. Nobody taught them that they are themselves sufficient enough and do not need a male support. This negative attitude of society and the social stigma attached to their being makes them vulnerable and an easy trap. “The another reason includes the religious fundamentalism, polygamy, child marriage, negligible decision making status of women in financial matters, frustration in love, globalisation, export oriented model and consumerism, natural disasters making families homeless and disintegrated, seeking for better life (e.g. job and prospect of marriage, increased dependency of guardians on the income of female children), inadequate government policies, lack of social security and safety, corruption amongst the members of law enforcing agencies in domestically and in international borders.”⁸ “A study shows that most recruiters were friends, acquaintances or family members, who make all travel arrangements, obtain necessary documents and provide women with money to purchase necessity.”⁹ A full fledged racket is being operated and it is surprising to know that the women are at the lead positions who transport women from one place to another and indulge them in prostitution have monetary benefits.

Women becomes helpless, no body respects her dignity and integrity. She is called by abusive names and she is forced to live in that place forever. They face various psychological problems like depression, anxiety and various medical problems like HIV/AIDS. They remain on medication for various problems they suffer. “The trafficking victim undergoes physical abuse, substance use, deterioration of mental health, physical health and then suffers from major trauma, depression, having suicidal thoughts, which leads them to in taking drugs or alcohol or to hurt or kill themselves as they feel hopeless and are in rage and anger.”¹⁰ In order to satisfy the needs of their customer they regularly take heavy doses of drugs and for the most period of time they remain in a subconscious state which affects their mind and body. Moreover they undergo abortion and various surgeries to remain active in their dark

⁸MdRazidurRahaman, *Human Trafficking In South Asia (Special Preferences On Bangladesh, India And Nepal): A Human Rights Perspective*, 20 IOSR JOURNAL OF HUMANITIES AND SOCIAL SCIENCE 5, 05-08 (2015).

⁹*Supra Note 3 at 1346.*

¹⁰Jeremy M. Wilson & Erin Dalton, *Human Trafficking In Ohio*, RAND CORPORATION 46, 46- 50 (2007).

profession and due to which their body is harmfully affected. They feel segregated from the society and develop hatred towards the entire society and the legal system which is not helping her when her basic human rights are being continuously violated.

Protection at the International Level

The existence of human trafficking and forced prostitution can be traced much before the advent of globalisation and inter country trade but it has tremendously increased after the advent of the concept of the world as a single family, after which the connections between various nations increased and in the garb of this globalisation such practices also rapidly increased. China, which is one of the developed nations, having the highest population in the world has also been a country where human trafficking and forced prostitution is a concerned activity which is widely practiced. China having a huge number of population and to control it the government there brought in the one child policy which negatively affected the lives of the women there. The families there, especially the rural population, prefer boy over girl and due to which the population of female has substantially decreased, so for getting brides the activity of human trafficking is prevalent there. Even in Thailand, the exploitation of females is at its highest peak and this is because of the state recklessness. “A study by the United Nations, Scientific and Cultural Organisation demonstrates that a lack of proof of citizenship is the single greatest risk factor for a hill tribe girl or woman to be trafficked or otherwise exploited.”¹¹ This is because they lack the legal status in the country which is most important to get basic rights in a nation, like right to education, right to earn, right to own properties, right to marry, right to enter into trade etc. This make such women to be vulnerable and are easily become victim of human trafficking and forced prostitution.

These activities were noticed lately when the feminism developed and the violence against the women and their sexual exploitation was brought in to the notice of the developed and most powerful states of the world which led to various conferences and conventions for the protection of the rights of the women. “A Fourth World Conference on Women was conducted in Beijing, China where emphasis were put on the violence against women which enabled trafficking to enter the global political spotlight which was framed as a gendered issue and a violation of women’s human right.”¹² After this conference a series of other conventions and declaration came in pursuance to the rights of the women and various International bodies like United Nations, UDHR etc played an important role. International

¹¹ *Supra Note (2) at 30.*

¹² Alicia W. Peters, *Things That Involve Sex Are Just Different: US Anti- Trafficking Law And Policy On The Books, In Their Minds, And In Action*, 86 ANTHROPOLOGICAL QUARTERLY 221, 227-255 (2013).

Convention on Civil, Political and Economic Rights, International Convention on Economic, Social and Cultural Rights, Convention on Elimination of all types of Discrimination against Women etc was passed which ensured some basic human rights to the women. All the developed and developing states ratified these conventions and also entered into various treaties for safeguarding the human rights of its people. “On November 15, 2000, the General Assembly adopted the UN Convention against Transnational Organised Crime and two Optional protocols on trafficking in persons and smuggling of migrants and this protocol defines trafficking 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, which includes at a minimum, the exploitation of the prostitution of others forms of sexual exploitation, forced labour or services or practices similar to slavery, servitude or the removal of organ.”¹³

The SAARC nations also came together to combat the increasing exploitation of women formed a convention (i.e.) “The SAARC Convention on Prevention and Combating Trafficking in Women and Children for Prostitution, according to which trafficking means the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking.”¹⁴ While defining trafficking the ratifying countries framed laws in their respective nations and has together raised voice against human trafficking and forced prostitution.

In United States, the people and various religious groups took things in their hands when it was found that a lot of number of small girls and innocent women were being trafficked and forced into prostitution. A lot of demonstrations and campaign were done by these groups to make the government realise its duties over which it has been sleeping since a long and demanded for strong laws and proper measures for the prevention of human trafficking and forced prostitution. “In June, 1999, the National Association of Evangelicals issued a statement signed by more than 130 religious leaders calling on Congress to pass a human trafficking law to end the sinister trade that profits ruthless businessmen, criminals, and

¹³*International Trafficking In Persons, Especially Women and Children*, 95 THE AMERICAN JOURNAL OF INTERNATIONAL LAW 407, 407-410 (2001).

¹⁴*Supra Note 7 at 2.*

corrupt public officials at the expense of millions of women and children.”¹⁵ Due to public pressure and law and order situation in the US, the congress had to pass a federal law (i.e.) The Trafficking Victims Protection Act, under which the union retains the power to prosecute and punish for human trafficking for the maximum punishment of twenty years imprisonment. Therefore the globalised world has become more cautious towards the vulnerable position of women and is continuously striving to protect the status and dignity of women and to provide them a safer place to live where their basic fundamental rights are protected and respected. The international organisations and the world community at large are coming with various international agreements and their focus has shifted to check and control the organised crimes.

The Legal Framework in India

India is a party to various International Conventions and treaties like The Convention on Elimination of all forms of Discrimination against the Women and The Convention on the Rights of the Child, under which it is an obligation on India to frame laws and ensure all measures to combat human trafficking. “As per CRC, state parties shall take all appropriate national, bilateral, and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form and state parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare.”¹⁶ In pursuance to these conventions and treaties, the Indian government came up with various laws to prevent trafficking and to regulate prostitution.

The Constitution of India, Article 23¹⁷, which is a fundamental right prohibits the human trafficking and consider it to be against the basic right of a human being. The Indian Penal Code, 1860 under Sections 366A, 366B, 370, 372, 373 makes kidnapping, procurement of minor girl, importation of a girl, trafficking of a person, selling or buying for the purpose of prostitution as an offence and are punishable with rigorous punishment. The Protection of Children from Sexual Offences Act, 2012 specifically deals with the prevention of sexual exploitation against the children and it safeguard the interest and welfare of the children by handling them with utmost care and caution.

The Immoral Traffic Prevention Act, 1956 was enacted by the parliament to control trafficking. It was earlier enacted as The Immoral Traffic (Suppression) Act but later on its name was changed into The Immoral Traffic Prevention Act. Section 7 of the act criminalises

¹⁵*Supra Note 1 at 81.*

¹⁶*Supra Note 7 at 5.*

¹⁷INDIA CONST. art. 23.

the practice of prostitution in or in the vicinity of the public place. Section 8 punishes seducing and soliciting for the purpose of prostitution. Though many years have been passed since this act came but this has not proved to be an effective legislation as there are many ambiguities in the act. The act defines public place, but it is ambiguous and vague. There is no conceptual clarity about it. Further Section 8 is extremely patriarchal and has been widely misused and many innocent women have defamed and prosecuted due to it. “The act misses out on what actually constitutes trafficking-the element of force, deception and coercion, which go on overtly and in spite of the definition of prostitution having changed from 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 to sexual exploitation or abuse of persons for commercial purpose, there is no perceptible attitude shift in the lawmakers and enforcers from taking efforts to curb prostitution to curbing trafficking.”¹⁸

Suggestions & Conclusion

To eradicate prostitution and human trafficking in its entirety it is important that all of us should join hands together. We cannot just shed the responsibility and blame the government for everything. There is a dire need that all the stakeholders like NGOs, social workers, government, community service providers, law enforcing agencies, the society etc should collectively participate as anyone or two organisations are not sufficient to provide all kinds of help to the victims and moreover these victims are unavailable to express their pain and to seek assistance and accessing the services of the government and these organisations. “There exist various barriers in accessing the services which includes fear of retaliation, lack of knowledge about services, fear of deportation, lack of social support, lack of trust in the system, language differences, lack of knowledge about their rights, feeling of shame, gender fear and not being able to identify oneself as a victim.”¹⁹ These barriers should be immediately worked upon.

To remove these barriers it is important that proper training should be given to every sector of the society, being it the common man, a law enforcing agent or a doctor. Various social organisations like NGOs, child welfare institutions etc should be properly trained to provide assistance to women and their families who are victims of trafficking and prostitution. The doctors should be instructed to immediately report to the concerned authorities if any patient, especially a child suffering from sex transmission disease comes for the treatment. It is

¹⁸ Raja Lakshmi, *Delinking Prostitution A Look At India's Immoral*, 22 CANADIAN WOMEN STUDIES 110, 112-113.

¹⁹ *Supra Note 9 at 47.*

important that the locals should be engaged in rescuing the victims. They should be provided with sufficient trainings so that if they find anything suspicious they could react immediately and save the victim. The law enforcement agencies should be properly trained and a continuous check should be kept on them as it is found that many a time these people who are to help the victims are themselves indulging in such practices. To satisfy their lust they in spite of knowing the people who practice such activities, ignore it and take sexual and monetary benefits from it.

We should provide the victims help by capacity building, conducting proper counselling, providing them education, job training, proper source of income, legal services, health services, a good shelter and take all measures to re habilitate them. It is not always advisable to send back the victims to their homes as it is most likely that they may be again forced into the dark world and it is also possible that if those who pushed her into trafficking or prostitution may be from powerful background and harm her or her near and dear ones. So proper rehabilitation homes should be constructed for these women, where they are in the safe environment and are eventually healed. The govt need to fund anti trafficking programs in various states so as to raise awareness among the people about the miserable conditions of such women so that they can help various organisations, legal officers and medical practitioners in assisting the victims. “Further, the current laws should be amended to include stricter punishments and new legislations should be brought in wherein the burden of proof should lie on the accused to show they have not trafficked and the judiciary should be sensitized and trained to deal with the complexities involved in the trafficking offences.”