Exploring Possibilities of Preventing Sex Trafficking at the Source

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Abstract--- Sex trafficking has been an issue of debate among academics and activists for long. While the official legal response of the state and one side of this debate remains rescue and rehabilitation with an aim to abolish or prevent exploitation for prostitution, the other side demands legalization or decriminalization with right to sex work. But the resultant action through all this remains more or less restricted to tackling the consequences of sex trafficking at the destination areas. This paper argues that the present day efforts at destination areas have been insufficient at tackling sex trafficking and hence there is a need to focus on the source areas and tackling the root causes of trafficking and preventing sex trafficking. This paper suggests two frameworks for this, namely, human rights framework and crime prevention approaches.

Keywords--- Sex Trafficking, Prevention, Human Rights, Crime Prevention

I. INTRODUCTION

Human trafficking is present all around us. Under the garb of legitimate businesses like placement agencies for supply of domestic workers, escort services as well as illegal establishments like brothels. People are trafficked all over the world for various reasons from sexual exploitation, marriage to forced labour, as child soldiers and camel jockeys. It is one of the gravest forms of human rights violation.

Trafficing is the result of a combination of push factors like inadequate employment, lack of education, lack of employment, poor living conditions, abuse, gender discrimination, natural and man-made calamities, and in some cases religious and cultural practices coupled with pull factors like established migration routes, fewer constraints to travel, globalization and in case of sex trafficking, tourism, demand for girls for marriages among other things [1].

Trafficing can be understood if broken into three parts. This can either be done by breaking down the definition into i) acts of recruiting, harbouring, receipt, transfer etc, ii) means of coercion, deception, abuse of power etc and iii) purpose of exploitation. The other breakdown can be in terms of is source, transit and destination. These source areas are where recruitment happens, the beginning of the transportation or the receipt of persons to traffic. The next is transit or points of convergence of many small routes. These lie between source and destination. The final is destination, where the exploitation takes place. But traffickers can exploit the trafficked even during the journey and this in indeed not uncommon. It is also important to understand that source transit and destination can overlap. This article focuses on sex trafficking, i.e. trafficking for prostitution and sexual exploitation.

While efforts have been made by the government as well as various NGOs to tackle trafficking for sexual exploitation, most of these have been towards rescue and rehabilitation at the destination focusing more on the consequences of trafficking. They overlook the larger socio-economic issues that are at the cause of the problem. Half hearted efforts at rehabilitation result in sending the rescued back to the same situation that compelled them to take the risk to migrate or fall prey to the traffickers in the first place. Implementation of the laws at the destination has not been able to yield expected results of curbing trafficking. Sex worker rights activists also have mainly worked at preventing HIV-AIDS, anti-trafficking of unwilling women and minors and instituting sex work as legitimate labour and rescues of women and girls trafficked into prostitution through self regulatory boards.

India has ratified to the United Nations Convention Against Transnational Organised Crime, 2000 in 2011. Supplementing this is the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000. The Article 9 of this Protocol deals with prevention of trafficking in persons. It requires State Parties to establish comprehensive programmes and other measures to not only prevent trafficking, but also protect victims of trafficking from re-victimization[2]. Immoral Traffic[ing (Prevention) Act, 1956 (Henceforth ITPA) does not address prevention except in some cases through closure of brothels. Contrary to what the name suggests, it leaves out prevention [3], while the Indian Penal Code (Henceforth IPC) only defines trafficking [4].

Mere rescue and repatriation without evaluation and change in the situation at home of the rescued in terms of the family structure and income, education, aspirations, etc will make the person vulnerable to being trafficked once more. This article argues that there is a definite need for comprehensive proactive strategies to target the root causes along with the reactive strategies tackling the consequences of trafficking that we practice as of today.
II. FEMINIST DEBATES

Feminists remain divided on these issues. Radical feminists view prostitution as oppression of women, do not distinguish between trafficking and prostitution, and those who choose prostitution are considered to be suffering from false consciousness, a defence mechanism that makes them deny abuse [5]. They find similarities in emotional dissociation and post traumatic shock experienced by both rape victims and prostitutes [6]. This group supports the abolition of prostitution.

The other group comprises of various ideological positions that support decriminalization of prostitution (with or without varying degrees of state regulation). This comprises of materialist feminists who distinguish between voluntary and forced prostitution, where voluntary prostitution is seen as sex work, similar to a range of low status, marginalised jobs women engage in [5]. This group also shares its ideology with liberal feminists who believe that women are free to work in the sex work industry if they willingly choose to do so. This position is also associated with postmodern feminist politics in the west [7]. “In the context of prostitution, in accordance with the value accorded to heterogeneity, postmodern feminists emphasise the need to accord due recognition to the subjectivity of sex workers. Postmodern feminists argue against the imposition of external moral straitjackets and in favour of attention to sex workers’ own views and understanding of prostitution and trafficking” [5].

III. RESPONSES TO SEX-TRAFFICKING

Depending on the ideology followed, countries and initiatives vary in terms of the laws passed and work done in the field on this issue. There are primarily four legal regimes-complete criminalization, abolitionist or partial decriminalization, complete decriminalization and legalization [8]. Criminalization includes criminalization of all aspects of prostitution by punishing traffickers, managers, pimps, as well as women themselves. Abolition criminalizes all the parties involved- managers, traffickers, customers, pimps but decriminalizes the women. Complete decriminalization decriminalizes the women in prostitution as well as all the third parties. It believes in not having separate laws for sex trafficking and prostitution but trying exploiters under general laws. And finally, legalization involves decriminalization with some regulation like registrations, application of labour laws, zoning and medical examinations.

Abolitionist feminists and anti-prostitution activists promote a model where all third parties are penalized including the buyers of sex and decriminalizes the women. Beyond this Jeffreys [6] also suggests that for the prostitution industry to end women comprehensive exit strategies comprising of providing place of safety, counseling, education, targeted drug and alcohol programmes, skills training and support in gaining employment. Supplementing these efforts should be training of police, judiciary and everyone who come in contact with women who have been prostituted. Finally, she also recommends ‘john school’ for prostitutes (customers). Jeffreys [6] makes an important point about prostitution in nations where women are driven to prostitution because of dire necessity. Here there is a need for job creation and measures to reduce demand.

Indian law with regards to prostitution has followed a tolerationist approach. Post independence India signed the UN Convention for the Suppression of Immoral Traffic in Persons and the Exploitation of the Prostitution of Others, held at New York on 9th May 1950. Then in 1956 a Central Act was passed which was the Suppression of Immoral Traffic in Women and Girls Act, 1956. This Act was amended in 1978 and then in 1986 when there was a change in nomenclature of the Act and since then it has been known as the Immoral Traffic (Prevention) Act, 1956 (ITPA) [3].

The Indian approach that is followed is somewhere in between the regulationists and the abolitionists. Patkar and Patkar [9] believes that it is “born out of political embarrassment influenced by the ‘necessary evil’ or ‘safety valve’ school of thought.” From the Lok Sabha Debates regarding SITA, 1956 (Vol. IX, 1956) it can be understood that the legislators felt that sex between two consenting adults falls under private domain and thus the State has no control over the act even if there is an exchange of money [10]. Recently, section 370 of the Indian Penal Code was amended after the recommendation of the Report of the Committee on Amendments to Criminal Law (The Justice Verma Committee, henceforth JVC) based on evidence of organized nature of the crime of trafficking and the concern over missing women and children. The JVC recommended the definition of trafficking to be adopted from the Trafficking Protocol [11].

(IPC) Section 370 as per the Criminal Law Amendment Act 2013 defines trafficking as,

Whoever, for the purpose of exploitation, (a) recruits, (b) transports, person (c) harbours, (d) transfers, or (e) receives, a person or persons, by

- First- using threats, or
- Secondly- using force, or any other form of coercion, or
- Thirdly- by abduction, or
- Fourthly- by practising fraud, or deception, or
- Fifthly- by abuse of power, or
- Sixthly- by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received. A person involved in any of these acts commits the offence of trafficking.

Explanation 1: The expression “exploitation” shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2: The consent of the victim is immaterial in determination of the offence of trafficking [4].

Policies and actions on the ground in India that originate from these differing positions have concentrated efforts on the destinations of trafficking with little or no attention given to the source areas. Abolitionist activies have concentrated on rescues and rehabilitation of women and girls and prosecution
of traffickers, managers, pimps. This is supplemented by legal assistance for rescued women and children and job training. In contrast sex worker rights activists oppose police excesses, social pressures, discriminatory legal decisions, and on agitating for improved working conditions, benefits and protection of those in sex trade [7]. They have also constituted the ‘Self Regulatory Boards’ so as to prevent sex trafficking.

IV. EXPLORING POSSIBILITIES OF PREVENTION

But ultimately the efforts of both the groups have not yielded expected results. Globally, researchers are urging the attention to be diverted to the issues that are the root causes of trafficking. In India, the present efforts of rescue and rehabilitation at times forcefully remove women who do not want to be rescued. The sorry state of state run shelter homes and rehabilitation programs adds to their misery. Very often women and girls are reintegrated into the same conditions that had initially resulted in them getting trafficked [12]. With no change in these conditions or the lack of efforts at the source to deal with the push factors the women and girls are once again vulnerable to trafficking. Unfortunately sex worker rights advocates have also ignored this area of intervention. There is a dearth of efforts as well as research on the issue of prevention of sex trafficking. While Sen and Nair [1] have highlighted the need to take prompt action on cases of missing children and women among other strategies. There is also a need to explore long term strategies to prevent trafficking. These include addressing the structural inequalities of caste, class or gender that make certain groups vulnerable to trafficking. This article suggests a shift in focus from reactive measures to proactive measures. It suggests equal efforts at tackling the root causes of sex trafficking at the source areas along with the present day efforts at the destination.

Samarasinghe and Burton [13], in a very insightful review of various prevention programs by NGOs recommend for such programs to be sustainable. These programs should be “built on certain key principles, including an adequate gender analysis within a frame work that includes human rights, female empowerment, and development” (pp.62). The gender analysis, they opine is necessary as gender discrimination is at the root causes of sex trafficking.

Another well researched paper by Barbara Limanowska [14] for various UN agencies analyses programs in South East European region. She has carefully analyzed prevention programs in South East European countries under three categories- prevention programs that address root causes of trafficking, programs to raise awareness and reintegration programs. She asserts from her analysis that addressing root causes is the need of the hour (p.67).

While commenting on the anti-trafficking awareness campaigns she found that these are perceived by the general public as anti-migration rather than anti-trafficking. The messages of ending up in prostitution and slavery, according to the author were perceived as simplistic and unrealistic and hence people would not change their plans to migrate even though they were aware of the dangers (p. 21). She instead suggests encouraging safe migration. “There is also agreement that knowledge about trafficking should be one component of human rights, child rights and life skills education for children and should equip them with the necessary knowledge and skills to protect themselves and to understand the dangers of trafficking (p.82)” In line with Smarasinghe and Burton’s [13] suggestion of inclusion of a gender aspect, Limanowska [14] asserts that although it is known that a woman’s position in the family, the labour market and the migration process plays a part in her vulnerability to trafficking, she found that prevention programs hardly this into consideration in the policies (p. 25). She stresses on poverty reduction among vulnerable groups.

V. SUGGESTIONS

I put forward two approaches here. The first one if of addressing the root causes under the human rights framework. This has been put forward by many authors. I briefly discuss them here. I add to this crime prevention which has largely remained unexplored in cases of sex trafficking.

A. Human Rights Framework

To elaborate on what Samarasinghe and Burton [13] suggest in the earlier section, a human rights framework to preventing sex trafficking must “promote the right to be free of violence, the right of movement, the right to health care, the right to education, and the right to development should be woven into any gender-directed approach” (p. 62).

Chuang [15] draws attention to the root causes of trafficking. She criticizes the present approaches for dealing with consequences of trafficking as opposed to the larger socio-economic reasons that are at the root of trafficking. She urges looking at trafficking, not just as a law and order problem to understanding it as a problem of migration, poverty, discrimination and gender-based violence. She advocates progressive realization of socio, economic and cultural rights. She suggests two measures towards making prevention a counter-trafficking strategy. The first is assessment of present day strategies for their long term effects. The second and more relevant for this research is her suggestion of “using human rights law to provide a conceptual framework for addressing the root causes of trafficking” (Id. p. 157). “A human rights framework offers legal and political space for the disenfranchised to begin to claim these needs as rights, and thereby bring the scope of state responsibility into sharper focus.” She suggests linking root causes of trafficking to violations of economic, social and cultural rights. “These include violations of such rights as the right of opportunity to gain a living by work one freely chooses or accepts, the right to just and favourable conditions of work, the right to an adequate standard of living, and the right to education.” She links these rights to the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and its implementation without discrimination (Id. p. 160-162). This Covenant has been acceded by India in 1979. The point she makes is relevant in the Indian context where caste and gender based discrimination prevents people from accessing resources. Right from the Preamble which guarantees social, economic and political justice, various rights in the Indian Constitution guarantee Economic, Social and Cultural Rights. Beginning with the Right to Equality, the Right to Education, Prohibition
of Traffic in Human Beings and Forced Labour, Prohibition of Employment of Children in Factories etc. as well as the Directive Principles and clauses for positive discrimination extending from the Right to Equality would all fall under this broader category.

In the Indian context where poverty and the constraint in choices it creates is one of the root causes of sex trafficking, a suggestion by Limanowska [14], who urges the use of the human rights framework for poverty reduction among the vulnerable groups may be relevant. With an understanding that poverty is sustained because of discrimination and that human rights framework helps address discrimination through principles of equality and non-discrimination, she stresses on a human rights based poverty reduction strategy (p. 83).

B. Crime Prevention

To address the issue of sex trafficking from a crime prevention perspective there needs to be clarity on the causes of it. And also understand which are most relevant.

Most criminological theories have focused on the criminal. Be it Lombroso’s biological positivism, explaining criminals based on their physical features, to the more recent social control theory forwarded by Hirschi that linked social bonds to criminal behaviour [16].

But, a theory oft mentioned around discussions of crime prevention is that of Marcus Felson- Routine Activity Theory. This theory takes into consideration three factors coming together for crime to take place- a motivated offender, a potential target, and the absence of a capable guardianship (crime triangle). A capable guardian can even include any kind of surveillance or other informal forms of social control. This theory links changing crime rates to changes in routine activities [17]. This theory can be relevant in explaining sex-trafficking where traffickers take advantage of the vulnerabilities of a victim which can include the absence of guardians, parents and teachers or other surveillance among other things. Or the increased dependence on women’s work that forces them to migrate. It is known that this also creates situations for traffickers to take advantage of. Sutton et. al. [18] points to feminist criticisms of this theory which include that in cases of family violence it is important for society to change offender motivations rather than the victim’s presence which can be targeted by programs, thus restricting woman’s freedom. But the same authors also comment the theory for taking the focus away from traditional criminal justice responses that only focus on the offender which have only had limited success.

Approaches/Typologies to Crime Prevention

Both Gilling [17] and Sutton et. al. [18] divide interventions into primary, secondary and tertiary. The primary interventions target the general population, secondary target at risk populations (both possible offender and victims) and tertiary target known offenders and victims.

For Sutton et. al. [18], the next level of distinction is between Environmental approaches and Social approaches. Environmental approaches can alternatively be called situational crime prevention and it focuses on manipulation of the physical environment like installation of CCTVs or improving surveillance through neighbourhood watch programs. On the other hand social crime prevention addresses criminal motivations or any program that can affect the behaviour. Social crime prevention focuses mainly on the potential offender through programs like improving education. They can include community development initiatives that can consequently improve community cohesiveness to reduce crime. This can also be linked to Felson’s theory discussed above. These programs can be broad enough to include education, employment policy, housing and health programs, but the primary focus is youth followed by economically marginalized groups [17]. These approaches, thus are very similar to the approaches discussed in this section and also very relevant to preventing sex trafficking. It is also clear that this approach will then include participation of various agencies to achieve its goals. Crime prevention approaches have rarely been linked to prevention of crimes like sex trafficking. It is an area that needs further exploring.

To conclude, when it comes to tackling sex trafficking, preventive interventions have remained largely unexplored. Research and evaluation on the effectiveness of present day awareness campaigns and patrolling is little. An effective strategy needs to be long term, addressing the structural inequalities that make some sections more vulnerable to sex trafficking. Apart from this, especially in the Indian context, there is a need for more research on prevention of human trafficking in general.

REFERENCE


