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# RIGHTS OF REFUGEE CHILDREN-A CRITICAL ANALYSIS

AUTHORED BY - ASHUTOSH TRIPATHI

*“Having control over who touches your body, and how, lies at the core of human dignity and autonomy” – Justice Major, In R. v. Ewanchuk<sup>1</sup>*

Seema, Lakshmi and Chanda are all terror stricken girls, aging between 6-7 years. They were brought to a brothel in Kolkata from Bangladesh and Nepal. They were allowed to leave, not because they were rescued but because they fell into the insidious circle of HIV and with no treatment, they were nonetheless, dying. They are a victim of the vicious circle of peddling human flesh. In fact, perplexity arises when they live life in servitude where all they can hope for, is a safe heaven.

The *Universal Declaration of Human Rights* (‘UDHR’) guarantees every human being, a right to Nationality where there can be no deprivation or denial to change his Nationality.<sup>2</sup> Trouble arose, when the Economic and Social Council (‘ECOSOC’) was tackling the situation of ‘Stateless Persons’ when it clashed with the Refugee Convention of 1951. It was sensed, that special treatment needs to be accorded on Statelessness and owing to the conference of Plenipotentiaries, *The Convention relating to Status of Stateless Persons* was adopted in 1954. Even today, statelessness is a huge problem in South Asia and the situation aggravates when a stateless person falls victim to human trafficking.

If one dates back to the early 1980s, the focus of the United Nations (‘UN’) got channelized towards the surreptitious and insidious practice of human trafficking which had assumed an unparalleled and frightening dimension resulting in grave violation of human rights, especially women and children.<sup>3</sup> It was in 1949, when the *Convention for the Suppression of Traffic in*

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<sup>1</sup> *R v Ewanchuk* (1999) 1 SCR 330 (Can) [28].

<sup>2</sup> Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) Art 15.

<sup>3</sup> Halima E. Warzazi, ‘Exploitation of Labor through Illicit and Clandestine Trafficking’ E/CN.4/Sub.2/1986/6 (UN Publications 1986).

*Person and the Exploitation of Others* paved way to eliminate the ‘white slave trade’. Further, in 2000, the *Palermo Protocol to the United Nations Transnational Organised Crime Convention* (‘UNTOC’) which classified trafficking as an international crime.

Even though there is no limit to the standards of practice when it comes to Nationality of Refugees, yet The Hague Convention of 1930, The 1948 UDHR, The 1954 Convention relating to the Status of Stateless Persons, The 1961 Convention on the Reduction of Statelessness, The 1989 Convention on the Rights of Child fall short, because these poor souls are denied their fundamental rights.

## **REFUGEE CHILDREN: RIGHTS UNKNOWN OR CELEBRATED?**

About 15 years ago, Professor Goodwin-Gill called out a “total realignment of protection’ for child refugees while contemplating *The 1989 Convention on the Rights of the Child* (‘CRC’).<sup>4</sup> Similarly, Professor Jane McAdam applauded Article 3 of the CRC which adds a cushion to the function of the Refugee Convention.<sup>5</sup> The role of International Treaties is crucial as they set norms. The CRC’s major novelty, the ‘Triangle of Rights’ and the ‘Best Interests’ rule is the most comprehensive innovation because even though CRC does not cover refugee children, it restricts discrimination of all forms<sup>6</sup>, grant legal rights to every person below the age of 18<sup>7</sup> and creates a special category of protected children by virtue of Article 3.

CRC also holds utmost power when it comes to Refugee children because even if a State has not ratified the Refugee Convention, but is a party to the CRC, then it may be applied for preliminary protection to Refugee children and for United Nations High Commissioner for Refugees (‘UNHCR’) to advocate its adherence.

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<sup>4</sup> GS Goodwin-Gill, ‘*Who to Protect, How ... and the Future?*’ (1997) 9 IJRL 1, 7.

<sup>5</sup> J McAdam, ‘*Complementary Protection in International Refugee Law*’ (Oxford University Press 2006) 173-174.

<sup>6</sup> UN General Assembly, ‘*Convention on the Rights of the Child*’ (November 1989 United Nations, Treaty Series, vol. 1577) Art. 2.

<sup>7</sup> Ibid, Art. 1.

## COMBATING VULNERABILITY OF REFUGEE CHILDREN TO HUMAN TRAFFICKING: INTERNATIONAL PERSPECTIVE

The office of the United Nations High Commissioner for Human Rights has always given primary consideration to the 'best interests' of the child in case of his parent's deportation, detention or return.<sup>8</sup> This can also be inferred from various reports of the Special Rapporteur on rights of migrants where the efforts of UNHCR are clearly visible when it comes to family reunification.<sup>9</sup> In case, the child does not qualify for the Refugee status, the office calls for an immediate practical assessment in the best interest of the child.<sup>10</sup>

### INDIAN YARDSTICK

Trafficking being prohibited in India<sup>11</sup>, still holds a taboo where due to social stigma<sup>12</sup> and fear of mortification, people remain desensitized.<sup>13</sup> In India, trafficking has been labelled both directly and indirectly in part III over Fundamental Rights and Part IV over Directive Principles of State Policy<sup>14</sup>, however they do not mention 'trafficking', but exploitation which is one of the element of trafficking. The Immoral Traffic Prevention Act, 1956 is the only legislation which concretely addresses trafficking but still confuses with prostitution. Furthermore, with major gaps in prosecution, missing gender sensitivity and no uniform definition of a child, there are many reasons to believe that trafficking in India, is not considered as an organized crime and with a very few ratifications and protocols, there is not much of a belief while advocating trafficking cases.

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<sup>8</sup> Report of the 2012 Day of General Discussion: 'The Rights of all Children in the Context of International Migration' (UNHRC 2013) [72].

<sup>9</sup> Jorge Bustamante, Human Rights Council: 'Report of the Special Rapporteur on the Human Rights of Migrants' UN Doc A/HRC/11/7 (14 May 2009) [57], [123].

<sup>10</sup> UNHCR, 'Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum' (February 1997) [9.2].

<sup>11</sup> Constitution of India 1950 (Indian Constitution) Art. 23.

<sup>12</sup> Verelst A and Ors, 'Mental health of victims of sexual violence in eastern Congo: Associations with daily stressors, stigma and labelling' BMC women's health 2014 14:106.

<sup>13</sup> United States Department of State, 'Trafficking in Persons Report' (June 2010) <<http://www.unhcr.org/refworld/docid/4c1883c52d.html> accessed on 08 March 2018>.

<sup>14</sup> Indian Constitution (n. 11) Art. 39(e) & (f).



## **TRAFFICKING OF PERSONS (PREVENTION, PROTECTION & REHABILITATION) BILL, 2018**

The UNTOC along with its protocols has played a vital role in revising anti-trafficking legislations of many nations. By introducing this bill, Government of India aims to become a global leader to fight human trafficking. However, the future of the bill is unforeseen since its text already confuses human trafficking with migrant smuggling. It is also disconcerting the actual context of global impacts for refugee children and migrants.

### **RESTORING CULTURAL NORMALCY**

The cognitive comfort of refugee children can be assured most effectively by restoring the lost community life. A clear line needs to be drawn between child victim and the trafficker. Refugee children who have been rescued should be given efficient rehabilitation in a safe atmosphere keeping in mind, gender sensitivity. Anti-trafficking trainings must be given with full enthusiasm and effective monitoring along with strengthened community initiatives. While it is visible that Nations have made a little progress towards the fight for child trafficking, following loops need to be filled with utmost priority.

- Ensuring a voluntary return to one's country of origin and not resorting to temporary asylums and resettlements in a third nation.
- Ensuring an optimum degree of fragmentation on the eagerness of the host Government to allow refugee children to resume their own activities, i.e. refugee participation.
- People oriented planning, i.e. understanding demographic profiles of refugee children and regulating the background within which refugees manage their everyday life.
- Communicating traditional dance, music and other forms of art and sports which play an important role in representing culture.
- Renewing and strengthening the practice of rituals and religion.
- Enforcing the gamut of cooperation strategies and avoiding coercive practices.
- Retaining the identity of children by maintaining their own mother tongue.
- Tracing the parents of unaccompanied children to reunify their families.

Psychosocial well-being is of utmost necessity as far as refugee children are concerned and appropriate remedial assistance is needed to ensure full recovery of their poor soul. The transition

from full dependency to no dependency is a slow and a developing phase in their life which calls for high self-esteem, identity and security in order to make them adapt to the society. The after effects of this disruption in their lives can be highly serious and daunting, depriving them from their primary role model, identity and their emotional development. Therefore, it needs to be understood that the effects of this social upheaval caused by their forced movement affects the coherence of their culture and social values need to be kept intact for their very own identity and emotional well-being.

