



Rights Against Exploitation in the Context of Women and Children

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ABSTRACT

If today we ponder about the word “protection”, women and children comes into picture immediately. Though women and children are believed to be the most delicate and pampered ones their rights are being encroached every day and protection of them comes naturally to balance the human rights scale. Despite the legal rights beings granted to them through various Government policies and Acts of the country and international covenants, exploitation against them is endemic. Women and children are being targeted in many ways such as domestic violence, trafficking, prostitution, rape, pornography, child marriage, child labor, child sexual abuse etc. The word ‘exploitation’ basically means the action or fact of treating someone unfairly in order to benefit from their work. The Constitution of India prohibits discrimination based on sex but it equally empowers the government to undertake special measures for women. Though the position of women has improved in last four decades ,but still they are struggling to maintain their dignity and freedom. Due to patriarchal society , Indian women and children are facing the toughest time mentally and physically ,mainly due to increase in the exploitation of their rights ,lack of awareness of legal and constitutional rights they have provided.

EXPLOITATION OF WOMEN IN INDIA

Incidences like sexual abuse by near relatives, co-habitation with near or dear friends and subsequent decline of marriages and issues relating to illegal pregnancy etc. are the real fact, the information of which remains mostly in darkness. In addition, girl students molested by teachers or repeated sexual abuse by antisocial activists are also an unfortunate reality. Women exploitation in the form of physical

and mental torture on wives by husband is also common, mostly where women are simply a house wife and not associated with any employment. As a result, they are compelled to keep their head down in a speechless manner tolerating the cruelty of their husband helplessly ,mentally disordered for which they often take the shelter of suicide or other means of malpractices that result very disgrace social, moral, ethical, and after all economic support to them With the passage of time, days and society, there are a lot of movements relating to this exploitation of women but still men are forward in status as compared to women and Indian society is male dominated where female are being exploited spatially. According to Purana , there was violence against women in ancient India, but there was strong punishment for that offence. However, some main aspects of such exploitation may be highlighted as following 1) Use of women to earn money 2) Physical and mental harassment by men in society 3) Trafficking of women 4) violence against women.

STAGES OF WOMEN EXPLOITATION AND PRESENT INDIAN PERSPECTIVES –

In the grip of growing consumerism, violence against women has been rapidly increasing and a legitimate human right issue in connection to their socio-economic stability has got impetus. Trafficking of women is strongly associated with economic disparity as prevailing in the country which brings massive development of women into prostitution . Contrary to popular belief, child prostitutes are not primarily children lower socio-economic circumstances . Pre-birth stage of women: If a cyclic concept of women exploitation is assumed for convenience of research,

one can identify the stages at which they are being victimized.

Pre-birth Stage: Despite illegal, sex selective abortion has been taking place, because in many developing countries like India, it is still thought that baby girl would be a burden of a family in future and in rural areas, the same is considered along with the concept that they would not be economically and socially productive as they have not physically strong like men. Hence, despite employing enough labour force for economic development, women are not paid properly and thus they are economically deprived section of Indian society .

Infancy stage of women: At the infancy stage, she is looked after with ignorance particularly in case of education, health care and nutrition. From the initial stages of development, they remain weak and isolated. This is because of the same reason as stated earlier. Thus, there is a tendency in rural India in particular to over-emphasize on baby boy considering their future probability of application.

Childhood stage of women: At the time of childhood, due to constant ignorance, women are victimized in the form of child abuse and trafficking for lucrative business spread all over the world both for labour and sex. Therefore, it cannot be denied that the child labour act of 1986 does not bring remarkable positive impact as the majority of child labour in rural India is female.

The adolescence stage of women: At the stage of adolescence, pitiable form of violence or exploitation is noticed in the form of prostitution, trafficking, early marriage, crime committed against women etc. This is a stage when they become matured, can understand the social and economic bondage and being realized this tyranny, they are either compelled to choose prostitution or unintentionally abused for sex. In addition, being considered as burden, they have to face early marriage very often as decided by their family. Sometimes, this results psychologically disorder among them. Moreover, the young women or teenagers are victimized to satisfy a few gangsters by providing sex and beauty. **Reproductive stage of women:** At reproductive age, they have to face domestic violence, if get married. Moreover, at this time, they are sexually, psychological and physically tortured by intimate partner or non-partner also. Consequently, homicide is very common as read out

in common newspapers in all parts of the country. At the time of elderly, she becomes helpless due to absence of workability or sexual beauty. Consequently, they are again ignored and exploited. Thus, the history of women life is a garland of stigma or misery. There is no stage at which she gets honour due to their traditional oppressed life lead without protest.. Therefore, it is a fact that, each and every part of the country of India is being endangered by gender bias significantly which needs immediate careful handling for the sake of human right, otherwise, it is clear that this wound will be acute and the resultant effects as experienced everywhere from rural to urban will damage the synthesis between elements of society.

CHAPTER-2 : Constitutional Rights to Women

The rights and safeguards enshrined in the constitution for women in India are listed below:

1. The state shall not discriminate against any citizen of India on the ground of sex [**Article 15(1)**].¹
2. The state is empowered to make any special provision for women. In other words, this provision enables the state to make affirmative discrimination in favour of women [**Article 15(3)**].
3. No citizen shall be discriminated against or be ineligible for any employment or office under the state on the ground of sex [**Article 16(2)**].
4. Traffic in human beings and forced labour are prohibited [**Article 23(1)**].
5. The state to secure for men and women equally the right to an adequate means of livelihood [**Article 39(a)**].
6. The state to secure equal pay for equal work for both Indian men and women [**Article 39(d)**].
7. The state is required to ensure that the health and strength of women workers are not abused and that they are not forced by economic necessity to enter avocations unsuited to their strength [**Article 39(e)**].
8. The state shall make provision for securing just and humane conditions of work and maternity relief [**Article 42**].
9. It shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women [**Article 51-A(e)**].

¹ Our Constitution, Shubhash C. Kashyap, pg.no-109

Legal Rights to Women:

The following various legislation's contain several rights and safeguards for women:

1. PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 is a comprehensive legislation to protect women in India from all forms of domestic violence. It also covers women who have been/are in a relationship with the abuser and are subjected to violence of any kind—physical, sexual, mental, verbal or emotional is the premier legislation for prevention of trafficking for commercial sexual exploitation. In other words, it prevents trafficking in women and girls for the purpose of prostitution as an organised means of living.²
2. Indecent Representation of Women (Prohibition) Act (1986) prohibits indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner.
3. Commission of Sati (Prevention) Act (1987) provides for the more effective prevention of the commission of sati and its glorification on women.
4. Dowry Prohibition Act (1961) prohibits the giving or taking of dowry at or before or any time after the marriage from women.
5. Maternity Benefit Act (1961) regulates the employment of women in certain establishments for certain period before and after child-birth and provides for maternity benefit and certain other benefits.
6. Medical Termination of Pregnancy Act (1971) provides for the termination of certain pregnancies by registered medical practitioners on humanitarian and medical grounds.³
7. Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (1994) prohibits sex selection before or after conception and prevents the misuse of pre-natal diagnostic techniques for sex determination leading to female foeticide.
8. Equal Remuneration Act (1976) provides for payment of equal remuneration to both men and women workers for same work or work of a similar nature. It also prevents discrimination

on the ground of sex, against women in recruitment and service conditions.

9. Muslim Women (Protection of Rights on Divorce) Act (1986) protects the rights of Muslim women who have been divorced by or have obtained divorce from their husbands.
10. Indian Penal Code (1860) contains provisions to protect Indian women from dowry death, rape, kidnapping, cruelty and other offences.
11. Code of Criminal Procedure (1973) has certain safeguards for women like obligation of a person to maintain his wife, arrest of woman by female police and so on.
12. Legal Services Authorities Act (1987) provides for free legal services to Indian women.
13. Hindu Succession Act (1956) recognizes the right of women to inherit parental property equally with men.
14. Minimum Wages Act (1948) does not allow discrimination between male and female workers or different minimum wages for them.
15. Mines Act (1952) and Factories Act (1948) prohibits the employment of women between 7 P.M. to 6 A.M. in mines and factories and provides for their safety and welfare.
16. The following other legislation's also contain certain rights and safeguards for women:
 1. Employees' State Insurance Act (1948)
 2. Plantation Labour Act (1951)
 3. Bonded Labour System (Abolition) Act (1976)

CHAPTER-3 - EXPLOITATION OF CHILDREN

A child worker earns in its childhood, he/she loses ten times that due to a continuous decline in his/her productivity. Keeping such facts in mind, the United Nations had said in its declaration regarding child rights on Nov 20, 1959, that every child should receive protection for physical, mental, and moral development. There are 3 reasons behind India's child trafficking problem-

- (1) Rampant poverty and lack of opportunities : parents sell their children for merely a handful of rupees.
- (2) Child trafficking as a highly profitable, illegal business which has buyers from all over the world. It is third most profitable organized crime business, generating higher rate of revenues.

² Gracy v. State of Kerala, AIR 1982 SC 1090

³ Commentary on the Constitution of India, pg.no- 178

(3) Vulnerability of the child, and lack of enforcement of child rights.

India is home to the largest child labor population in the world because it is not rare to find thousand of children working in the fields for 14-16 hours a day ,in labor intensive profession like farming, stone cutting, mining industry and zari embroidery, organ donate etc .This is being worsened by the entry of multinational companies into India ,to exploit the lack of accountability in labor law and cheap labor. Child labor is highest among scheduled tribes, scheduled caste and OBC children because they faced discrimination throughout generations. Literacy rate is also very low among them ,despite providing reservation policies favoring this demographic. Forced displacement , caused by development projects migration to urban areas, farmers suicides and armed conflict is also another cause of child labor. This often results in children being exploited into bonded child labor. This children becomes psychologically and mentally disturbed, they thus become dependent on their 'owners'.⁴

RIGHTS RELATING TO EXPLOITATION AGAINST CHILDREN-

Child labor (Prohibition and Regulation) Act,1986

- (1) Child Marriage Restraint Act,1929
- (2) Commission for the Protection of Child Rights Act,2005
- (3) Juvenile Justice Act(Care and Protection of Children) Amendment Act,2006
- (4) Prohibition of Child Marriage Act,2006
- (5) Protection of Children from Sexual Offenses Act,2012

CHAPTER-4 - CASE LAWS RELATED TO EXPLOITATION AGAINST WOMEN AND CHILDREN

1. People's Union for Democratic Rights v. Union of India: [(1982) 3 SCC 235] Also known as the Asiad Workers case. The Supreme Court held that though the Employment of Children Act, 1938 did not include the construction work on projects because the construction industry was not a process specified in the Schedule to the Act, yet, such construction was a hazardous occupation and under Art.24 children under 14 could not be employed in a hazardous occupation.

⁴ Abdullaha V. Union Of India, AIR 1991 SC 574

The right of a child against exploitation under Art.24 was enforceable even in the absence of implementing legislation, and in a public interest proceeding

2. Lakshmi Kant Pandey v. Union of India: [(1984) 2 SCC 294] This is an extremely important case relating to the adoption of Indian children by persons inside and outside India. In the absence of legislation, the Supreme Court framed elaborate guidelines in the matter. There was no law to regulate inter-country adoptions and such lack of legal regulation could cause incalculable harm to Indian children. Considering the possibility of child trade for prostitution as well as slave labor, legal regulation of such adoptions was essential. Therefore, Justice Bhagwati created a scheme for regulating both inter-country and intra-country adoptions. The Supreme Court held that any adoption in violation of or non-compliance with may lead adoption to be declared invalid and expose person concerned with to strict action including prosecution. For years, social activists have used these directions to protect children and promote desirable adoptions. The Government of India framed a national policy in this regard. Also Indian Council for Social Welfare v. State of A.P.[(1999) 6 SCC 365]

3. M.C.Mehta v. State of T.N.: [(1991) 1 SCC 283] The Supreme Court directed that children should not be employed in hazardous jobs in factories for manufacture of match boxes and fireworks, and positive steps should be taken for the welfare of such children as well as for improving the quality of their life.

4. M.C.Mehta v. State of T.N.: [(1996) 6 SCC 756] The Supreme Court directed that the employers of children below 14 years must comply with the provisions of the Child Labour (Prohibition and Regulation) Act providing for compensation, employment of their parents / guardians and their education.

5. Gaurav Jain v Union of India: [(1997) 8 SCC 114] The Supreme Court held that the children of the prostitutes have the right to equality of opportunity, dignity, care, protection and rehabilitation so as to be part of the mainstream of social life without any pre-stigma attached on them. The Court directed for the constitution of a committee to formulate a scheme for the rehabilitation of such children and child

prostitutes and for its implementation and submission of periodical report of its Registry.

6. Sakshi v Union of India: [(1999) 8 SCC 591] In this Public Interest Litigation matter, the Supreme Court of India asked the Law Commission to consider certain important issues regarding sexual abuse of children submitted by the petitioner and the feasibility of amendment to 375 and 376 IPC.

7. Bachpan Bachao Andolan v Union Of India-

A PIL was filed in the Supreme Court in the wake of serious violations of child rights. The petition was filed specifically to discourage child trafficking from circuses all over India. Children are very frequently sexually abused at these places, which is a violation of Juvenile Justice Act and other international treaties and covenants.

CONCLUSION

Numerous laws and policies are enshrined to “protect” the rights of women, children and elderly in various national and international statutes. But this “protection” is myth. Reluctant states and central government have done precious little to change the patriarchal and archaic laws relating to women, children, and elderly people. It clearly shows the loopholes presently existing laws and policies, as well as the lack of proper implementation of these laws to uproot these social evils. Though the status of women in India, both historically and socially, has been one of the respect and reverence, but the hard truth is that even today, they are struggling for their own identity, shouting for diffusion of their voices and fighting for their own esteem. Every day, they cross among the fears and fraught for individuality. Despite the constitutional guarantee of equality of gender, rampant discrimination and exploitation of women in India continues. It is high time now that women should get a respectable and dignified position in the Indian society. Awareness in the women as well as society should be created and their equal rights should be effectively implemented. Crimes against women should be made punishable and In the era of globalization and with revolution in means of communication and information technology, the media role has become more crucial for women empowerment and child trafficking in Indian modern society. In modern society changes have been taking place in everywhere in almost every field but to protect honour of women.

SUGGESTION

1. Lack of well-planned educational, economic and social programmes from grass root level is highly responsible for such acute and pitiable scenario of the women in the country. In this context it should be mentioned that women being vulnerable by this sort of negligence are compelled to divert themselves to choose dark route of survival in the form of abused or sexually exploited product of consumption. In most cases, they cannot get justice despite their voices for survival to get rid of violence.

2. We need communities and individuals to be a part of this change in mindsets, attitudes and beliefs. the Government of India to do everything in their power to take up radical reforms, ensure justice and reach out with robust public services to make women’s lives more safe and secure.

3. Create healthy environment for women and children everywhere by supporting efforts to end violence against them, bringing them to the center of peace building, advancing their political participation and leadership and increasing their economic empowerment. Create awareness everywhere to end exploitation against women and children through the education and strong social, moral, and cultural values and make strong laws to punish victim immediately in Present Indian society

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