

The Journey From Darkness To Light: Redefining Social Disability In The Light Of Children Of Sex-Workers And Their Need For Access To Equal Education

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Abstract

In a nation, which undertakes to secure 'socio-economic justice' and 'equality of status and opportunity' to all its citizens, the children of sex-workers suffer from social exclusion which raises obstacles in their path of enjoying their rights and liberties. Though these children do not suffer from 'disability', as the term is generally understood, but they are held captive within the shackles of social disability. While the legal institutions are busy formulating special enactments for the benefit of physically or mentally disabled children, they have failed to address the need for education of these children. Although a socio-beneficial legislation, i.e. the Right of Children to Free and Compulsory Education Act, 2009, makes it mandatory for 'every child' to receive compulsory elementary education, yet the children of the sex-workers do not get to enjoy education facilities despite the fact that their prostitute mothers' are willing to do anything to provide them a better livelihood. These children, being stigmatised from birth, fail to receive education at par with other children and owing to their mothers' profession, the teachers are often prejudiced and biased. More than often, the so-called 'normal' children do not comfortably mingle with these children in schools which lead to irregularity in attendance and some often prefer to drop-out of school. Even if they want to become self-reliant and be financially solvent in order to uplift the status of their disadvantaged families, lack of equal education opportunities and unpreparedness to face the world promote fatalistic expectations that only little can be achieved. The authors make an attempt to justify as to how education can help in mainstreaming such socially disabled children into the society and discuss the responsibilities of schools, the attitude and role of teachers at an interpersonal level. The argument that is developed in the course of the article is that the social stigma attached to these disabled children can be removed easily if the common people make it a point to join hands with the socio-legal institutions in implementing the prevalent laws for the purpose of social inclusion of these children and to achieve the desired goal of social justice.

I. Introduction

"To no one will we sell or deny or delay right or justice" – Magna Carta.

Despite being signatory to numerous international instruments on the rights of the child and having a Constitution that prohibits discrimination and mistreatment on the basis of sex, caste, creed place of birth etc. , as well as an excess of legislations, our nation has failed to satisfactorily protect the fundamental rights of children, particular those of sex workers'. The existing regulations and policies lay their foundation on the notion that sex-work is immoral and consequently, cannot effectively promote the well-being of the children of the sex-workers. These children suffer from social exclusion and face discrimination from the mainstream society or the "common people", mainly due to the stigma attached to the place they reside in and of course, their mothers' profession. The fact that most of these women do not wilfully become a part of this flesh trade can be certainly considered as a reason behind them wanting their children to have

access to their basic liberties and rights. However, where women wilfully indulge into sex-work due to various reasons like poverty, separation from families and the like, it should not lead to their children being treated as social outcasts. Also, these children being stigmatised from birth, fail to receive proper education compared to the other children of the mainstream society owing to the stigma attached to their mothers' profession. Although the Right of Children to Free and Compulsory Education Act, 2000 makes it mandatory for 'every child' to receive compulsory elementary education, yet the children of the sex-workers do not get to enjoy education facilities despite the fact that their prostitute mothers' are willing to do anything to provide them a better livelihood. Even then, it is strongly believed that only education can help in mainstreaming such socially disabled children into the society and help them become self-reliant and be financially solvent in order to uplift the status of their disadvantaged families. The only way to achieve this objective is by sensitizing the people of the mainstream society about the situations of these sex-workers which will automatically lead to the removal of the social stigma attached to these disabled children. Furthermore, if the mainstream society collaborates with the socio-legal institutions in implementing the established laws for the purpose of social inclusion of these children, it will be easier to achieve the desired goal of social justice.

II. Discrimination Faced By the Children of Sex-Workers: The Indian Experience

A. Redefining Social Disability and Discrimination: The children of sex-workers do not suffer from 'disability', as the term is generally understood or as defined under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 but they are held captive within the shackles of social disability. The term "social disability" in common parlance identifies with systemic barriers, negative attitudes and exclusion by society, either purposely or inadvertently, which in simple words means that society is the main contributory factor in disabling people. This kind of disability is caused by the way society is organised, rather than by a person's impairment or difference. If such social barriers are removed, the disadvantaged section of people can be independent and equal in society, with choice and control over their own lives. One direct consequence of such social exclusion faced by the "socially disabled" people is discrimination. The term "discrimination" can be defined as any distinction, exclusion, restriction on the basis of disability which is the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation.

Despite the unprecedented progress at international sphere in augmenting legal protection of every individual against various forms of discrimination, reports from all parts of the world validate the fact that discriminatory acts and practices are anything but a memory from the past. Though the Universal Declaration of Human Rights, proclaims that "all human beings are born free and equal in dignity and rights", the children of sex-workers are not included in the mainstream society so much so that they are always made subject to ridicule, humiliation, repudiation and discrimination owing to the nature of their mothers' profession. This inter-relation between social exclusion and discrimination stems from the negative attitude of the mainstream society towards the disadvantaged section of the people and is likely to continue in the same manner unless they are made aware of the needs and difficulties faced by these people.

B. Importance of Care and Family Support: It is a known fact that childhood should be entitled to special care and assistance, and children should be afforded the necessary protection so that they can fully assume their responsibilities within the community. For harmonious development

of a child, it is essential for the child to grow up in a family environment, in an atmosphere of happiness, love and understanding. The Convention on the Rights of Child, 1989 emphasises on the word "care" and makes it an obligation for the State or family, as the case may be, to provide safeguards and care so that they become fully prepared to live an individual life in the society. The children of sex-workers, whose mothers are often considered as "fallen women" owing to their profession, lack the sort of care and safeguards as prescribed under various international instruments. Primarily, there is a lack of traditional family structure in the so called "red light areas", so much so that the children do not even know their biological fathers. In such a scenario, total responsibility of such children falls on the mothers to provide for all the necessities of life to them. Furthermore, these sex-workers often work throughout the day, leaving their children unguarded and on their own, which makes them even more vulnerable to the dangerous environment of the red light area. These children not only face extraordinary danger but the female children are mostly expected to enter the trade like their mothers while males are expected to help in the flesh trade. The requirement of care and concern is indeed felt by these children thus rendering them vulnerable. However, these children being deprived of a proper family environment ought to be given special protection and assistance by the respective States which thereby demonstrates that "care" is not only the normative aim of childhood but it is also the right of a child to be in care, of either a parent or State. However, in a developing country like India, it is quite visible that the respective institutions have failed to act in the capacity of *parens patriae* by not providing adequate care and protection to these disadvantaged children.

C. Common Problems Faced by the Children of Sex-Workers: While human rights violations are common throughout the country, they are particularly widespread in the lives of people involved in flesh trade and sex work. Discrimination against sex-workers is as much an issue as the discrimination faced by other marginalised group along the line of caste, religion, etc . While sex-work is commonly not treated as work but a filthy and immoral life style threatening to taint the "innocent public", the media on the other hand does not miss a chance to fuel the image of women in prostitution as overly sexual outcast who threaten the very structure of the so-called "traditional family life". The stigma against a woman in sex work is not limited to the woman herself but it also carries down to her children, regardless of their own professions or lifestyles. Apart from the constant worry of being exploited, these women more often than not face the intimidating job of having to raise their children within such an unwholesome and alien environment. Consequently, the children's physical, mental, social, moral and spiritual development gets affected because of the oppressive and dangerous environment where they are being brought up. Often random adult men approach these children, especially girls, seeking sexual favours from them in exchange of money. Furthermore, the brothel keepers have vested interest in maintaining an oppressive structure inside the brothel for the purpose of continuation of flesh trade. As a result of this oppressive structure in the red light areas, these children struggle to meet their basic needs like health services and proper education. As a consequence, the brothel owners and pimps take advantage of this deprivation, commonly using children to pressurise their mothers into providing sexual acts to customers or work extra hours so that the brothel owner can make more money.

These children are also refused proper treatment by various health officials owing to their place of residence or their mothers' profession. Further, it is difficult for the children of sex workers to obtain birth certificates, either because they are born at home due to hostile environment in hospitals, or due to difficulty in establishing paternity in some cases. This endangers the right of sex workers to raise their children, and violates the basic human rights of their children, including their right to education since schools are often hesitant to admit students without proper birth or identification certificates. These children are often subjected to both explicit and grotesque abuse

even within their own community by the clients and brothel keepers and helplessly witness their mothers being trampled, dominated and exploited by clients, pimps, brothel owners, and also the police authorities.

As the children grow older, young girls are sexually abused and forced to step into the filthy world of flesh trade while the boys are either introduced to alcohol and substance abuse and they subsequently become involved in coercing and exploiting girls and women of the area. In spite of all the challenges faced by these children, some children genuinely show great interest in learning vocational activities and pursuing education to come out of such an environment and fight for their own rights and liberties enshrined upon them by the Constitution.

D. Challenges in Achieving the Objective of Access to Equal Education for "All": The children of sex-workers face numerous obstacles in the field of education, such as lack of teachers in schools and non profit organisations, large class sizes, inability to write and difficulties owing to lack of documentation, as a result of frequent migration. Apart from that, there are not enough teachers both in schools and after-school programmes run by these non-profit organisations. Amongst the number of children attending these schools, majority of them perform poorly because the teaching is mostly done in local language which is quite often different from the children's native languages owing to the fact that most of them migrated from different regions of India and do not speak the local language. In addition, there are no standardized test that these children can take to prove their level of education neither there are any remedial classes for these children to learn the language to catch up with their peers in their grade. There are also cases where the child of a sex-worker might be going to a school which is outside the red light area and he/she is the only child in that school hailing from a red-light area so much so that when they disclose their identity they face discrimination because of the stigma associated with the place itself, the place from where they belong. Many a times it also happens that the teachers take these students aside and inquire about their mother's rate which undoubtedly leads to lower self-esteem and a lack of motivation in school. This eventually leads to the children leaving school and engaging themselves in some odd-jobs.

As a result of the high drop-out rates, it becomes difficult for the non-profit organisations to provide efficient services to these children. Since the child has to sit in the same class again and again, it has been observed that he/she eventually loses interest in studies. In addition to high dropout rates, these children also face the issue of school leaving certificates which are hardly issued to them and thereby, it becomes hard for them to secure admission in schools or to appear in any examination. Also, the organisations working in the red light areas constantly face staff shortage due to the organisation's location, stressful work environment and low pay and in due course of time, the workers lose interest in the job. Owing to the lack of trust among mainstream society about the potential of these children, there is a lack of financial resources available as the privileged class does not view these children as being able to succeed in higher education which leads to lack of monetary support or scholarships. Like any other child, even these children need proper education for a better future. To improve their grades, many of them feel the need to enrol in private tutoring classes but cannot afford them. It also cannot be ignored that majority of the mothers are non-literate or neo-literate and therefore have their own limitations in supporting and understanding the demands of their children's schooling. Thereby, these children persistently struggle to fulfil their dreams of equal access to education.

III. Legal Provisions: Loopholes in Existing Laws and Room for Improvement

The Constitution of India explicitly prohibits the discrimination against any citizen on the grounds of religion, race, caste, sex or place of birth so that no citizen is subject to any sort of

disability, restriction or condition on account of such discrimination. Despite such safeguard provided by the Constitution, fundamental rights of the children of sex-workers or the “fallen women”, as categorised by the society, have not been satisfactorily protected. Even though the Constitution directs the State to ensure that the tender age of children are not abused and are also not made to enter avocations unsuited to their strength or age, the children of sex-workers are exploited not only by the brothel owners or pimps but also by the state authorities especially the police force. A major reason behind such a serious crisis is general absence of strong international legal sanctions against these kinds of violations. However, the aforementioned lacuna is nothing in comparison to the failure of the Indian government to protect the rights and liberties of this disadvantaged section. To this one must add the general lethargy that has become endemic to the functioning of the Human Rights Commissions, which in most of the states, do not even function properly in spite of the directions issued by the Apex Court. Despite the existence of a plethora of legislations that seek to prevent human rights violations, the poor implementation of these laws in India and no specific law focussing on the well being of the sex-workers and their children being present, this section of people have been unable to fully enjoy the gains and well being, compared to other groups of people, whether in the form of better education, health or other indicators of freedom and happiness.

The main legislation dealing with people in flesh trade is the Immoral Traffic Prevention Act, 1956 which seeks to prevent trafficking in persons in India and prohibits most outward manifestations of sex work including brothel operation and public soliciting. It also allows for eviction of sex-workers from their residences in the name of “public interest”. While the stated purpose of the said Act is to protect sex workers, it is more than often used against them. The Act does not explicitly prohibit prostitution, but law enforcement officers have incessantly used the provisions to harass prostitutes and also their children. One strategy that has been used by international anti-trafficking groups and Indian law enforcement agencies has been the “rescue and restore” missions. However these programmes which seek to “rescue” trafficked and underage sex-workers are sometimes successful but only at the expense of the sex-worker community.

According to the NHRC, in India alone, there are approximately 5.4 million children of prostitutes and the majority of them live with their mothers in the red light areas. Apart from the above mentioned Act, the Juvenile Justice (Care and Protection of Children) Act, 2015 was enacted also to cater to the needs of the children in need of care and protection. The definition of the term “child in need of care and protection” includes those children also who are likely to be abused or tortured or exploited for the purpose of sexual acts and trafficking, which would possibly mean to include the vulnerable children of the prostitutes. The Act confers responsibility on various Children’s Homes and Open Shelters to cater to the needs of the children in need of special care and protection and take such steps as necessary for their restoration and social re-integration. However, the authorities of these shelter homes or the so called “care-givers” are often unwilling to accommodate the children of sex-workers and at times, these children do not favour the idea of residing in the shelter homes because they are far away from the red light area and hence, their mothers. These children also have a constant fear of being discriminated against by larger society when their identity is revealed. It would be also be pertinent to mention that various organisations which provide night care shelter do not cater to male children above 14 years of age and in such a case, these children are being deprived of the protection they should get, thereby making their situation exceptionally vulnerable and exposing them to their precarious surroundings.

On the contrary, the judiciary has played an important role in protecting this disadvantaged section against discrimination. The judiciary, being the guardian of the fundamental human rights, has never failed to see to it whether existing laws and regulations prohibiting discrimination are

respected in legal practice. In situations where the existing legislations on discrimination were arbitrary or lacked clarity, the judiciary effectively issued guidelines in consonance with the various international instruments in order to safeguard the rights and liberties of the vulnerable people. The Apex Court, on recognizing the rights of the children of sex-workers, held that these children have the equal opportunity, dignity, care, protection and rehabilitation so as to be a part of the mainstream of social life and such children have to be rehabilitated. It also stated that “segregating children of prostitutes by locating separate schools and providing separate hostels would not be in the interest of the children and the society at large”. What is expected of the governmental agencies is to effectively implement the existing laws so that these children can also face the brighter side of their lives.

IV. Need for Equal Access to Educational Opportunities

Equal access to education is important for three reasons; first, education is a right, second, education enhances individual freedom and third, education yields important development benefits. The Universal Declaration of Human Rights, 1948 gives due recognition to “right to education” and provides that “everyone” has the right to education. Similarly, the Convention on the Rights of the Child, 1989 contains provisions promoting the right to education and particularly reiterates many elements of the UNESCO Convention against Discrimination in Education, 1960 including the right to free and compulsory primary education and access “to all”. The terms “everyone” and “all” would mean to include even the sex-workers’ children. Right to equal access to education has been dealt with numerous international instruments so much so that it has come to be treated as a fundamental human right. The right to education on the basis of equal opportunity is so fundamental to the child’s right to education that the drafters of the Convention on the Rights of Child, made all other aspects of education dependent on it. The Convention places a duty on all State parties to recognize the right of the child to education with a view to achieving the right progressively on the basis of equal opportunity. Despite the convention’s approach, the fact remains that equality in education is not universal and international instruments draw States’ attention to specific groups of children who are more likely to be victims of educational discrimination.

The development of any nation depends on its educational system and it has been proved that education is the key to social welfare and positive social change. However, if any section of the population is deprived of this opportunity to receive proper education it will not only affect the individual but will also affect the community as a whole. The sex-workers feel that even though they could never receive educational facilities, their children should not lose the opportunity to study which would eventually enhance their inner strength-intellectual, political, social and economic- thereby helping them conquer all sorts of oppression, exclusion and discrimination.

The Constitution of India guarantees to every child, between six to fourteen years of age, free and compulsory education. Apart from that, the States also have the responsibility of ensuring that all the basic needs of children are met and that their rights are fully protected. However, the children of sex-workers, who usually attend after-school programmes organised by the non-profit organisations, do not receive the quality education which children of similar age belonging to the mainstream society receive. The existing Right of Children to Free and Compulsory Education Act, 2009 promotes “compulsory education” which imposes an obligation on the appropriate government to provide free elementary education and ensure compulsory admission, attendance and completion of education to every child between six to fourteen years of age. It is felt that the since the compulsory education has been made compulsory only till the completion of fourteen years of age, even though the children belonging to the main stream society can still manage to

pursue further education, the children belonging to the red-light areas either drop-out of schools or leave education and are forced to work in atypical environment, thereby rendering all the efforts in vain. In order to make these children get an equal opportunity of education like the ones belonging to the mainstream society, the appropriate authorities should not only frame beneficial policies exclusively for these disadvantaged children and it is believed that if the age limit for compulsory schooling is increased further, these children will have a better chance to prove their mettle and secure financial assistance and scholarships for their future academics. Access to equal education does not only depend on proper implementation of the existing laws but also involves equal participation from the teachers and academicians in order to build a better future for these children.

The teachers should be sensitised and made aware of the situations and needs of the sex-workers, so that instead of discriminating the students belonging to the red-light areas, they can help these children mingle with other students which will eventually lead to an influx of students from these stigmatised areas into common schools. These children will no more hesitate to attend normal schools outside the red-light areas and that would be a real achievement of the objective of "equal access to education". Apart from the afore-mentioned methods, the appropriate government should also make provisions for these children to pursue their studies through Open Education system. The open education or distance learning system not only provides flexibility but is also a learner-centred system which provides the students with opportunity to continue education irrespective of age or occupation. It will be really beneficial for these children if they can continue their higher studies through the open education system and simultaneously work in order to provide their mothers' with a better environment and help them to come out of the shackles of flesh trade.

V. Conclusion

Nelson Mandela and Graca Machel in their "Our promise to the World's Children" have not only mentioned about the rights of the children but also ensured that each child deserves to have the "best possible start in life, to complete a basic education of the highest quality, to be allowed to develop full potential and be provided with the opportunities for meaningful participation" in the community. What can be derived from the afore-mentioned words is that every child should be able to their life with dignity and education is one such means to enable them to face real-life hurdles and participate in all activities of the society. In order to remove the social-stigma attached to the children of sex-workers and change their status from "socially disabled" to "socially able", first and foremost there is a need to sensitise the stakeholders like police officers, educational institutions, government officials, doctors and members of the society about the reality and requirements of sex-workers and their children so that there is an attitudinal change towards these people. An attitudinal change will not only help these socially disabled children to mainstream into the society, but also connect them with the rest of the people at an inter-personal level leading to hope-building amongst these children for a better future.

In addition, it is also believed that if the appropriate governments issue them proper identification documents like ration cards or voter identities, it will be of assistance to these children to secure admission in various educational institutions and open bank accounts along with their mothers', thereby enhancing the chances of securing loans for education or housing. Furthermore, there should be support for the mothers involved in sex-trade, by creating alternative employment opportunities, drop-in-centres, safe protection homes, counselling sessions, and initiating programmes to prevent trafficking in persons in the red light areas so that the stigma is removed from their as well as their children's names. In order to support the

non-profit organisations working for the betterment of the sex-workers, the common people should volunteer as these children and their mothers need a tailor-made support to fulfil their dreams. India is yet to see a revolution which will change the common perception of the image of women involved in sex-trade as “fallen women” to women who struggle and are willing to do anything to provide their children with a better livelihood. The society cannot witness a positive social change unless the common people join hands with the socio-legal institutions to remove the stigma attached with these disadvantaged children. The struggle is going to be difficult, but it isn't impossible as Fidel Castro says, “A revolution is not a bed of roses. A revolution is a struggle between the future and the past.”

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