

## WOMEN AND CHILD RIGHTS: TRADE OF DIGNITY AND DREAMS

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### **INTRODUCTION**

Women rights are human rights. The Universal Declaration of Human Rights proclaims the equality of the sexes. The Fourth World Conference on women held in Beijing in 1995, was an important step forward in terms of Human Rights for women. Promoting women rights has been an important area of focus for the whole world and the international agencies. Now there is global recognition to the women rights and thus these rights are considered as an integral and an inalienable part of universal Human Rights. This principle was earlier confirmed at the World Conference on Human Rights in Vienna in 1993, but the death of this angel whom we also call as better -half and half-sister is noticeable every now and then and thus according to Hon'ble Shree Justice V.R. Krishna Iyer, former Judge, Supreme Court of India, the poor women continues to suffer from womb to tomb. Still women are subjected to sexual offences like rape, sexual slavery, enforced prostitution and forced pregnancy besides being subject to gender bias in almost every walk of life. According to Article 51-A of Indian Constitution, provides that the state shall endeavor to foster respect for international law but despite all efforts, the situation continues to be grim and the violence against women has been attracting attention of judiciary, executive, NGOs and public at large in recent years. As regards exploitation of women and grant of equal rights to them, there are certain international standards to judge the same but there are certain other yardsticks that may be applied only in countries having peculiar values. Virginity, purity and chastity are the most valuable possessions of an Indian girl or woman and they will in no circumstances, part with such precious possessions unless forces to do. In *Rafiq v State of U.P*<sup>1</sup>, the Supreme Court had held that no women of honour will accuse another of rape since she sacrifices what is thereby dearest to her and that rape for a woman is a deathless shame. In *State of*

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<sup>1</sup> *Rafiq v State of U.P.*, (1980) 4 S.C.C.262.

*Maharashtra v. Chandraprakash Kewal Chand Jain*<sup>2</sup>, the Supreme Court has expressed the following view- "An Indian woman attaches maximum importance to her chastity and would not easily be a party to any move which would jeopardize her reputation and lower her in the esteem of others...." To an Indian woman, chastity is so dear that any other feeling, how much so ever violent it may be, cannot override it. In *Pramod Mahto v. State of Bihar*<sup>3</sup>, the Supreme Court had expressed the following view that even if communal feelings run high, it is inconceivable that an unmarried girl and two married women would go to the extent of staking their reputation and future in order to falsely set up a case of rape on them for the sake of communal interest...."

### **IMMORAL TRAFFICKING**

Trafficking in persons is defined as the recruitment, transfer and receipt of persons by means of threat or force for exploitation<sup>4</sup>. It has received worldwide coverage because millions of people are prey to this evil. It not only continues but is rising at an alarming rate because most countries contribute to trafficking either as a place of recruitment, transit or destination of the trafficked individuals. Human trafficking is a crime of crimes and various elements like abduction, kidnapping, grievous hurt form a part of it. Children and young girls are most vulnerable to this evil. Children are regarded as a gift of God and serving them according to many individuals is serving the almighty itself. Isn't such jeopardy against such belief?

### **CHILD TRAFFICKING**

Child trafficking refers to the illicit trade of children across borders of country, continent and also within a country internally for purposes like slavery, commercial sexual exploitation or for other purposes of earning profit like selling organs of their body etc. Children are more prone to trafficking in the recent world especially in the South Asian countries. Recent statistics show that nearly 500-1500 girls and women are trafficked every year from Bangladesh to West Bengal and then to other parts of India and also to middle east via Pakistan<sup>5</sup>. While discussing Child trafficking it is first

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<sup>2</sup> *State of Maharashtra v. Chandraprakash Kewal Chand Jain*, (1990) 1 S.C.C.550.

<sup>3</sup> *Pramod Mahto v. State of Bihar*, (1989)(2) Supp.S.C.672.

<sup>4</sup> United Nations, "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime,"

<http://www.uncjin.org/Documents>.

<sup>5</sup> Ibid.

important to highlight the reasons that contribute to this jeopardy, important among which are mentioned below :-

- Poverty- It is seen that the impoverished families have a tendency to sell their children in order to stabilize their economic condition. As discussed earlier the female sex is more vulnerable to this and it has been seen many a times that they are sold for getting married to older men so that a male heir can be born thereof.
- Lack of Education-The families willing to sell of their child for consideration are usually those who are not educationally sound and are still veiled by the superstitions and age old customs.
- Lucrative job employments-The families because of their poor economic condition are lured by the lucrative job opportunities that are proposed by the traffickers. They hope that sending their child away might help him earn his own living and live a normal life than suffering from plight of poverty.

Trafficking or child trafficking can be better termed as a process, end results of which are sexual abuse, child labour, child marriage, organ trade etc. Child trafficking for forced marriage is a common practice. It is defined as a formal marriage or informal union before the age of 18 years<sup>6</sup>.

### **RELATIONSHIP BETWEEN TRAFFICKING AND MIGRATION**

It is to be borne in mind that trafficking and migration do not mean the same thing. Therefore it can be said trafficking uses the processes of migration. This usage occurs at the structural (conceptual) level as well as the process (operational/action) level of the two phenomena. At the structural level, the migration phenomena involves a shift in physical space from a place of origin to a place of destination and its multiple associative aspects provide the basis and the context for trafficking<sup>7</sup>.

### **DIFFERENT MEANS OF MIGRATION MOVEMENT**

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<sup>6</sup> UNICEF, "Children Child protection from violence, exploitation and abuse" available at [http://www.unicef.org/protection/57929\\_58008.html](http://www.unicef.org/protection/57929_58008.html).

<sup>7</sup>Sunanda Goenka , *Immoral Trafficking of Women and Children for Transnational crime and legal process*,9.

The movement towards a destination may be either internal or external migration movement. Various documents, immigration and border checks influences the nature of the trafficking process. Traffickers may use legal or illegal means of entry and exit<sup>8</sup> :-

- Legal exit but illegal entry occurs when necessary entry visas cannot be obtained from the desired country of destination but the individual obtains the necessary passport which are usually stamped with false visas.
- Illegal exit and illegal entry involves the use of false documents or no documents and usually includes a bribe to the border officials or guards. People can be moved using a combination of land, sea or air transport.

As in order to make a successful trafficking process there is a great likelihood that organised crime networks across borders, smugglers and forgers are involved.

### **FACTORS CONTRIBUTING TO HUMAN TRAFFICKING**

Alison Phinney puts forward the notion of the trafficking triangle which refers to the space created by the demand, supply, and the impunity with which trafficking occurs. According to her , Sex trafficking is driven by a demand for women and the children bodies in the sex industry, fuelled by a supply of women who are denied equal rights and opportunities for education and economic advancement and perpetuated by traffickers who are able to exploit human misfortune near impunity<sup>9</sup>.

The factors which contributes to Human Trafficking are:-

- The feminisation of poverty;
- The breakdown of traditional social and economic structures and the atomization of household members into units of labour;
- Increasing insecurity of food and livelihood for a vast majority of the marginalized population in the region;
- The rapidly growing population need to migrate for work;
- Growth in the feminisation of migration due to women bearing greater economic burden of the household.

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<sup>8</sup>Ibid.

<sup>9</sup> Phinney Alison , *Trafficking of Women and Children for Sexual Exploitation in the Americas*, Washington D.C., 2001.

- Camel racing is one of the most popular traditional sports in the Gulf especially in the United Arab Emirates (UAE) demands light-weight jockeys which is why children are preferred and thus traffickers by taking such opportunities, look for children in vulnerable situations and traffic them to be exploited as jockeys.
- Fake marriages where family members think that their daughters are saved as they are getting married which subsequently become nightmare because in the name of marriage they are actually being trafficked and ultimately get shelter in the brothels<sup>10</sup>.

### **CROSS BORDER TRAFFICKING OF WOMEN AND CHILDREN FROM INDIA TO NEIGHBOURING COUNTRIES AND ITS ROUTE**

There is nothing concerning about the problem of trafficking in Nepal. A plan of action against Trafficking in children was formulated in 1998 to be implemented by the ministry of Women and Social Welfare. Nepal is considered to be least developed countries of the world, lacking insufficient economic capital, infrastructure and developed human resources to forge an independent path of development. Trafficking is an integral offshoot of the need for outmigration in Nepal. Organisations working on trafficking issues estimate that thousands of women and children are trafficked each year out of Nepal into neighbouring countries primarily to India. It is estimated that about 200,000 women and girls from Nepal are working under mostly oppressive conditions in the various red-light areas of Indian cities. The expansion of open border between India and Nepal rendering a readily porous and accessible, as well as migration of Nepalese to India is also due to employment. As employment plays the key mitigating factor in fuelling cross border trafficking in recent years along with deteriorating economic conditions in the countryside of Nepal and chronically it results into low status of women and children. A number of geo-physical, socio-cultural, economic and political factors are responsible for the growth of trafficking in Nepal. One study estimated 12,000 girls less than 18 years being trafficked to India every year<sup>11</sup>. Other estimates of Nepalese women and girls being trafficked to India ranged from 25,000 to 30,000. A woman and girl is sold at 9 prices varying from IRS 25,000 TO IRS 100,000 of the total women and girls trafficked, 90 percent are brought to India and the

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<sup>10</sup> UNICEF, "*Children Child protection from violence, exploitation and abuse*" at pg 13.

<sup>11</sup> K.C. Bal Kumar et al, (2001), *Trafficking- Girls with special reference to prostitution: An assessment*, Geneva ILO/IPEC.



remaining 10 percent to other countries<sup>12</sup>. Similar to Nepal, Bangladesh is mainly a country of origin within the South Asian Profile on trafficking<sup>13</sup>.

### **MIGRATION AND CROSS BORDER OPERATION IN TRAFFICKING**

If 1993 is the year human smuggling crashed into our living rooms with the golden venture fiasco (the name of an ill-fated ship carrying undocumented Chinese from Fujian province) the year 1998 could be viewed as the year that the human smuggling became an "official global problem". The issue was discussed at very high level at different international conferences as well as the great concern regarding this issue was also depicted in a very popular Hollywood movie known as Lethal Weapon 4, which showed "evil snakeheads" and their human cargo from china. The trade in human and migrants is a topic that intersect contemporary anxieties concerning the global political economy, ethics, stratification, multiculturalism, population growth, political corruption, transactional crime, the Internet, human rights and the ability as well as the inability of states and global agencies to control any of these problems effectively.

### **CHILD ABUSE**

According to *Black's Law Dictionary*<sup>14</sup>, Child Abuse can be either intentional or negligent. Child abuse is defined as any form of cruelty to a child's physical, moral or mental well being. It is also used to describe some forms of sexual attack which may or may not amount to rape. According to *David Gil*, child abuse is the intentional, non-accidental use of physical force or intentional, non-accidental acts of omission on the part of a parent or other caretaker interacting with a child in his or her care, aimed at hurting, injuring or destroying that child<sup>15</sup>. The World Health Organisation's *World Report on Violation and Health*, has defined violence against children as the intentional use of physical force or power against oneself, another person or against group or community resulting in injury, death, psychological mal-development or deprivation.

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<sup>12</sup> Rajbhandari, Renu (1993), *Present Status of Nepalese Prostitutes at Bombay*, Kathmandu Women Rehabilitation Centre.

<sup>13</sup>Jonaki, Vol. 1, Sept. 1997, published by Sanlaap, Kolkata, p.21.

<sup>14</sup>Black's Law Dictionary, 5th Edition, 1891.

<sup>15</sup>Gil, David G. *Violence Against Children - Physical Child Abuse in the United States*, Harvard University Press (1st Edn, 1970)

## **CHILD LABOUR**

Child Labour is one of the worst forms of violation of Child rights. Child labour exploits physically, morally, economically and blocks their access to education. A generally valid definition of child labour, i.e. Child in terms of its chronological age and Labour in terms of its nature, quantum and income generation capacity. Child Labour can also be defined as, the segment of the child population which participates in the work either paid or unpaid.

Operation Research Group defines Child Labour as, "a working child is that child who was enumerated during the survey as a child within the five to fifteen years of age bracket and who is at remunerative work, may be paid or unpaid and is busy any hour of the day within or outside the family". Poverty, Illiteracy and other social conditions push children into the labour market. These children are deprived of love, care, protection and healthy development. Instead they are exploited, abused and condemned to live in an uncongenial environment. Child labour are categorised into three depending upon the nature of the jobs:-

- *Self-employed child labour* - A large number of children are employed as self-workers indulging themselves in various activities like rag pickers, street children for whom the streets are the real home.  
However, the Government has added domestic servants, restaurants and dhabas working children in the list of hazardous occupations under the Child Labour (Prohibition and Regulation) Act, 1986<sup>16</sup>.
- *Child labour in Organised Sectors* - Where a large number of children are found working in organized industries such as beedi manufacturing, firework, glass and bangles industry.
- *Child labour in Unorganised Sectors* - A large number of children are engaged in unorganised sectors, for which no official record is available. These are certain jobs which may be considered as non-hazardous for adults but for a child worker they may be hazardous, occupations like working in wayside restaurants (dhabas), newspaper vendors and coolies, child construction workers, child domestic workers.

## **JUDICIAL INTERPRETATION OF SEXUAL HARASSMENT AT WORKPLACE**

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<sup>16</sup> *Government of India ban on Domestic child labour and child labour in the hospitality sectors*, 10th October, 2006, [http://www.unicef.org/india/resources\\_3407.html](http://www.unicef.org/india/resources_3407.html), accessed on 28<sup>th</sup> January, 2015.

In the case of *Vishakha v. State of Rajasthan*<sup>17</sup>, the Supreme Court had dealt with subjects like gender equality and gender bias and had held that sexual harassment was not a fiction and the gender based violence is discrimination and it violates a woman's basic Human Rights. It was for the first time the Supreme Court recognized sexual integrity of women as a basic and fundamental right. The court has also held that in the absence of domestic law to check the evil of sexual harassment of women at workplaces the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality and right to work with human dignity. The court also accepted the suggestion for mandatory complaints, committees at all work places. It will not be out of place to mention here that the trial court had acquitted the rapists giving the following reasons - ".....it is beyond comprehension that those who live in rural culture.... would in this manner commit rape particularly in collusion with someone who is forty years of age and another who is seventy years of age and that too during broad day light in the jungle in the presence of other men. The court is of the opinion that Indian Culture has not fallen to such low depths, that someone who is brought up in it, an innocent, rustic man, will turn into a man of evil conduct who disregards caste and age differences and becomes animal enough to assault a woman...." however the ground story is different as seventy-five percent of the women population is subject to domestic excesses and violence. According to a report of the World Bank, the number of woman having died in domestic and sexual violence is more than the women having lost their lives in cancer, road accidents, war and malaria. However, First National Human Development Report released by Deputy Chairman, Planning Commission, K.C.Pant, states that the women are getting a better deal. Gender equality index moved from 62 percent in 1980 to 67.6 percent in 1990. Himachal Pradesh beat Kerala to top the list and Bihar came last and fell further behind. In India various legislation have been enacted or amended to provide protection to the women. The most recent enactment is the National Commission for Women Act, 1990. It was enacted to establish a National Commission for Women, which was setup in pursuance of this Act. The commission had proposed amendments in various Acts and gave suggestions on certain subjects such as Dowry Prohibition Act 1961, The Code of Prevention of Sati Prevention Act, 1987, The Code of Criminal procedure (Amendment) Bill, 1994, The Hindu Marriage Act, 1955, The Indian Penal Code, 1860, The Child Marriage Restraint Act 1929, Bigamous Marriage -section 198 of the Code of Criminal Procedure, The Indecent Representation of Women (Prohibition) Amendment Bill, 1995, The Constitution (Eighty-first Amendment) Bill, 1996, Custody and Guardianship, Comment on the A.P. Women's Commission Bill, 1996 etc. It also proposed some new

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<sup>17</sup> *Vishakha v. State of Rajasthan*, AIR 1997 SC 3011.



bills for the protection of women against certain social events such as domestic violence, barbarous and beastly cruelty against women, eve teasing, child rape etc. This bill included the Marriage bill 1994, The Domestic Violence to Women (Prevention) Bill, The Orphan and Destitute Children (Adoption) Bill, 1994 etc. Besides, the commission has also been taking up political issues like women in Panchayat Raj, economic empowerment of women, legal issues like violation of women's rights, health issues like female foeticide and infanticide, social issues like domestic violence, status of women, plight of widows and women belonging to scheduled caste and scheduled tribes etc. In order to secure dignified status for women and equality in all walks of life, a Joint Committee of Parliament was constituted on 20th April, 1997. It was named as "Committee of Empowerment of Women". Its main functions were to consider the reports submitted by the National Commission for women and to report on the measures that should be taken by the Union Government for improving the status or conditions of women in respect of matters within the purview of the union government, including the administration of the Union Territories, to examine the measures taken by the Union Government to secure for women equality, status and dignity in all matters to examine the measures taken by the Union Government for comprehensive education and adequate representation of women in Legislative bodies or services and other fields, to report on the working of the welfare programmes for the women; to report on the action taken by the Union Government and Administrations of the Union Territories on the measures proposed by the committee and to examine such other matters as may deem fit to the committee and to examine such other matters as may deem fit to the committee or are specifically referred to it by the house or the speaker and the Rajya Sabha or the Chairman of Rajya Sabha.

### **INDIA'S CONSTITUTIONAL OBLIGATION TO IMPLEMENT INTERNATIONAL TREATY AND INSTRUMENTS**

The Constitution of India provides many provisions for the protection of the women such as Articles 15, 23, 39, 51.

#### **Art. 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth**

Nothing in this article shall prevent the state from making any special provision for women and children and thus it empowers the state to make special provision for women and children.

**Art.23: Prohibition of traffic in human beings and forced labour:** I. Traffic in human beings and beggars and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

II. Nothing in this article shall prevent the state from imposing compulsory service for public purpose and in imposing such service the state shall not make any discrimination on grounds only of religion, race, caste, or class or any of them. In *Raj Bahadur's* case<sup>18</sup>, the Calcutta High Court pointed out that "Traffic in human being" means selling and buying men and women like goods and includes immoral traffic in women and children for immoral or other purposes. Under Part IV of the constitution Article 39(e) and 39(f) identifies that men and women and the tender age of children are not abused and the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength and childhood and youth should be protected from such exploitation and moral and material abandonment respectively and these are some of the principles of policies which should be followed by the state.

**Art. 51A: Fundamental duties:** Part IVA of the constitution of India says that every citizen of India shall renounce practices derogatory to the dignity of women.

**Art. 253 of the Constitution of India deals with the provision of power of parliament to make laws for giving effect to international agreement.**

Thus this article empowers the parliament to make any law for the whole or any part of the territory of India for implementing treaties and international agreements and conventions. In other words, this article enables the Government of India to implement all international obligations and commitments. But laws enacted for the enforcement of treaties will be subject to the constitutional limits, that is, such a law cannot infringe fundamental rights or other rights enshrined in our constitution.

**Art. 39: Certain principles of policy to be followed by the state-**

(e) that the health and strength of worker, men and women and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength: and

(f) That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

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<sup>18</sup> AIR 1953 Cal 522, 57 CWN 507.

## **LAWS COMBATTING CHILD TRAFFICKING**

*The Immoral Traffic (Prevention) Children Act, 1986* Section 3<sup>19</sup>, Section 4<sup>20</sup>, Section 5<sup>21</sup>, Section 6<sup>22</sup>, Section 7<sup>23</sup>, Section 8<sup>24</sup>, Section 9<sup>25</sup> are the various provisions that narrate the different offences that can be caused by trafficking and their various punishments.

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<sup>19</sup> Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than two years and which may extend to three years and also with fine which may extend to ten thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which shall not be less than three years and which may extend to seven years and shall also be liable to fine which may extend to two lakh rupees.

<sup>20</sup> Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of any other person shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both, and where such earnings relate to the prostitution of a child, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years.

<sup>21</sup> Any person who detains any other person, whether with or without his consent (a) in any brothel, or (b) in or upon any premises with intent that such person may have sexual intercourse with a person who is not the spouse of such person, shall be punishable on conviction, with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees.

<sup>22</sup> Any person who carries on prostitution and the person with whom such prostitution is carried on, in any premises: (a) which are within the area or areas, notified under sub-section (3), or (b) which are within a distance of two hundred meters of any place of public religious worship, educational institution, hotel, hospital, nursing home or such other public place of any kind as may be notified in this behalf by the Commissioner of Police or Magistrate in the manner prescribed, shall be punishable with imprisonment for a term which may extend to three months.

<sup>23</sup> Whoever, in any public place or within sight of, and in such manner as to be seen or heard from, any public place, whether from within any building or house or not (a) by words, gestures, wilful exposure of his person (whether by sitting by a window or on the balcony of a building or house or in any other way), or otherwise tempts or endeavours to tempt, or attracts or endeavours to attract the attention of, any person for the purpose of prostitution (b) solicits or molests any person, or loiters or acts in such manner as to cause obstruction or annoyance to persons residing nearby or passing by such public place or to offend against public decency, for the purpose of prostitution shall be punishable on first conviction with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

<sup>24</sup> Whoever, in any public place or within sight of, and in such manner as to be seen or heard from, any public place, whether from within any building or house or not (a) by words, gestures, wilful exposure of his person (whether by sitting by a window or on the balcony of a building or house or in any other way), or otherwise tempts or endeavours to tempt, or attracts or endeavours to attract the attention of, any person for the purpose of prostitution (b) solicits or molests any person, or loiters or acts in such manner as to cause obstruction or annoyance to persons residing nearby or passing by such public place or to offend against public decency, for the purpose of prostitution shall be punishable on first conviction with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

<sup>25</sup> Any person who having the custody, charge or care of or in a position of authority over any person causes or aids or abets the seduction for prostitution of that shall be punishable on conviction with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine.

Regional SAARC Convention To Combat cross- border Trafficking : The aim of this convention is to promote amongst member states to effectively deals with various aspects of prevention, interdiction and suppression of trafficking in women and children<sup>26</sup>

### **LOOPHOLES OF DIFFERENT LAWS MADE FOR THE PROTECTION OF WOMEN AND CHILDREN**

Insufficient or inadequate laws, poor enforcement, ineffective penalties, minimal chances of prosecution, the relatively low risks involved , corruption and complacency, invisibility of the issue, the failure of governments to implement policies and provide adequate services for victims all of them play a role in perpetuating trafficking<sup>27</sup>. With a view to provide protection to the women against certain crimes, social evils, and other socio-economic problems, various social legislations have also been enacted and certain provisions have been incorporated in various acts.

#### **THE INDIAN PENAL CODE, 1860**

- Sec 304-B - DOWRY DEATH
- Sec 354 - ASSAULT OR CRIMINAL FORCE TO WOMAN WITH INTENT TO OUTRAGE HER MODESTY
- Sec 366 - KIDNAPPING, ABDUCTING OR INDUCING WOMAN TO COMPEL HER MARRIAGE
- Sec 366 - A- PROCUREMENT OF MINOR GIRL
- Sec 366 - B- IMPORTATION OF GIRL FROM FOREIGN COUNTRY
- Sec 376 - PUNISHMENT FOR RAPE
- Sec 376-A- INTERCOURSE BY A MAN WITH HIS WIFE DURING SEPERATION
- Sec 376 - B -INTERCOURSE BY PUBLIC SERVANT WITH WOMAN IN HIS CUSTODY
- Sec 376 - C - INTERCOURSE BY SUPERITENDENT OF JAIL, REMAND HOME, ETC
- Sec 376 - D - INTERCOURSE BY ANY MEMBER OF THE MANAGEMENT OR STAFF OF A HOSPITAL WITH ANY WOMAN IN THAT HOSPITAL

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<sup>26</sup> SAARC Eleventh Summit, meeting of the heads of State or Government, Kathmandu, January 4-6, 2002.

<sup>27</sup> Nirmala Niketan, 2003, *Review of Literature for ARTWAC: Maharashtra*, Mumbai: Nirmala Niketan College of Social Work.



- Sec 509 - WORD, GESTURE, OR ACT INTENDED TO INSULT THE MODESTY OF A WOMAN

#### **THE INDIAN EVIDENCE ACT, 1872**

- Sec 113 - A. PRESUMPTION AS TO ABETMENT OF SUICIDE BY A MARRIED WOMAN
- Sec 113 - B. PRESUMPTION AS TO DOWRY DEATH
- Sec 114 - A. PRESUMPTION AS TO ABSENCE OF CONSENT IN CERTAIN PROSECUTION FOR RAPE

#### **THE DOWRY PROHIBITION ACT, 1961**

- Sec 8 - A. BURDEN OF PROOF IN CERTAIN CASES

#### **THE PLANTATION LABOUR ACT, 1951**

- Sec 25. NIGHT WORK FOR WOMEN AND CHILDREN
- Sec 32. SICKNESS AND MATERNITY BENEFITS

#### **THE FOREST ACT, 1948**

- Sec 66. FURTHER RESTRICTIONS ON EMPLOYMENT OF WOMEN

#### **THE BEEDI AND CIGAR WORKERS (CONDITIONS OF EMPLOYMENT) ACT, 1966**

- Sec 24. PROHIBITION OF EMPLOYMENT OF CHILDREN
- Sec 25. PROHIBITION OF EMPLOYMENT OF WOMEN OR YOUNG PERSONS DURING CERTAIN HOURS

#### **THE MOTOR TRANSPORT WORKERS ACT, 1961**

- Sec 21. PROHIBITION OF EMPLOYMENT OF CHILDREN

*PROTECTION TO WOMEN IN THE MATTER OF ARREST ETC* - Despite various covenants and subjects, complaints of custodial violence to women prisoners whilst confined in police lock up or custody, the Supreme Court had to step in and lay down guidelines for ensuring protection and maltreatment of women arrestees. The directions in context, issued in *Sheela Barse v. State of Maharashtra*<sup>28</sup> inter alia, are that female suspects should not be kept in police lock up in which male suspects are detained. Interrogation of females should be carried in presence of female police officials' constables.

**THE CODE OF CRIMINAL PROCEDURE, 1973**- In Chapter XXXI relating to bail it is laid down as follows in the proviso to section 437(1) that, provided that the court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years, or is a woman or is sick or infirm.

### **GOVERNMENT MEASURES TO PROTECT THE RIGHTS OF WOMEN AND CHILDREN**

It is the responsibility of the Government to ensure women and child rights to be respected, protected and fulfilled through policy, laws and practise. Government aims to reduce the violation in the following manner:-

- Creating laws that make Human rights violation illegal.
- Adopting policies and programmes to ensure people have access to their human rights.
- Ensuring that human rights are properly enforced, including providing resources and assistance like access to courts and appropriate punishments for violations.
- Providing education and awareness raising programmes about human rights.

Human rights define the value and worth of each person and their relationship to Government and the society. They identify the standard of living quality life style that each of us can expect to live and enjoy. Human rights are inherent, inalienable and universal but due to some social structures, traditions, stereotypes and attitudes about women and their role in the society, women do not have the opportunity and ability to access and enforce their rights on the same basis as men. Human Rights

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<sup>28</sup> Sheela Barse v. State of Maharashtra, A.I.R.1983, Supreme Court, 378.

exist as a birth right but to make such rights effective they need to be supported by law and able to be used in practise which is possible through many ways , through the United Nation, through the police, our families, our employees, our friends and through us as an individual. Our own awareness towards human rights and support for it is the most important ways to enforce them. Government in order to be accountable need to adopt the following measures:-

- *Implementation of respective law and policy* - Government can work towards eradicating discrimination against women by introducing new laws and providing sanctions for discrimination where required.
- *Working against trafficking and exploitation of prostitution* - Government can ensure appropriate measures to suppress all forms of trafficking of Women and exploitation of prostitution of women.
- *Ensuring the education and training* Government are required to ensure that all education is free from stereotypical concepts of the role of men and women.
- *Ensuring the equal opportunity of employment* - Government in order to ensure that women have equal rights to work, the right to receive equal same pay for work of equal value.
- *Measures to protect the health of the women* - Government should provide equal health services in the field of family planning, during pregnancy etc.
- *Ensuring economic, cultural and recreational life* - Government should ensure that women have equal access to family benefits, forms of financial credits including bank loans and mortgages and same rights as men to participate in recreational , cultural and sports activities.

### **LEGISLATIVE MEASURES FOR CHILD RIGHT PROTECTIONS**

The Indian legislative system has various laws for dealing with the problem of Children. But no law is effectively implemented to protect children from exploitation so the multiplicity of laws is a ban and not a boon. Also as children are not aware of their rights and related laws on their own, it is their elders who can take care for the protection of their rights and whether these laws are properly implemented or not. The Juvenile Justice (Care and Protection of Children)Act,2000 is a very specific law based on a preventive approach to Juvenile Justice but the poor implementation of the laws , lack of support structures, low conviction rates and inadequate resources leads to delay of justice<sup>29</sup>. The legislation has passed various acts for the protection of child rights like:

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<sup>29</sup> Ambika Pandit, Juvenile Languish in Tihar in Breach of Law, 12th December,2011, The Times of India, New Delhi.

The Right of Children to Free and Compulsory Education Act,2009; The Juvenile Justice (Care and Protection of Children) Act,2000; The Commissions for the Protection of Child Rights Act,2005; The Prohibition of Child Marriage Act,2006; The Child Labour (Prohibition and Regulation) Act,1986; Prevention of Offences against the Child Bill,2009; Protection of Children from Sexual Assault Bill,2010; The Medical Termination of Prevention Act,1971; The Pre-conception and Pre-natal Diagnostic Techniques(Prohibition of Sex Selection)Act,2003; Guardianship and Wards Act,1890.

## **PROVISIONS OF INDIAN PENAL CODE,1860 RELATING TO CHILD RIGHTS VIOLATION**

- *CHILD RIGHT VIOLATION BEFORE BIRTH* - It deals with sections like 312<sup>30</sup>, 314<sup>31</sup>,315<sup>32</sup>,316<sup>33</sup>.

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<sup>30</sup> Causing miscarriage.--Whoever voluntarily causes a woman with child to miscarry, shall if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.-A woman who causes herself to miscarry, is within the meaning of this section.

<sup>31</sup> Death caused by act done with intent to cause miscarriage.-- Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; if act done without woman's consent. If act done without woman's consent.--and if the act is done without the consent of the woman, shall be punished either with 2\*[imprisonment for life], or with the punishment above mentioned. Explanation.-It is not essential to this offence that the offender should know that the act is likely to cause death.

<sup>32</sup> Act done with intent to prevent child being born alive or to cause it to die after birth.--Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

<sup>33</sup> Causing death of quick unborn child by act amounting to culpable homicide.--Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.



- *CHILD RIGHT VIOLATION AFTER BIRTH-* It deals with sections like 317<sup>34</sup>, 318<sup>35</sup>, 360<sup>36</sup>, 361<sup>37</sup>, 363<sup>38</sup>, 363-A<sup>39</sup>, 364-A<sup>40</sup>, 365<sup>41</sup>, 366-B<sup>42</sup>, 369<sup>43</sup>, 372<sup>44</sup>, 373<sup>45</sup>, 375<sup>46</sup>, 376<sup>47</sup>.

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<sup>34</sup> Exposure and abandonment of child under twelve years, by parent or person having care of it.--Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.-This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

<sup>35</sup> Concealment of birth by secret disposal of dead body.-- Whoever, by secretly burying or otherwise disposing of the dead body of a child whether such child die before or after or during its birth, intentionally conceals or endeavors to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

<sup>36</sup> Kidnapping from India.--Whoever conveys any person beyond the limits of India without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from India.

<sup>37</sup> Kidnapping from lawful guardianship.--Whoever takes or entices any minor under 2\*[sixteen] years of age if a male, or under 3\*[eighteen] years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

<sup>38</sup> Punishment for kidnapping.--Whoever kidnaps any person from 1\*[India] or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

<sup>39</sup> Kidnapping or maiming a minor for purposes of begging.

<sup>40</sup> Kidnapping for ransom, etc.--Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organization or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death or imprisonment for life, and shall also be liable to fine.

<sup>41</sup> Kidnapping or abducting with intent secretly and wrongfully to confine person.--Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

<sup>42</sup> Importation of girl from foreign country.--Whoever imports into [India] from any country outside India [or from the State of Jammu and Kashmir] any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.] Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.

<sup>43</sup> Kidnapping or abducting child under ten years with intent to steal from its person.--Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any movable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

<sup>44</sup> Selling minor for purposes of prostitution, etc.

<sup>45</sup> Buying minor for purposes of prostitution, etc.

Apart from the this, laws alone cannot give the children their due rights unless the mindset of the society is changed and they understand that the children too are individuals in their own rights. Legislations are just a means and ways towards the betterment but walking on the way to achieve the goal is the implementation of the laws. So government should emphasis on the implementation by improving the implementation procedure. The need of the hour is the effective implementation of the laws and making the children aware about their rights for which there can be awareness lectures in the schools and in the institutions like observation homes, juvenile home etc where the neglected children and the children in conflict with laws are made to stay. Also by giving legal education in the school can be helpful in multifarious ways.

### **CONCLUSION**

The abuse of the children in deferent terms is growing menace in recent days. The problem of Child Sexual Abuse within the society is an epidemic that virtually all children are at risk of abuse. Sexual Abuse of women and children is a situation of abuse of power where older, stronger, and more knowledgeable persons take advantage of children for their own sexual pleasure and is most commonly is perpetrated by someone known to the child or the women. Children are considered to have the purest souls. Trafficking and its results do nothing but pollute them thereby having permanent impact on their minds and sometimes body. The men who are a husband, a brother and a son for some woman turn to be demons for other .They not only tease, insult or hurt women physically but are even successful to shake them from within. India which is called the country of great people has today been the fourth most dangerous place for women to live. They are not safe anywhere with anyone .they are not even safe at their own house. This barbaric and heinous behaviour of men towards women is not a crime which has begun today but has been since centuries. earlier women used to be suppressed by their surroundings but now it is time for them to come out and fight against these devils who have made their life a curse . Although India has got freedom since 66 long years but the freedom of women in this society is yet not visible. They are tortured, humiliated, by inhuman means. This torture against the female society has to be stopped .Men has to understand the value of women in the society and have to respect them and support them in all spheres .If each one takes one step towards protection of women and children than the miserable state of woman can be relieved to

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<sup>46</sup> Rape.

<sup>47</sup> Punishment for Rape.

certain extent. Women is said to be god's secret weapon . There is a famous saying a woman in health are the hope of the nation. The better the position of women in India the faster will be its progress.

Following steps can help the battle against trafficking easier:-

- Funding these illegal operations should be stopped.
- A constant check should be kept at the international borders so as to check such transactions.
- This evil cannot be ousted without the help and cooperation of the government.
- Strict adherence to the legal framework of country can bring a noticeable decrease in trafficking.

