



“PROSTITUTION: PROTECTION OF HUMAN RIGHTS OF WOMEN AND CHILDREN”

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ABSTRACT

Prostitution is referred to as the oldest practice in the world and today, it has taken the face of violence because of commercialization and has become an issue of human rights. It is the called the worst form of exploitation of women and children which evident of man’s tolerance of this exploitation on an organized level in society. Women are looked upon solely as an object and as an outlet for man’s basic instincts. They are caught in the chain of pimps, goons and other antisocial elements in society with the police supporting it on the other side. They are classified as criminals by the society and therefore, these women find it difficult to raise their voices against basic human rights violation. Women working as prostitutes pay horrible price, they go through psychological and physical harm, including disease and stunted growth, often with permanent effects. They are subdued with drugs and subjected to extreme violence; they undergo physical and emotional damage from violent sexual activity, forced substance abuse, exposure to sexually transmitted diseases, including HIV/AIDS, food deprivation and psychological torture. Some victims suffer permanent damage to their reproductive organs and die as a result of all of these atrocities. Often, the various physical and mental health problems faced by them includes injuries from rape and sexual assault, injuries from physical assault (beatings, burning from cigarette butts), repeated abortions, drug and/or alcohol dependency, jaundice, HIV/AIDS, skin diseases, depression, psycho-social trauma, suicide attempts, TB, STDs, malnourishment, insomnia, etc.

INTRODUCTION

Women’s rights are the fundamental human rights that were enshrined by the United Nations for every human being on the planet nearly 70 years ago. Yet almost everywhere around the world, women and girls are still denied them, often simply because of their gender. Winning rights for women is about more than giving opportunities to any individual woman or girl; it is also about changing how countries and communities work. It involves changing laws and policies, winning hearts and minds, and investing in strong women’s organizations and movements.



CAUSATION OF THE PROSTITUTION AND KINDS OF ABUSES FACED BY WOMEN AND CHILDREN IN PROSTITUTION

Factors leading to prostitution

1 Poverty

Primary reason for prostitution is poverty. Majority of the women and girls enter prostitution because they are illiterate or either because they are not able to get any other employment. They don't have any other option, they can either starve to death or can earn their livelihood from working as prostitutes.

2 Under- age employment

Due to poor economic conditions, young girls and women have to work in hotels, officers, industries and shop at immature age, and at this impressionable age they are easily misled by lust-seekers for paying the good wages to them.

3 Deceiving by the family

The family being poor and not able to get two square meals to live and in cases when they have a daughter they think of deceiving her because for them she is a burden. To earn her livelihood she has to work somewhere. But being illiterate she may not get the job and she thinks of entering the profession of prostitution.

4 Deceiving by the lover

There are cases where the lover makes a false promise to marry the girl and she elopes with him but instead of marrying her, he sells her to some pimp or some brothel owner.

5 Domestic Clashes

When the husband is drunkard or a gambler and doesn't give the money to the wife or day to day expenses at home, she has no other choice than to enter the prostitution. She has to somehow support her family and in this case, she has to work for earning a livelihood and sending her children to school. Being illiterate or not getting any job she has to switch on selling her body for money. This is the one of the major reason why the married women enter in to prostitution.



6 Illegitimate Motherhood

The women who become pregnant as a result of their liaisons and who cannot get abortion get exposed in society. Nobody wants to marry them but everybody wants to enjoy them sexually. Desperately such women prefer to become regular prostitutes.

Kinds of abuses faced by women and children in prostitution

1 Rape

This is the most common abuse faced by the prostitutes. Men believe that just because prostitutes sell her body for money they can do anything with her and can ask for everything in return of money. And that's why they try to get sexual with her against her will. They are subjected to do those sexual acts which are against her will and she is not ready to do and if she refuses to do, he makes her do those acts forcefully.

2 Physical Violence

Prostitutes are being subjected to physical force which can potentially cause death, injury or harm. It includes, but is not limited to: having an object thrown at one, being slapped, pushed, shoved, hit with the fist or with something else that could hurt, being kicked, dragged, beaten up, choked, deliberately burnt, threatened with a weapon or having a weapon used against one (e.g. gun, knife or other weapon).

3 Extortion

Prostitutes are extorted for money which she earned. There are cases where the money which the prostitutes earn for their living is snatched by either the pimps, brothel owners. The customers coming to the prostitutes also extort the money from them by blackmailing that if she doesn't hand over the money to him he will inform the police about the work she is carrying on. The police officials also extort money from the prostitutes and also take the sexual pleasures from her by threatening to arrest her.

4 Exclusion from Health Services

Prostitutes are very hesitant to go to hospitals because of the negative attitude towards them. They are seen as black spot on the society and the response towards makes it more painful for them. Due to the unsafe sexual relations they are at the high risk of having HIV and other related STD's. They are not provided any kind of health services either by the pimps, brothel owners. Even if they think of stepping out their places for medical check up, they are not given the



positive outlook by the doctors, nurses. They only curse these women. And if they are having HIV they are ones who are held responsible for such condition

5 Societal Response

The response of the society towards prostitution makes it more vulnerable. The society still believes it to be taboo and considers the woman who is a prostitute as a whore. She is not respected in the society. She suffers the deterioration. They suffer from moral collapse and lose their status and position which other respectable men and women enjoy in society.

6 Unwanted Pregnancy and Abortion

Women who enter this profession get pregnant once in a lifetime. The main reasons for getting pregnant are not using the condoms for protection. The customers who come for getting their sexual needs fulfilled don't prefer taking any kind of protection. And if a prostitute tells them to take such a protection, she is abused and beaten. And if a brothel owner makes a point clear to wear the condoms, customers pay them extra for not taking any protection. Due to it, women get pregnant and she has to abort the baby because she cannot keep a child in her profession.

INTERNATIONAL AND INDIAN LEGAL FRAMEWORK PROVIDING PROTECTION TO WOMEN AND CHILDREN IN PROSTITUTION

International documents relating to Women rights

Of all the international human rights laws that encompass the rights of women, one of the first treaties to explicitly mention prostitution was the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). It was adopted on 18th December 1979, by the UN General Assembly. It entered into force on 3rd September 1981. It has described discrimination against women as:

Discrimination against women includes any distinction, exclusion or restriction made on the basis of sex that has the effect or purpose of impairing or nullifying women's enjoyment of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. This is irrespective of their marital status, on a basis of equality of men and women.

In an attempt to ensure that there is equal access to and equal opportunities in public and private life enjoyed by women too, this treaty has specifically addressed prostitution. Article 6 of this



treaty urges to the state parties to “take all measures to stop all forms of trafficking and the exploitation of prostitution of women”.

There is an another document also which addressed the problem of prostitution among women and children and i.e Convention for the Suppression of the traffic in persons and of the exploitation of the prostitution of others. It was approved by the UN General Assembly on 2nd December 1949 and it was entered into force on 25 July 1951. The Convention also incorporates a number of provisions concerning the international traffic already present in the earlier instruments. It requires, for example, that offenses under the Convention be regarded as extraditable offenses (Article 8); that states parties establish systems of coordination and exchange of information among themselves (Articles 14 and 15); that they take appropriate measures in connection with immigration and emigration procedures (Article 17); and the supervision of employment agencies (Article 20). At the same time, the approach underlying the Convention considers that repressive action against procurers is insufficient without measures aimed at reducing the incidence of prostitution. Accordingly, the Convention also contains a program for action by states through their educational, health, social, economic, and other services for the prevention of prostitution and for the rehabilitation and social reintegration of its victims (Article 16).

International documents protecting Child rights

Children are not just the objects or the toys at the hands of the parents or any other individual. Rather they are also the human beings and the individuals having their own rights. But just like any other prostitution, child prostitution is flourishing with the passage of time. Child sex tourism is also now a-days taking place at a rapid rate.

There are various international conventions that urges to protect the child’s right. First among them is the Convention on the Rights of the Child. The UN General Assembly adopted the convention on 20 November 1989. It came into force on 2 September 1990. The Convention on the Rights of the Child of 1989 defines more precisely the term “child”:

“[...] a child is any human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier”



The UN General Assembly adopted the second optional protocol on 25 May 2000. This protocol prohibits the sale of children, child prostitution and child pornography. It came into force on 18 January 2002. The OPSC reinforces the provisions of the Convention on the Rights of the Child from sexual exploitation. The global campaign has helped to raise awareness of States Parties obligation to protect all children below the age of 18 from all forms of sexual exploitation, to criminalize all acts of sale of children, child prostitution and child pornography and to ensure the rights of child victims and witnesses. A child who has been sexually exploited should be treated as a victim rather than a criminal, irrespective of the legal age of sexual consent.

Indian Legal framework

Prostitution is legal in India. A number of related activities including soliciting in a public place, kerb crawling, owning or managing a brothel, prostitution in a hotel, child prostitution, pimping and pandering are illegal.

Prostitution in India comes largely because of the human trafficking taking place at a large scale. Human trafficking leads to the sexual exploitation causing physical and mental trauma to the women and children. There are laws for curbing the problem of human trafficking in India but there is no such act for protecting the basic human rights of the children and women working as prostitutes.

1 The Constitution of India

Human trafficking is prohibited by the Constitution of India. Article 23 talks about the 'Right against Exploitation'. Exploitation is opposed to the human dignity given in the Preamble and the provisions of Article 39(e) and (f) of the Indian Constitution. Article 23 protects the individual not only against the state but also the private citizens.

2 The Indian Penal Code, 1860

The IPC was often used to charge the prostitutes with the vague crimes such as public indecency or being a public nuisance without explicitly defining what these consist of. However, there are certain provisions in the IPC which specifically deals with trafficking in persons. Sections 370 and 371 aim at the suppression of slavery. Section 370 punishes importing, exporting, buying, selling or disposing of a person as a slave. The offence is non-cognizable, bailable, non-



compoundable and triable by a Magistrate of the first class. It is punishable with imprisonment that may extend to imprisonment up to 7 years and fine.

Section 371 seeks to punish a habitual dealer in slaves. A person who steals a child in order to sell him as a slave is punishable under this section. The offence is non-cognizable, non-bailable, non-compoundable and triable by the Court of Session. Punishment may extend to 10 years of imprisonment and fine.

Section 372 and 373 punish the trade of selling and buying minors for purposes of prostitution. These sections are in consonance with article 23 of the Constitution which prohibits traffic in human beings and sanctions punishment for practising such acts. The former section punishes the sale of minor girls below the age of 18 years for the purpose of prostitution, illicit intercourse or for any other unlawful and immoral purposes. The offence consists of the intentional or conscious exposure of a minor girl to the danger of degradation.

.3 The Immoral Traffic (Prevention) Act, 1956

The government of India ratified the International Convention for the Suppression of Immoral Traffic in persons and exploitation of prostitution of others in 1950. As a result of this parliament came up with a law named The Immoral Traffic (Suppression) Act (SITA) in 1956. This law is the first law dealing with the status of prostitution in India. In the year 1986, this law was amended and was named as The Immoral Traffic (Prevention) Act (ITPA/ PITA), 1956.

PITA aims at vanquishing the evils of prostitution in women and girls and achieving the public interest viz. to rescue the women and girls who have fallen into the trap of prostitution and to disrupt the evils of prostitution and also to provide the opportunities to these victims so that they could become the acceptable members of the society.

The Act was introduced as a means of limiting and later abolishing the prostitution as an organised means of living by gradually criminalising various aspects of sex work.

Judicial Approach

The Act is a social welfare legislation to abolish the commercial sex activity carried on by the brothel keepers by using innocent and illiterate women and also to remove the social evil for the good of the society. It is obligatory on the part of the State to provide for protective homes for such women rescued from brothel houses [P.N. Swamy, Labour Liberation Front v S.H.O.



Hyderabad, 1998 (1) ALD 755].

In *Dr. Upendra Baxi v State of U.P.* (AIR 1987 SC 191), the Apex Court issued directions to authorities to improve the conditions of Protective Homes and to the State Government to constitute Board of Visitors and to formulate programme of rehabilitation of inmates.

In the leading case of *Vishal Jeet v Union of India* (AIR 1990 SC 1412), a PIL was filed against forced prostitution of girls, Devdasis and Jogins and for their rehabilitation. The Supreme Court held that despite stringent and rehabilitative provisions under the various Acts, results were not as desired and, therefore, called for evaluation of the measures by the Central and State Governments to ensure their implementation. The Court called for severe and speedy legal action against exploiters such as pimps, brokers and brothel owners. Several directives were issued by the Court, which, inter alia, included setting up of a separate Zonal Advisory Committees, providing rehabilitative homes, effectively dealing with the Devdasi system, Jogin tradition, etc.

In the case of *Gaurav Jain v. Union of India*, (1997) 8 SCC, While clearly stating the violation of Right to Life of trafficked victims the Supreme Court ordered the Union Government to form a Committee to frame the National Plan of Action and to implement it in mission mode. The Supreme Court ordered to constitute a Committee to make an in-depth study into these problems and evolve such suitable schemes for Rehabilitation of trafficked women and children.

The Supreme Court in *Buddhadev Karmaskar v. State of West Bengal* (Criminal Appeal No 135 of 210) said that sex workers are also human beings and hence they are entitled to a life of dignity. It has been well-settled by a series of decisions of this Court that the word 'life' in Article 21 of the Constitution means a life of dignity and not just an animal life.



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