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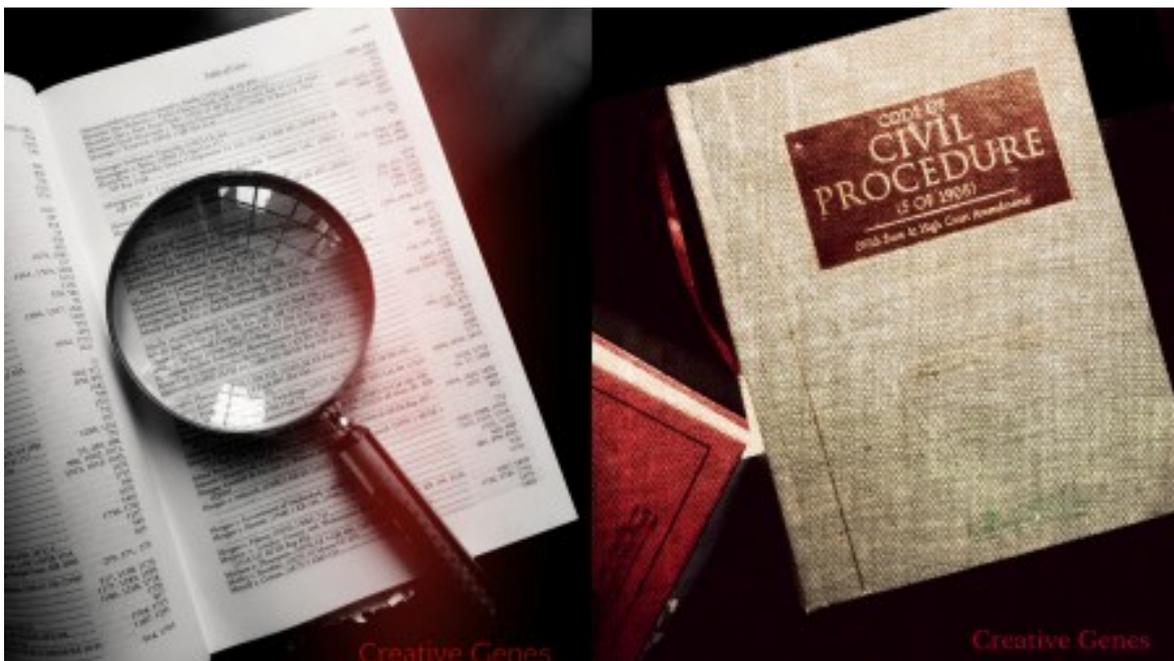


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Aftermath of DLF case: Can the Real Estate Regulation and Development Bill come to rescue of the Consumer ?¹

The construction Industry has evolved over the years and the demands of the all the stakeholders involved have changed. Construction industry is one of the most under regulated sector in the country and various attempts of have been made to bring transparency and save the interests of the different individuals who are part of the sector. The consumer is at the receiving end due to the non-uniformity and arbitrariness of the builders in the industry. The essay throws light on the landmark DLF case in which the consumers have been put in a vulnerable position and the builders have extracted money and gained undue advantage out of the contractual agreement with the Belairs Apartments Association. The research undertaken will focus on the situation prevailing before the case was brought before the commission and analyze the Real Estate Regulation and Development Bill from a consumers perspective and suggest changes that could help the construction industry and the consumers who are at the mercy of the builders due to ignorance. The essay further explains the manner in which the builders are exploiting the consumers in the construction and the need for regulating the sector to provide equal bargaining power for the consumer while entrusting the job of construction to the builders and the developers.

Introduction

India is in the midst of a transition phase in which the construction industry has undergone unimaginable changes. Unfortunately, the phase has been favoring one section of the society, and the consumer's interests have taken a back seat. The emphasis is on the construction, and if one could recall the instances of credibility in the construction by different individuals, then the number of parties approaching the courts and the consumer courts would be comparatively less.

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“I promise you all the basic amenities in the apartments” was the promise that lured the natives of Ahmedabad to invest vast sums of money for their houses. The builder failed to comply with the said terms and conditions in the contract and has flouted the consumer laws. The case was ultimately presented before the redressal forum and forum unraveled the discrepancies in the project and imposed a fine on the builder. The species is just the tip of the iceberg as there are many builders and third parties which violate the consumer law and continue to exploit the consumer community². The nature of misuse of the consumer rights might be different, but the aggrieved party is the consumer only³. Reportedly the target group of the builders and the promoters are the middle and upper middle class who are not aware of the intricacies and the pitfalls involved in the industry and which are used to extract money and return sub-standard or delayed product. Awareness is the key for all the stakeholders in the construction industry and which is one aspect that is lacking and contributing for the consumer to get duped. The builders and several other agents who are a part of the system tend to play on the unawareness factor of the consumer.

The layman may find it hard to decipher the reasons and would almost be impossible to find the roots of few problems. The probable ways in which the consumer is being subjected to exploitation, unfaithful and illegality by the builders and developers in the construction industry are :

Sub-standard work

The Supreme Court of India has stated in of its judgment that any builder or developer using sub-standard material and making false and misleading advertisements or in any manner represents

² Firstpost, (2015). *Real Estate Bill finally gets Cabinet nod: Here's how it will protect home buyers from frauds - Firstpost*. [online] Available at: <http://www.firstpost.com/business/real-estate-bill-finally-gets-cabinet-nod-heres-how-it-will-protect-home-buyers-from-frauds-2188229.html> [Accessed 15 Jul. 2015]

³ The Indian Express, (2015). *Home buyers find safeguards, but industry picks loopholes*. [online] Available at: <http://indianexpress.com/article/india/india-others/home-buyers-find-safeguards-but-industry-picks-loopholes/3/> [Accessed 8 Jul. 2015]

his work or the building then he shall be inviting legal trouble as his actions would be amounting to a strong case of infringement of Consumer and Competition law.

Approvals and Permissions

The developer and builder are required to take close to 17 permissions and approvals from various departments for constructing a building and which may vary depending on the nature of the construction that is going to happen. Government agencies and different bodies that are subsidiaries task is to ensure that the building is built in compliance with the norms of the state and permissions are sought from the water, electrical, disaster management and various other boards. On numerous occasions the regulatory bodies have held that the authorities sell plots without seeking the appropriate approval of the layout plans and due to which the possession is difficult to be transferred to the new owner of the land. The action of the builders falls under the ambit of deficiency of services.

In case of illegally acquired land

Land grabbing or wrongful possession is another major challenge for the developers and the builders. The consumers will be at the receiving end if the developers are not diligent enough to inquire into the genuinity and the legal standing of the land that has been chosen to construct the building. The allottees have the luxury to approach the consumer court to resolve the matter or by way of seeking remedy at the Civil Court⁴. The general remedy for such is to seek compensation or ask for an alternate accommodation from the builder. In this regard, the Apex Court has held that the advertisements promising or inviting applications for the allotment of land or house without a legal title will be treated as unfair, deceptive on the part of the builders.

⁴ The Indian Express, (2015). *Home buyers find safeguards, but industry picks loopholes*. [online] Available at: <http://indianexpress.com/article/india/india-others/home-buyers-find-safeguards-but-industry-picks-loopholes/3/> [Accessed 15 Jul. 2015]

Booking frauds

The construction industry is at the center of globalization, and people have become conscious of having a luxury house or apartments. The builders and developers allow residences by way of a draw due to numerous applicants even prior to the construction of the complexes or apartments. The builders are required to proceed with the construction with whatever resources available with the allottees at the point of time. There are cases in which the developer insists on the need material for the construction but denying the opportunity without a proper cause shall invite legal trouble. The court has stated that nine months to a year can be considered as a reasonable period to return the application fees without any interest. But, if it has been proved that the delay in returning the application fees by the authorities then the refund shall include the interest for the unreasonable period.

Uninformed changes in the layouts and the land of the allottees

If the builder plans to construct additional buildings and has not been informed to the allottee or was not a part of the purchase agreement that was entered into at the time of execution. If found to make any changes without the knowledge of the consent of the allottees then he can issue a legal notice in the regard and if he fails to explain within the prescribed time then he can move the consumer court or approach the civil court .

Delay in the delivering the possession of the building or property

Delay in the delivery of possession is one of the main causes of concern that has been plaguing the construction industry and has been on the rise. The builders tend to make tall promises and the allottees hoping that they would be moving to a new house in the date or the time mentioned by the builder make the payment. Unfortunately, delivery of the possession more often than not takes more than the stipulated time⁵. The court has taken cognizance of the situation in various matters in connection to deliver and has distinctive between a reasonable delay and in ardent delay in the delivery of the possession, which means if the builder has a genuine reason and

⁵ Planningcommission.gov.in, (2015). [online] Available at:
http://planningcommission.gov.in/aboutus/committee/wrkgrp12/pp/wg_cp2.pdf [Accessed 1 Jul. 2015]

caused delay then the court may accept and relieve the builder. In case of unreasonable delay then the court will consider the act as “deficiency of services” and impose fine or compensate the allottees including the interest if there is injustice on the part of the builder.

Issuance of completion certificate

The builder should be in possession of the completion certificate that validates the state of the building and he or the allottee can approach the concerned authority and procure the certificate by way of Right to Information application with the SPIO of the local municipality and the No-objection certificate approving that the building is in the right condition. Later, if the builder does not provide the same to the allottees, then he has the option of moving the consumer court or the civil court.

Hidden charges

The builders or the developers have in the past included charges that are not accounted for. Therefore, there is a need for the customers to be diligent in costings as there is a possibility of the developers burdening them with an unnecessary amount that are not required to be paid. In such a scenario, the consumer can approach the civil or the consumer court for the relief. The consumer can also approach the Competition Commission of India if he can prove that the builder has abused his dominant position and benefitted, imposed exorbitant hidden charges.

There is enough scope for regulation in the industry considering the increased number of daily transactions that take place between the builder and the consumer. The job is only half done if one could identify the biggest problems that are hindering the growth of industry and putting the consumer in a position of disadvantage. The probable remedies that should help the consumer for the better and tackle the situation for the better-using the law as it as a useful tool. Keeping in mind the nature of disputes in the industry there are different remedies and recourses for the consumer. In case of delivering sub- standard quality product the consumer can approach the consumer court or the civil court for deficiency of services and also seek compensation for not fulfilling the contract. If the necessary approvals or the permissions for the construction are not

taken then, the recourse would again be the consumer court under the Consumer Protection Act, 1986 for deficiency of services⁶.

Additionally, the following provisions of the Consumer Protection Act, 1986 are the recourse for the consumers at different stages of the construction. The majority of their claims will be brought under Section 2 under Unfair Trade Practices, deficiency of services and defect of goods. The consumers can seek relief and approach the consumer forum or the civil court under the above-mentioned heads of the Consumer Protection Act, 1986⁷.

The Supreme Court has banned the construction activity within the 5 kilometers radius of the Badkhlal lake because the complainants plot comes within the said rules and recommendations of the apex court and the commission directed the builder to reimburse the amount inclusive of interest confirming that they were entitled to compensation.

One of such cases which caused mayhem in the construction Industry was Belair Association 's DLF Private Limited in which the builders misused the dominant position and framed the contract in a way that infringes the rights of the consumers. In the Landmark case, the contractual agreement between the one of top players in the Industry, DLF Private Limited (“DLF”) and Belair Association. The agreement was entered into was for the construction of a multi- storied residential complex in DLF City, Phase V, Gurgaon, Haryana. As per the agreement, the complex included five buildings that had 19 floors each with a total of 368 apartments and handed over in a span of 36 months from the date of entering into the agreement. But, DLF has breached by constructing 29 floors instead of the agreed 19 floors that resulted in the delay of transferring the possession of the apartments to the buyers. The non-obedience to the terms of the contract has led to financial losses and escalations in the amount that was agreed at the beginning of the contract. The total amount paid by the apartment allottees comprises of the ownership rights over the apartments and also the prorate ownership rights of land beneath the building rights as well as pro- rata ownership right of common areas and facilities.

⁶ West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993.

⁷ Planningcommission.gov.in, (2015). [online] Available at:
http://planningcommission.gov.in/plans/planrel/fiveyr/10th/volume2/v2_ch7_6.pdf [Accessed 15 Jul. 2015]

The apartment's allottees aggrieved by the acts of DLF approached the Competition Commission of India. The case was filed against DLF and Haryana Urban Development Authority (HUDA) and the Department of Town and Country Planning (DTCP), State of Haryana.

The allegations leveled against DLF, and HUDA and DTCP were that the parties have abused the dominant position and had conditions that are one-sided, highly arbitrary, unfair and impressed upon them allottees of the apartments. This had a lasting impact on the rights of the consumers and did very little vest their confidence in the builders and their conduct. A major allegation leveled by the allottees was that government authorities who are expected to take control of the situation had acted in an unruly, illegal and irrational manner as they had allotted land and extended licenses, permissions and clearances violating not only the consumer laws but other statutes as well.

The Competition Commission of India has observed that DLF has misused the dominant position in the case is a violation of section 4 of the Competition Act. The section says abusive of dominant position has occurred in the case. A situation can be termed as abuse of dominant position under the following circumstances going by the 4(2) of the Act:

1. An entity or enterprise imposes unfair or discriminatory conditions or prices in the purchase or sale of goods or provision of services
2. Limits or restricts production of goods or provision of services or technical, scientific development
3. Denies market access to other competitions
4. Uses its dominant position in one relevant market to enter into or protect the other relevant market.

The CCI has termed the agreement and the deal as "blatantly unfair" and a closer look at the agreement between the complainants i.e. Belairs Association and DLF showcases the

arbitrariness and suppression and unfair advantage of the consumers. The following are the terms that have pointed out and found to be favoring DLF only:

- The builder can make unilateral changes without the buyers' consent
- Builder has the right to change the layout plan without buyer consent
- Building can unilaterally change inter se areas for different uses like residential, commercial, etc., without informing anyone
- Preferential location charges are paid for upfront, but if you do not get the location you ask for, you only get a refund/adjustment amount at the time of last installment, and that too without interest
- The builder enjoys unilateral right to increase/decrease super area at his sole discretion without consulting allottees, who nevertheless are bound to pay additional amounts or accept a reduction in the area⁸
- The builder will decide the proportion of land you get as your share
- The builder continues to enjoy full rights on the community buildings, sites, recreational and sporting activities, including maintenance, with you having no rights in this regard
- Builder has sole discretion to link one project to other projects, with consequent impact on ambiance and quality of living, with buyers having no right to object
- You are liable to pay external development charges, without these being disclosed in advance and even if these are enhanced
- The builder has total discretion regarding arrangement for power supply and rates levied for the same
- In many situations, the buyer forfeits the amounts paid

⁸ Epw.in, (2015). [online] Available at:
http://www.epw.in/system/files/pdf/2014_49/25/Legislation_for_the_Real_Estate_Sector.pdf [Accessed 4 Jul. 2015]

- Allottees have no exit option except when builder fails to deliver possession within the agreed time, but even in this case they get refunds without interest, and that too only after the apartment is sold
- The builder's exit clause gives him full discretion, including the right to abandon the project, without any penalty
- The builder has the sole authority to make additions/alterations in the buildings, with all the benefits flowing to the builder, and not the apartment owners
- Third party rights can be created without your consent, to the detriment of your interest.

According to the deal, each flat price was 1 to 3 crores and out of which 33% of the total amount has been paid to DLF before the completion of the construction. After the complaint was filed at the CCI an investigation was ordered by the Director General and who after investigation has concluded that DLF is the leader of the market has framed the agreement in way that protects their interests and flouts the consumer's protection. The report has put forward not only the arbitrariness and the misuse of the power by DLF alone it just mirrored the situation across the country and DLF is just a one out of the millions of the individuals and companies that resort to injury of the consumer security⁹.

The investigative report further mentioned that DLF, which is considered to be the Giants in the huge industry. The DG says, "There is a huge housing shortage and buyers cannot influence the business decisions of DLF since residential units are in shortage. The consumers are dependent on DLF in Gurgaon because of its huge land reserves and projects under construction. The demand is huge while the supply is less¹⁰. Thus, there is no case of countervailing buyer power in this case that has any sobering impact on the dominance and market power of DLF."

The CCI has found few of the clauses specifically violating the consumer law and they include:

¹⁰ Epw.in, (2015). [online] Available at:
http://www.epw.in/system/files/pdf/2014_49/25/Legislation_for_the_Real_Estate_Sector.pdf [Accessed 15 Jul. 2015]

- They (builders) issue advertisements for launching projects without the land being purchased, registered in their names and possession taken and without taking prior approval of competent authorities.
- Builders don't specify the total area of the plot/flat/house, indicating clearly the carpet area and utility area.
- They don't specify the date of delivery and consequential remedies available to the consumer in case of delay.
- They don't deposit the amounts collected from allottees against a particular project in a designated escrow account that will be utilized only for the construction of the concerned building.
- They don't inform buyers about the progress of works and status of account of each allottee in a transparent manner.
- They don't inform buyers of built-in hidden costs other than the initial set price.
- They don't post all the relevant information on the internet and make them available in the public domain. There is no transparent and participatory mechanism put in place to deal with price escalations if any.
- In cases of inordinate delays, there is no provision for the payment of pre-determined penalties to buyers.

The report has proved beyond doubt that it was a case in which DLF has compromised on the rule of law and resorted to abuse of dominant position. The CCI has imposed a fine of Rs 650 crores, and DLF challenged the decision in the apex court. The court deciding the case on merits has agreed with the verdict given by CCI and ordered DLF to pay the sum mentioned by CCI for proven misconduct and wrongdoing.

In the wake of the numerous cases reaching the consumer forums and courts across the length and breadth of the country. The Government made steps towards formulating a law for the welfare of the various stakeholders involved in the industry and more specifically to secure the

interests of the consumers who are at loss more than anyone else in the whole system. This has led to the introduction of the Real Estate Regulation and Development Bill, 2014¹¹. The industry is a combination of a sale, purchase, and development of land residential, commercial or any other usage. There are so many aspects that are to be dealt by different departments and agencies of the government. The real estate projects are a state subject, and they are under the control of the respective states town and urban planning department. There are acts in place like the Apartment Ownership Act, which regulate one individual in control of too many apartments. Similarly, the regulating bodies have thrown light on the lack of regulating authority or law in about real estate in which the consumer has become a vulnerable party. In 2012, there was a recommendation that there should be more transparency in the real estate sector so that the average person will be aware of the current status and the happenings of his or any other project. Additionally, it got into the picture a new machinery to resolve the disputes of the field. This idea resulted in the enactment of the bill in the year by the Ministry of Housing and Urban Poverty Alleviation¹². The primary motive of the Real Estate Regulation and Development Bill, 2013 is to regulate contractual agreements between the buyers and sellers in the real estate space and thereby ensuring consumer protection and standardization of business practices. The highlight being the institution of regulatory authorities in every state of the country to register real estate projects.

A closer examination of the bill unravels interesting provisions that could change the dynamics of the industry, and few of them are:

- The establishment of the state-level regulatory bodies known as the Real Estate Regulatory Authorities (RERAs)

¹¹ Prsindia.org, (2015). [online] Available at: <http://www.prsindia.org/administrator/uploads/media/Real%20Estate/Real%20Estate%20-%20Legislative%20Brief.pdf> [Accessed 6 Jul. 2015]

¹² Firstpost, (2015). *Real Estate Bill finally gets Cabinet nod: Here's how it will protect home buyers from frauds - Firstpost*. [online] Available at: <http://www.firstpost.com/business/real-estate-bill-finally-gets-cabinet-nod-heres-how-it-will-protect-home-buyers-from-frauds-2188229.html> [Accessed 11 Jul. 2015]

- All the real estate projects excluding few are to be registered with RERAs to promote transparency and combat any wrongdoing. Promoters are prohibited from booking or offering the projects for sale without registration.
- Post completion of the registration procedure the promoter has to upload the data of all the projects on the web based platform of RERA. The information or data will be inclusive of the site and layout plan and the schedule for the completion of the project.
- The bill also envisages that 70% of the amount paid by the consumer should be used for the purpose of the construction or the project undertaken.
- Establishment of Real Estate Appellate Tribunal for resolving the disputes. If people are not satisfied decision rendered by the REARs, then they can go for an appeal to the Tribunal.

Moreover, the Bill deals with the duties and the conduct of the buyer and the promoter who are vital to any real estate project. In case of default on the part of the promoter, the bill has fixed a 10% out of the total sum of the project as penalty¹³. The agent and the promoter should act with utmost faith and justice as they are checks and balances at every level. The bill if presented with minor changes in the following regard will be able to help the consumer community in a bigger way:

Modernization of the allotting titles:

The planning commission has found that there are numerous, unclear land titles and lack of transparency in the real estate transactions¹⁴. Therefore, the bill needs to incorporate provisos

¹³ Prsindia.org, (2015). [online] Available at:
<http://www.prsindia.org/administrator/uploads/media/Real%20Estate/Real%20Estate%20-%20Legislative%20Brief.pdf> [Accessed 15 Jul. 2015].

¹⁴ HelplineLaw.com, (2015). *Remedies Against Unfair Practices Of Builders And Real Estate Developers | RBRE | Real Estate Wills Probate And Trust - helplineLaw.com*. [online] Available at: <http://www.helplineLaw.com/real-estate-wills-probate-and-trust/RBRE/remedies-against-unfair-practices-of-builders-and-real-estate-developers.html> [Accessed 2 Jul. 2015]
Sen, K. (2015). *Real estate Bill: Will it create consumer comfort?*. [online] Business-standard.com. Available at: http://www.business-standard.com/article/opinion/real-estate-bill-will-it-create-consumer-comfort-113033100293_1.html [Accessed 11 Jul. 2015]

that will talk about the modernization of saving or allocating titles in order minimize the disputes with over the ownership of a land or building.

Lengthy procedure for approvals and permissions

The present system of real estate approvals is infamous for being a lengthy and complex one. The bill failed to focus on this particular aspect of the sector, and the shorter and simpler will reduce the chances of wrongdoing and looting of the consumers.

On the whole, the bill has delivered the right kind of legal framework that is needed for the consumer of the country. The problems stated above have been posing to be barriers to the growth of the industry and made the consumers more vulnerable. The provisions of the bill have given special emphasis to the problems that like hidden charges, non- issuance of completion of certificate and provided for implementable solutions in such scenarios¹⁵.

Conclusion

In the present scenario, a construction project to get underway needs to be approved by numerous departments starting from state and central agencies to the ministries. In any business, the longer period the raw material is stored the higher is the price of the product and also increases the overall cost of the product. If we apply the same methodology to the real estate sector taking land as the raw material for the construction. As the day pass by the developer may accept receipts by way of sale of proposed apartments and automatically the overall cost of the project rises.

In such a case, the not only the cost of buying or acquisition but even the holding of the land for a project increases much folds. The builders have additional costs like developmental and license

¹⁵ Ibef.org, (2015). *Real Estate Industry in India, Market, Sector, Report, Indian, IBEF*. [online] Available at: <http://www.ibef.org/industry/real-estate-india.aspx> [Accessed 13 Jul. 2015]

costs. As per a recent report, the cost of the production has increased as much as 50% and this could only worsen the situation in the country. On the other hand, few developers intentionally adopt a slow mode to complete the construction so that the price escalates and the consumer ends up more than the agreed amount at the beginning of the project. The major aspect which the lawmakers and the regulatory authorities have not focused on is the diversion of the funds earned by way of advance amount from the consumer have been diverted to another project in a different region altogether or may have been returned for to clear the at debts.

Irrespective of the nature of the cause that is contributing to the sub-standard work or delay in the delivery of the product. The consumers have been approaching the courts and the consumer forums for justice, but there are more customers who are withdrawing even after deficiency of services, gross injustice and irregularity in the project.

The Real Estate Regulation and Development Bill has the substance that can develop and bring the necessary changes in the industry. The bill if receives the consent of the lawmakers can revamp the dispute resolution and empower the consumer by updating him on the happenings and the developments of the project undertaken on the web based platform. But, the bill fails to establish a link with the present consumer redressal forums. On the other hand, the consumers should be diligent enough and make themselves aware of their rights as consumers and the ways in which they can get their projects done with the best of the developers and builders¹⁶. The consumer needs to take legal help to review the property documents and agreements to avoid further complications. In the years to come there would be more cases in underregulated construction sector but if the consumers are aware and a stringent legal framework is brought in regulated then it would create a level playing field wherein the consumer and builder work towards building the future of India.

¹⁶ Firstpost, (2015). *Real Estate Bill finally gets Cabinet nod: Here's how it will protect home buyers from frauds - Firstpost*. [online] Available at: <http://www.firstpost.com/business/real-estate-bill-finally-gets-cabinet-nod-heres-how-it-will-protect-home-buyers-from-frauds-2188229.html> [Accessed 9 Jul. 2015]

Equality and Quality of Higher Education in India: Problems and Perspectives¹⁷

Abstract: When we are talking about the Right to Education and cent. percent enrolment in primary level education and sab padhen sab badhen in India, just reaching little more than 20 percent enrolment in higher education, is that enough? Yes India stands on third position in this regard to get enrolled in higher education, after United States and China. Is that enough or we must target to reach on the top? And if the ultimate focus is on higher education, on equality or quality? Which one must be prioritised in present scenario of a developing country? Those questions has been raised in this article with the possible arguments and hurdles in access to education, especially for the least advantaged, 'excluded among excludes', with some positive outcomes.

Since you open the job-searching page of a newspaper, most of the time you must have seen the advertisement for ad-hoc and contractual lectures in under graduate colleges and University level. The simple question even raises in counter to this even into the mind of a lay man, as in their block (taluk), only one or two colleges are there, cannot a few seats be fulfilled? Do not the government have money to spend for this? S/he must think about the future of his/her children to whom s/he will not able to send for a cost-effective technical college or residential urban college. It is not about the fulfilling of seats, but that is the situation and quality of higher education in India presently. Though the situation of higher education in India is not in a worst place; in third after United States and China, still some lacunas if may take care will lead India into the better place.

India was having a great name in past with the best established universities like Nalanda Takshashila, Ujjain, and present situation of higher education is something low we can guess from the initial discussion of the present paper. Not even a single university have been got placed in QS-top twenty worlds ranking from India where US have 13 and then five universities from

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UK in 2014 ranking (Reddy and Aryasri, 2014). The 2015 ranking also more horrible for India, where top ten seats got reserved by US universities and five by UK under top-20 place. Other five seats got placed by Eth Zurich (Swiss Federal Institute of Technology) and Ecole Polytechnique Federal de Lausanne (EPFL) from Switzerland, National University of Singapore and Nanyang Technological University (NTU) from Singapore and Australia National University (ANU) also got placed within it with more than 90.0 score. And even the old established better universities lost their capability on study and research in India where IITs and newly established Institutes playing a somehow better role. Among them Indian Institute of Technology, Delhi and Indian Institute of Science, Bangalore are bitterly presented by QS-2015. The University of Delhi was better placed by the UGC got 191th rank in Social Sciences and Management and 176th on Arts and Humanities table under the QS World University Ranking also (TOI, 24/09/2015; 10). The gross enrolment ratio in higher education till yet is just nearly 21.1 per cent (2012-13) (GOI, 2014-15; 85). Even NAAC accreditation on 2011 was only 167 out of 625 universities and 4,529 out of 33,000 colleges also presents about the quality of higher education in India as all sought about quality of education (Powar, 2013; 362). Where we dreamt of 100 per cent literacy and enrolment in primary level education, why do our dreams become deem for dreaming about higher education? The contradiction of implementing policies of equality or quality; which is more important and the lacunas and issues in higher education in India the paper deals with.

Equality: The Concept

Equality is an ambiguous term, may not be possible in a simple manner. Though the Preamble of the Constitution of India declares about prevailing equality, since it has been not achieved yet, neither even in access to education. John Rawls (A Theory of Justice) discusses about equality as a fair deal with due respect. Callinicos (2000: 42-43) discussed about equality as

“Nevertheless, the goal of welfare-maximization does not require an equal distribution of income or wealth. If, on some highly unequal distribution, the satisfaction of the rich so out- weights the dissatisfaction of the poor that the sum of satisfied preferences is greater than that produced by

any other, more egalitarian distribution, then utilitarians would have no reason to reject that state of affairs”.

Where John Rawls emphasised on basic rights and liberties in his first principle on justice, the second principle discusses about the socio-economic inequalities, to be arranged on the greatest benefit of the least advantaged with, public offices and positions open to all under conditions of fair equality of opportunity. Even Robert Nozick emphasised on individual freedom and Amartya Sen's two concepts of 'Why equality?' and 'Equality of what?' also raises the basic question of the least advantaged. Those upper layers from lower ladder should be addressed in each and every implementation.

Equality and Quality

Before discussing about equality the Indian policies directly shifting to quality concern on higher education. Where Balakrishnan (2007) and Chattopadhyay (2009) has been importance on equity and excellence to stand hand to hand, it is necessary to importance more on equity, excellence comes from it in a welfare and democratic manner. If we will treat equals equally and un-equals unequally with special treatment, the equality may prevail in a positive manner with the development for all in a line-manner. Equality and quality are two broad concepts like two straight lines cannot walk together, but in different direction from each. If we will focus on quality, must have to take only the best among best performers. If we want to focus to increase the quality, before that we must take care about the equality among all. Before treating equally all, concerning the quality is vague. Yes we cannot make all equal, because they all vary by their characteristics (physically or mentally) from one to another, but what we can do is treating equally with special provision. Equality is a group manner makes more developed of the country in a commercial manner. The education would provide its constituents the highest equal chances for attaining excellence (Balakrishnan, 2007).

Higher Education Scenario in India: Problems and Perspectives Higher education always should be treated highly as it is the best way to gain FDI and of course can create a prominent plot in an international market. The revised National Policy on Education (1986) came on 1992 states that

Higher Education and especially the Technical Education must be prioritised on merit, not in any other criteria on birth (GOI, 2014-15).

The recent article of Sukhadeo Thorat (2015) in *The Hindu* expresses about the hurdles in access to higher education as the low rates of enrolment, unequal access, infrastructure problem and the decrease of the relevance of higher education. There are other factors also responsible like lack of efficient teachers (Reddy and Aryasri, 2014), family problem with parents decision, poverty, gender disparity, household works, distance of the school, infrastructure and other relative issues (Kumar and Mohanty, 2014), politicisation of education, bureaucratic interference, conservative social norms, lack of public participation etc. They are also explained about the present situation of higher education in India, with low level of intakes in colleges and universities that are being fulfilled with so many calls, and still seats are vacate for the whole academic year. Mostly the reserved seats for weaker sections are not getting fulfilled. Other issues may be the insecurity of job in non-technical higher education along with long-term courses. Unequal access with insufficient institutions and too weak infrastructure in most of the higher education institutes. Mostly the academicians should influence the policies on their specialised fields. Before implementing policies, the panels, conferences, group discussions should be there with practical knowledge based eminent persons, for whom the welfare policy is being implemented (Powar, 2013; 358). The loosening of the bondages of administrative and academic structures of universities or colleges to develop on its own, programmes that promote the growth of quality (like the Special Assistance Programme for University Department) need to be strengthened, financial assistance must be based on assessment of performance, and the assessment needs to be more vigorous than made by „visiting committees“ or „evaluation committees“, analysis of past performance and potential must be done using performance indicators identified on the basis of their applicability to Indian conditions (Ibid, 1995; 43).

Globalise teaching and research programmes, contact inter and foreign universities (Ibid; 44), building capabilities as far as curricular and pedagogical practices, and student-faculty exchanges of knowledge will be established in allowing foreign universities to establish their campus here (Thorat, 2015). But instead of focusing more on economic benefit, the institutions should do

coop with Indian culture, tradition, belief and should come with the motto to spread education and not only for commercialisation on the name of education.

The present situation of Indian higher education well discussed by Pushpendra Kumar and Sanjay K. Mohanty (2014) as;

“In the case of India, one in ten young men and one in four young women had never attended school. Moreover, young women were particularly disadvantaged-one-third of rural young women and almost two-fifth of married young women had never been to school”.

Private institutions are profit oriented, religiously active, and try to preserve their culture and originality and much biased (Balakrishnan, 2007), but always not factual and majority of the students choose it because of the better job probability, though cost-effective (Agarwal, 2006). Of course private institution performs well, but the fee, all students are not able to pay in a still developing poverty-ridden nation. We must follow up the better ideas and implementations of the developing countries and developed countries too and should try to accept it if possible, but special care should be about the least advantaged. The privatisation of education is a lack of to care about them. In every session many Indian rich students leaving foreign for a better study, where Indian poor better-up (in study) students suffers here because of the economic incapability. Sometimes the issuing of study loan and scholarship for the best scholars should be there for very poor students (Rath, 1992) with long term process to get approved and corrupted. When they cannot get a seat in some better universities in India, where no single university coming in first 100 numbers of best universities, then how could they think about foreign universities? And even it is also not necessary to go for that if we can get better facilities in Indian universities with modern techniques, better library and infrastructural facilities and permanent and reliable faculties. Foreign students must get interest to come India for their higher education for those reforms and there should be liberal regulations for the students all over world to study with economic help especially for the students all over world to study and get economic help.

The government also indicating the educational elites to be self-capable instead of waiting for the government job sometimes. But to be self-capable the elites have self-ideas to grown up and create even the situation to employ others, but for the starting of their plan they need the principle. That must be provided by the government as a support of the person's self-faith and interest. That is even a major issue the Indians prefer to be get settled in foreign with better salary package and conducive environment and even getting help from the foreign government also.

Education in India is more related to the culture, manner and it should address to the issues related to the major problems like inequality, hunger, poverty, social stigma, political upheaval, economic unrest, human rights, justice and many more problems as the focus should be by the international education provider authorities in India. Instead of spending on the branches, if the government would pay on the root, i.e. education it would bring benefit to the country. If the mass will be educated well, they will capable to take care about their environment, children's schooling, farming in a proper way, helping others for mutual development. Those must possible by the betterment of education, so the government must pay more attention on root instead of expending on other welfare policies.

Evocative Remarks

Not only education or more specifically higher education, but every policy should be reviewed in a time-frame manner. Institutional autonomy should be there with a higher authority cum facilitator. The higher education should focus more on English-medium of education with regional mother-tongue simultaneously. And even the fund for construction of infrastructure and other expenditures should spend with mutual consent of both central and state governments' joint sitting. Political and bureaucratic bourgeois should kept separate as much as possible from academics specially on the matters of appointing vice-chancellors, professors, allotting seats to the students, deciding about the syllabus of the educational institution, opening of colleges etc. (Powar, 2013: 365; Balakrishnan, 2007), and the only criteria should be the performance of talent. A proper vigilant eye should be on private and self-financing courses. Poor friendly

education (Ibid) should be provided by the government like Australia and Canada. Foreign universities students may attracted with better facilities through social media and the works and policies should be taken all relevant ideas from all faculties and may discuss with the conduction of seminars, conferences, short-term training programmes and workshops. No more than half of the government grant can be used for the salary of teachers, about 25 per cent for library and research purposes, and the remaining for other expenses (Rath, 1992; 538). The major problem may be, India spends merely 0.37 per cent of the country's GDP on higher education where US spends 1.41, UK spends 1.07 per cent and even China spends 0.50, at least better than it (Agarwal, 2006), if still India in third position on higher education, then if will little focus on it may lead must. And even if we will try to educate one generation, the parents will must include their future generation on the same way.

In India, parent's educational qualification and their children's education are closely related. Even the parent's socio-economic status, father's occupation and economic stability also play an important role with mother's education in a more influential manner on child. But the low caste children have less educational status in comparison to the higher-caste counter children have high attainment than their parents (Kumar and Mohanty, 2014).

The recent "Foreign Educational Institutions (Regulation of Entry and Operation) Bill", 2010, quests about the assurance of quality, prevention of commercialisation of education, zero profit based education, mandatory rule of corpus fund with 50 crore, special care for weaker sections, prioritise on Indian culture and norms all looks like a tight norm based authoritarian norms. It should be little liberal with instead of putting quality the government of India should mention the „what is quality in India“, because quality also varies from country to country and from developed to a developing nation. To preserve the culture Indian universities should be collaborated with those institutions and if we will ask for reservation, does India till yet able to implement the reservation policy in a proper manner for the least advantaged? But it should not be commercial. And mostly the „Prestige-enhancing universities“ must be welcomed (Choudaha, 2010 in Powar, 2013; 361).

The study environment, interest of the student, and faculties experience with proper periodical training and feedback to the students in an attentive and up-to-date manner, flexibility of the

administration with strong leadership, act like a facilitator under the umbrella of regulation, and co-operation among agencies, try to avoid appointing more Para-teachers on a regular attendance basis, to aim at always the mission, plan and goals of the institution may lead a strong higher education circle of development in India. The research should be relatively independent and should be relevant and useful for the betterment of the society. The UGC should be more active to take initiatives or else it is like bullshit to appoint special officers and establishing new commissions with active then nowhere. More necessarily there would be creation of vocational job opportunities for the highly qualified unengaged youth may lead to get interest to go for higher studies. Special focus should be there always for the differently able persons with other backward students on the basis of geographical, social, educational, economic so on and so forth, like excluded among excludes.

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The Nuclear Imbalance in South Asia: Concerns from a Moral Perspective¹⁸

Abstract:

The paper presents the concerns arising from a moral perspective in the context of a renewed arms race in South Asia. It challenges the idea that possession of nuclear power could in any way contribute to any sort of balance. The emulation of so-called great powers and expecting that balance would arrive as it did in the case of the US and the erstwhile-USSR during cold war is detrimental to the temporal and spatial uniqueness of South Asia. Deterrence, based on rational choice theory, does not apply to the South Asian context due to ambiguity owing to mutual mistrust especially in the case of India and Pakistan. Also, it no longer only states that are sole actors in the international arena. One cannot expect the non-state actors to behave in a rational manner. Furthermore, the idea of 'credible minimum deterrence' itself is questionable as it is a flexible posture adjusted to relative prowess and ambiguity in policy further aggravates the situation. The paper argues from a consequentialist notion of ethics and argues that the principles of harm and equity ought be part of nuclear decision-making. Another aspect that the paper uncovers relates to the 'reification' of nuclear power. Using a neo-Marxist framework and concept of Lukács, the paper argues that it is no longer the state as a repository of power that decides the trajectory of nuclear development. Rather the nuclear technology has started to dictate the way states are looking at regional and international relations. This inverted relationship has been created due to neglect of any ethical toolkit. The paper thus proposes an ethical toolkit that focuses on the negative duties of not to harm and also the positive duties to create conditions that would avoid harm being done to people.

Keywords: Deterrence, Ethical Toolkit, Harm Principle, Morality, Nuclear Imbalance, Reification, South Asia.

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Introduction

The case of a Nuclear South Asia presents a unique challenge to scholars from different theoretical perspectives in the discipline of International Relations. The realists and proponents of deterrence theory; the liberals, libertarians and the advocates of cosmopolitan morality and justice; the communitarians and scholars from constructivist perspective; and the Marxist, neo-Marxist and critical-theory scholars – all these schools and theories are able to provide explanations to a limited extent only. The arms race in South Asia, specifically that between India and Pakistan, is a matter of concern from the vantage point of scholars irrespective of theoretical affiliations. The paper thus tries to uncover the concerns arising from a moral perspective in the context of a renewed arms race in South Asia. In this regard, it is argued that far from creating a situation of balance, the presence and proliferation of nuclear power has led to an ‘imbalance in South Asia’. The major argument thus is that the possession of nuclear power could not, in any way, contribute to any sort of balance. The renewed arms race has gained a greater momentum ever since the two rivals gained the possession of nuclear power. Both India and Pakistan are ‘accumulating stocks of fissile materials, enhancing the range and accuracy of their missiles, and putting in place ambitious command and control systems’ (Vanaik, 2003). Thus, one can see that there does exist a probability that might cause an escalated conflict in South Asia.

The case of South Asia is further unique and worrisome owing to the harsh fact that creation of Pakistan was by partitioning British India. The religious backlash and the resultant massacre that the partition saw hardly have any parallels in the history of modern world. The two nations are still mired in continued struggles over the heated issue of Kashmir. The case of Pakistan–India rivalry sheds light on the dynamics of enduring rivalries, more so because it involves the question of identity. Identity here refers not only to ethnic or linguistic attachments, but more to ‘how the nature of politics, purpose of the state, and its underlying values and interests are understood by key political actors and their respective constituencies’. These notions can be

defined in terms of over-arching worldviews that are drawn from a religion or political ideology. The Pakistan–India rivalry in particular has involved questions of national identity – in fact, it has helped forge and change those identities on both sides. The rise of Islamism and Hindu nationalism and their role in shaping state ideology and national identities in Pakistan and India has played an important role in the endurance of the rivalry between the two countries (Nasr, 2005).

Pakistan has long argued that the Kashmir problem stems from India's refusal to accept the reality of Pakistan, and from its hegemonic aspirations. They argue that if India yields to these, only then a peaceful solution to the Kashmir problem can be found. For the Pakistanis, Kashmir remains the unfinished business of the 1947 partition. Pakistan argues that because both India and Pakistan accepted the UN Security Council resolutions of August 13, 1948, and January 5, 1949, the Kashmiris should be allowed to exercise the right of self-determination in accordance with these resolutions (Cheema, 1992). India, on the other hand, argues that Pakistan's aspiration in Kashmir is driven by its obsession with religion and its unwillingness to accept the fact of a secular India. The presence of this India questions the very need for Pakistan to exist at all and further fuels the Pakistani contention that Indians have never reconciled themselves to Pakistan (Chari et al., 2003).

With this background in mind, it is important to point out that India has always aspired to gain a position of prominence in global politics. It has tried to behave as a regional hegemon en route to a great power status. The aspiration to be a regional hegemon has reflected in India's assertive and sometimes intrusive policies vis-à-vis its neighbours. Specifically, the cases of East Pakistan and Sri Lanka where Indian intervened militarily are testimony to this. India has tried to emulate the western conceptions to some extent. However, the emulation of the so-called great powers and expecting that balance would arrive as it did in the case of the US and the erstwhile-USSR during cold war is detrimental to the temporal and spatial uniqueness of South Asia. Deterrence, based on rational choice theory, does not apply to the South Asian context due to ambiguity owing to mutual mistrust especially in the case of India and Pakistan. The possibility that deterrence would fail is significant in the context of South Asia (Lo, 2003).

Also, it no longer only states that are sole actors in the international arena. One cannot guarantee the non-state actors to behave in a rational manner. Furthermore, the idea of ‘credible minimum deterrence’ itself is questionable as it is a flexible posture adjusted to relative prowess and ambiguity in policy further aggravates the situation. Intended ambiguity does have an advantage for deterrence. The opponent is left guessing about the next move and plays safe. However, excessive ambiguity in a doctrine reflects the lack of clarity about India’s own deterrent (Kulkarni and Sinha, 2011). Furthermore, ambiguity is always problematic when one is dealing with rouge states or non-state actors. The expectation of cost-benefit analysis by such an opponent would not be a wise inference.

Nuclear deterrence and South Asia

One can locate the genealogy of nuclearisation of South Asia through the reactionary nuclearisation of India vis-à-vis China and even more reactionary development of nuclear capability by Pakistan vis-à-vis India. When China developed its nuclear weapon in 1964, it was just a couple of years from the Indian defeat in a humiliating war. Though Chinese logic for going nuclear would have been to have a global position and challenge the super powers, India considered it as a major threat to its survival. The war of 1971 with Pakistan was also presenting India with great threat as the United States and China were both rallying behind Pakistan (Chari et al., 2007). Thereby, India went for a peaceful nuclear explosion at Pokharan in 1974 to display its prowess. Scholars, however, have argued that domestic factors and political norms have been more significant in determining India’s nuclear policy rather than external security considerations (Perkovich 2000). This can be disputed as the ultimate goal of survivability can trump domestic considerations. Willingness or unwillingness on the part of domestic elite cannot hold for long when external threats are perceived as existential threats. Now the question arises: can one find relevant cases of success or failure of deterrence? The answer to this question depends on whether one agrees with the hypotheses of deterrence.

The essence of deterrence is that 'one party prevents another' from doing something by 'threatening to harm the other party seriously' in case it does. Thus, it is the 'use of threats to manipulate behavior so that something unwanted does not occur' (Morgan 2003). The theory of nuclear deterrence posits that presuming the rational choice that would be made by the actors (essentially the states), it would be irrational to launch a nuclear attack on another actor. This theory presumes that the presence of nuclear weapons would forge stability and 'deter' any action that would be detrimental to either side. The clearest case that favours the advocacy of nuclear deterrence was the cold war era rivalry between the United States and the erstwhile Soviet Union. The two big powers often went onto the brinks of launching a full-scale warfare and the proponents of deterrence theory attribute the lack thereof to the presence of nuclear weapons. Deterrence was considered to be a 'purely western concept' (McGwire, 2006). Scholars have gone at length debating the success and failure of the logic of deterrence (Sagan and Waltz, 2002). While the 'proliferation optimists' like Waltz argue possession of nuclear weapons would make wars more unlikely, the 'proliferation pessimists' like Sagan argue against the possessing nuclear weapons (Kapur, 2005; Rajgopalan, 2006)

The South Asian temporal and spatial uniqueness is quintessential to understanding about the success of nuclear deterrence or the failure thereof. India and Pakistan have had a long drawn rivalries pertaining mainly to religious and territorial domains as discussed in the introduction. As a consequence, the expected stability is far from being achieved. Instead, what is conspicuous is deficit of trust and regular border skirmishes. The proponents of nuclear deterrence argue that nuclear deterrence worked during the cold war and avoided an otherwise imminent great war. However, it should not be mistaken that the same would hold in the South Asian context. It is true that no major war – in terms of lives lost and damage incurred – has occurred between the two nations possessing nuclear weapons. However, this would be a mistake to infer that threat is not imminent. Transfer of technology and thereby the spread of nuclear weapon is 'more threatening for relatively powerful states than it is for relatively weak states' (Kroenig 2009). India is definitely a relatively powerful state when compared to Pakistan. This argument is premised on the idea that the states that relatively powerful can use their conventional military power to their advantage when dealing with a state that does not have nuclear power. However,

the 'strategic advantage' is lost once the other state acquires nuclear weapons (Kroenig 2009). This line of argument in a way proximates to the thinking that nuclear weapons serve as an equalizer and deny any advantage that may have a say in a pre-nuclear stage.

With respect to nuclear policy, India has been reluctant to release a detailed document on its nuclear doctrine. The only official document that it has brought out is 'brief press release on the operationalization of doctrine' in 2003 (Basrur 2008). The Draft Nuclear Doctrine as well as the National Security Advisory Board was released in August 1999. However, these were never officially adopted. Even the then External Affairs Minister, Jaswant Singh, made a point by calling iterating that it was 'not a policy document of the Government of India'. Pakistan as well has not publicly declared its nuclear doctrine. All that is known is through interview of officials. With respect to the idea of 'credible minimum deterrence', the thinking of India and Pakistan converge. In this regard, 'credibility and survivability' are the two pillars on which nuclear deterrence in South Asia is said to rest (Basrur 2008). The problem that remains unresolved are that how much is 'credible' or 'minimum' to allow deterrence to take place? The government is reluctant to say how much the minimum is. Also, whether that 'minimum position' will be fixed and stable is another question. It can be argued that the 'minimum' is always is a flux and depends on the 'changing quantity and quality of the nuclear arsenals' that its presumed rivals – Pakistan and China in this case – possess (Vanaik 2003).

From a realist vantage point, the argument supports nuclearisation and posit that the nuclearisation of the two countries and the threat of escalation has 'constrained both Indian and Pakistani decision-makers as they are worried about even 'minimal risks when such risks have great consequences' (Rajagopalan 2006). However, the truth is not that simple. Owing to the fact that ambiguity regarding credibility looms large, it is difficult to assume that a typical rational choice decision would be made. Had the worry been true as pointed out by Rajagopalan, even the continuous skirmishes would not have happened. Nuclearisation, therefore does nothing more but make the situation even more tense. It has led to high economic costs for the two countries and has led South Asia on a 'short fuse' (Bidwai and Vanaik, 2001). This is to emphasize that 'since 1998, relations between India and Pakistan has seen at least three major crises – In 1990

due to troops deployment along the Line of Control, then in Kargil conflict of 1999, and again in 2001-02 case of Operation Parakram (Basrur, 2008). The period saw the 'largest full-scale mobilisation of troops between any two countries in peacetime anywhere in the world since 1945' (Vanaik, 2003). If this is seen an indicator of improved relations with the advent of nuclear weapons, one is just being naïve. If anything averted the escalation of 1999 and 2001-02 conflicts, it was not 'deterrence' but external pressure from the United States.

An ethical toolkit and the problem of harm

The paper adheres to an ethical toolkit. The toolkit focuses on the negative duties of not to harm as well as the positive duties to create conditions that would avoid harm being done to people. This ethical toolkit is the major part of the moralist argument that the paper puts forward. The idea of morality is to argue for a certain set of principles that does transcend cultural and spatial dimension. In this sense, it tends to be prescriptive in ways what 'ought to be' done. With respect to negative duties of not to harm, the presence of a weapon that might annihilate entire cities at the push of a button poses serious questions. Is it really necessary to possess such weapons? At first, such an argument might echo activism rather than an academic argument. However, the paper tries to posit the same under the theoretical underpinnings of critical theory.

In this regard, it is important to explain what is meant by the notion of harm. From a utilitarian perspective, J.S. Mill asserted the idea of 'harm-principle'. For Mill, the principle is stated that:

“...the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.” (Mill, 1978: 68).

In this regard, Mill's argument is strictly libertarian establishing a limit on state power until and unless 'harm to other people' is caused (Mill, 1978). Now such a libertarian argument based on the notion of utility and free market can be seen to hold much ground in social behaviour of individuals. If we try to locate harm caused by possession of nuclear weapon, the policy of no first use is a clear case of a negative liberty of 'not to' do something which may otherwise cause

harm or suffering. Avoiding unnecessary harms to others is the central aspect of harm principle. However, the harm principle does not apply universally for Mill. There are circumstances in which society is justified in interfering with what someone is doing even when it doesn't harm others (Lacewing, 2009).

Taking cue from this and arguing that the universalisation of harm principle is the crucial part of world ethic, Andrew Linklater, talks about five forms of harms:

“1. Deliberate harm in relations between independent political communities; 2. Deliberate harm caused by governments to their own citizens; 3. Deliberate harm by non-state actors; 4. Unintended harm; and 5. Negligence” (Linklater, 2011).

The paper borrows from this categorisation and applies it to the South Asian post-nuclear context. With both the states possessing nuclear power, one cannot rule out the possibility of escalation of conventional wars to the nuclear level. Either of the two can cause 'deliberate harm' to one another owing to the fact that a slightly weaker control over military organisations, ill managed by civilian-control institutions, is 'likely to lead to deterrence failures and deliberate or accidental war, because of common biases, inflexible routines, and parochial interests' (Sagan and Waltz 2002). Unrestrained proliferation and reluctance of both India and Pakistan to join the Non-Proliferation Treaty further increases the possibility that a rouge non-state actor, say a terrorist organisation, can get access to the nuclear weapons. This raises the possibility of 'deliberate harm by non-state actor', to use Linklater's terminology. 'Negligence' as well contributes to such a possibility. Furthermore, there can be case of 'unintended harm' that may occur in absence of clear command and control in cases of urgency.

In this regard, it is important to weigh the aspects of security and freedom when a decision is to be made that might eventually harm a huge number of people. In a situation of nuclear brinkmanship a risk of loss of control is deliberately presented, thereby increasing the prospects of a nuclear escalation that neither side could completely control. Brinkmanship was not seen as a deliberate threat of escalation during cold war but rather 'the deliberate creation of a recognizable risk of war' (Schelling 1980). During the Kargil conflict of 1999, Pakistan was

presenting a risk of uncontrollable escalation. The threat was not that Pakistan may go to war in support of the Kashmiri rebels but that 'war may result' because neither New Delhi nor Islamabad may be able to maintain full control (Rajagopalan, 2006). Such a posture of brinkmanship clearly defies the ethical toolkit just presented. The idea that the fear of an uncontrollable war would cause the two parties from embarking on the path of war and that it has made them more cautious does not seem to be a very plausible explanation. It is clearly a 'deliberate' attempt at creating such a risk that may endanger the survivability of states concerned.

Furthermore, by allowing proliferation in the name of making the states more cautious is a risky business. The presence of rogue actors who are not concerned with the logic of a mutually assured destruction, the possibility of proliferation reaching their hands is high. This calls for the positive duties to come into place thereby creating conditions that would allow that such a proliferation does not occur. The non-proliferation treaty has its own caveats that are beyond the scope of the paper. Also, the confidence building measures are hard to be undertaken in shadow of mutual distrust that exists between the two countries. Efforts have been made in the past and will definitely bear fruits over time. However, dependence on a course that might not fructify in near future could, in fact, causes more harm than good. Thus, the point is to argue for the case of an arrangement, based on a moral perspective that integrates the two duties – positive and negative – thereby avoiding harm and creating condition that would avoid harm being done. Definitely, as the argument shows,

Reification and the case of nuclear weapons

The paper uncovers relates to the 'reification' of nuclear power. Using a neo-Marxist framework and concept of Lukács, the paper argues that it is no longer the state as a repository of power that decides the trajectory of nuclear development. Rather the nuclear technology has started to dictate the way states are looking at regional and international relations. This inverted relationship has been created due to neglect of any ethical toolkit. The paper has thus proposed for an ethical toolkit in the preceding section that focuses on the negative duties of not to harm

and also the positive duties to create conditions that would avoid harm being done to people. Proponents from the realist camp may argue that morality has no meaning unless it serves the the powerful. Thus, morality is seen as a 'function of power' in relations among states (Carr, 1946). However, even if one looks at morality in terms of self-interest, the nuclear logic fails to serve the purpose.

The concept of reification in Marxist and Neo-Marxist thought related mainly with the economic dimension. It 'specifies the dialectical relationship' that exists between existence and consciousness in a society. The major point is that the aspect of 'commodity production' dominates such a society. More simply put, reification implies the phenomenon in which a 'particular set of social relations' acquires the 'appearance of naturalness or inevitability' (Burriss, 1988; Markus, 1982). In this way, an inverted relation is established owing to the logic of capitalism and free market that allows a free flow of capital thereby creating a continuous and exponential repository of surplus value (Foley, 1986). Thus, what was created to serve people has, over time, achieved naturalness in a sense that it no longer remains constrained by the purpose for which it came into being in the first place.

The paper takes the logic of reification from the aforesaid framework and applies it to the nuclear scenario in South Asia. It is thus argued that presence of nuclear weapon has achieved a stature of its own, independent of security and strategic concerns. Lukács has argued, in economic domain, that the continuous production and reproduction of capitalist system on higher economic levels causes the 'structure of reification' to sink 'more deeply, more fatefully and more definitively into the consciousness of man' (Lukács, 1971: 93). This argument is borrowed here for the nuclear context. Taking this analogy, if one replaces capitalist system with global nuclear order and replaces commodity/money with nuclear power, one can see it resembling the reality. The quest for nuclear power does show a clear manifestation of 'fetishism of force' (Harrington de Santana, 2009). Nuclear power is seen as the highest currency in the lexicon of instruments of force. The sheer destructive capability of atomic power and nuclear weapons outweigh the existing instruments of war making by a big margin. Thus, the way states have justified its

presence questions even the basic rationality in an ironic sense. The price of peace is seen as the creation of a massively destructive force.

In a similar vein, Abraham (1999) argues that atomic energy has been presented as the 'privileged instrument of development' in the discourse that is created in a postcolonial state. However, the instrument of development 'became its end' due to inherent urgency and secrecy. The conditions of production overshadowed the prominence of state itself in the process. This is to reiterate that what was seen merely as an instrument has transcended the logic and derived a reality of its own, independent of state. The paper argues that the mad rush to nuclearise is a common sight in Asian countries that do so even at the cost of economic bankruptcy has to do with the lexical superiority of nuclear weapons. The history of Pakistan's nuclear program show how the nuclear developments were 'interwoven into the broader narrative of Pakistani nationalism' (Khan, 2012). The Indian case of nuclear development also saw an entwinement of nuclear power with religion, ideals of modernisation and the 'rhetoric of swadeshi or self-reliance' (Kaur, 2010). These cases clearly manifest the need to justify the path to nuclearisation as the cost accrued is such that it can not be seen justifiable only for defence and security. Furthermore, the link of weaponisation beyond security imperative reinforces the reification even further. Thus, the instrumental logic for which it was initiated has lost its meaning and nuclear weapons have reached to a deterministic stature.

Conclusion

The paper sought to explain the unique case of South Asia with the nuclear shadow as the contextual framework. India and Pakistan has had long drawn rivalry mainly related to the issue of Kashmir. In this light, it is argued that, the coming of nuclear capability has aggravated the situation even further. The theories of deterrence do not apply to the South Asian context. The paper went on to argue that the policy of a credible minimum deterrence itself is indefinite and flexible relative to the opponents' prowess. The element of rationality can be taken as a necessary condition but not a sufficient one. Furthermore, the changed global scenario that no longer has only states as actors, the possibility of a nuclear catastrophe has further increased. The

reluctance of both India and Pakistan to be part of the non-proliferation treaty adds to the worry. The paper then assessed the problem of harm and presented the typology of Linklater. These were then analysed in the nuclear scenario and thereby the paper argued in favour of an ethical toolkit that would be concerned with both the negative duty of not to harm and the positive duties to create conditions that would avert harm. The paper then discussed the idea that nuclear power has been reified in the sense that it is no longer serving the instrumental logic that was envisaged. Rather, it has become deterministic in the sense that the states are governed by its logic. Thus the paper presented the case from a moral perspective arguing against the illusion that nuclear power could lead to a balance in South Asian context.

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A Study of Child Begging in India and its Reasons¹⁹

INTRODUCTION

Even after completing 67 years of independence we have not achieved the so called 'Ram Rajya' as said by Mahatama Gandhi. Ram Rajya is a state in which every person is happy he has all the basic facilities for survival. But unfortunately we have not achieved this state. There are many day to day problems that India is facing. One such problem is child begging. Begging is also responsible for major loss of productivity and power in the country.

Let us first understand what we mean by Child Begging. When a child is forced to beg either for money or food due to poverty/trafficking/some other reason.

Despite the introduction of right to primary education as a fundamental right and Right to education Act we are still facing with the problem of child begging. India does not have any laws related to rights of child beggars to proper education and vocational training.

Child begging is not only a problem but it also attaints the country. When you visit a mall, market, traffic signals you will find child beggars coming and asking you for money. This shows that India is a poor country and is not able to provide any rights to these small children, but the reality can be different: it may be possible that the children are begging because they earn good money from it. But when a foreign person arrives to India and gives see this the reputation of the country is at stake.

Child begging is the begging stage of begging. When a child enters the profession of begging is main intention is to support his family financially or earn money for their bosses (Begging Mafia). Gradually the child develops as a beggar and loses his productivity. The main problem here is the loss of productivity of the nation on account of child begging. We consider children as the future of the country but when these children instead of getting education try to fulfill their need by begging, the future of the country is at a risk.

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In the current scenario begging has turned into a commercial activity. Children are either forced by their family to beg or are being trafficked by the mafias to beg. Child beggars are assumed to earn more because children's they catch the emotions of the people easily. The body parts of these children's are maimed so that they earn more by getting attraction of the people's emotions.

RESEARCH METHODOLOGY

The researcher has primarily relied on the 'Doctrinal Method'. The research is based on comprehensive study of sources which are primarily Legislative Bills, National and International Guidelines, Text Books, Journals, and other web resources, case laws, etc.

OBJECTIVES OF STUDY-

1. To discuss about child begging.
2. To understand the reasons behind child begging.
3. To study the laws related to child begging.

RESEARCH QUESTIONS-

1. What forces a child to beg ?
2. Is the child who beg has any right to proper education ?
3. Are there any laws to protect child begging?
4. Is there any policy made by the government to stop child begging ?

HYPOTHESIS-

The main reason for child begging in India is poverty.

STATEMENT OF PROBLEM-

90 percent of the time when I stop at a traffic signal, small children would come and ask for money. Also when you visit a temple, mall, market, historical monument, or any other tourist spot you will find small children begging. At the very same time a question always struck into my mind is there any rights of these children's.

LITERATURE REVIEW

1. Beggars in India

In India every year thousands of children are mutilated, infected with chemicals so that injury appears on their body. These children are forced to beg for 15 – 16 hours a day by torturers or organized gangs. Tourism is one of the major reason for the increase in child begging as foreign tourist give them generously out of sympathy. These gangs continue to look for new children they try to attract children by making them appear themselves as their benefactors. These gangs does not fear from the local government as they are very well organized. The best way to help these children is not to give them any money.

2. India Beggars and Begging Scams: What You Should Know

The author says that poverty in India is real, but begging is quite often carried out by organized gangs. The gang leader takes certain proportion of the begging collected by the beggar. Another problem is that a person who is used to begging does not prefer to work. Many of them makes more money then what they would have made by working. An example of Mumbai is given in the article where visitors are often approached by a women wanting some powdered milk to feed the baby. They will

take you to the nearby shop where the tin for the milk would cost around Rs 200, and there is certain proportion of the women in it which the shop keeper will give her. Also the baby is not with the mother is not an actual one but is on rent from the actual mother. Begging most commonly found in areas where tourism is there. There are so many child beggars in India that you cannot give all of them, but if you give to anyone the children will get attracted and your approach you.

3. Child Begging in India Both a Scam and a Reality

The article starts with a boy named Vishal whose family income is less than \$2 a day and begs to eat, whatever money he collects give it to his parents. Also many parents force their children to beg because they consider it is an easy way to earn money. Another boy Suraj who was an orphan and lives in a temple when asked why he was begging say that is was his ancestral business. Different children have different method in which they beg. A tourist shares her experience where a child ask her for food and not money, but later the child sells the same food to the shop again for half the price.

4. Keep the Change

The author says that giving a money or a gift to a child is the most harmful thing that a tourist do. Because this gives these children them a strong reason to stay away from the school. Most of the earning earned by them either goes in their parents hand or to the organized gangs. Also as the a disabled child earns more money then a normal child these gangs make the normal child disable so that they can earn more money.

CONSTITUTION AND NATIONAL LAWS

India after completing 67 years of independence does not have adequate norms to deal with the problem of Child Begging. Though it isn't that India does not have any laws, it has laws but they are very weak in nature and there is hardly any implementation of these laws.

Article 23 of the constitution of India states that 'Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance to the law.'

Article 39(f) of the constitution of India states -

'that children are given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.'

This a directive principle hence it is not enforceable by the courts, but this is what ideally should be done. Children must be provided with opportunities and facilities which will therein stop the problem of child begging.

Section 24 of the Juvenile Justice Act, 2000 states that -

'Employment of juvenile or child for begging.-(1) whoever employs or uses any juvenile or the child for the purpose or causes any juvenile to beg shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

(2) Whoever, having the actual charge of, or control over, a juvenile or the child abets the commission of the offence punishable under sub-section (1), shall be punishable with imprisonment for a term which may extend to one year and shall also be liable to fine.'

We have these rules for the punishment of punishment of forced begging but we do not have any norms for the regulating child begging that is due to poverty. Even, if the case against these people who forces a child to beg is registered the time taken by the judiciary to solve is case is

well known to us. Until and unless we have proper administration and laws to punish these people the problem of child begging will not be solved. Also the government should make rules for providing free food, education to the child so that he can study irrespective of his family background.

In Modern India begging has entered in the form of commercialization where even capable persons were employed. To prevent this mass scale commercial begging, 'The Bombay prevention of begging act, 1959 (Bombay act no. 10 of 1960)' is enacted and its application is extended to Delhi also. The Act considers begging as an offence. The offences committed by children below 18 years are covered by the Juvenile Justice (care & protection of children) Act 2000. Though begging is not considered as an offence for the children covered under the Old Juvenile Act. Rather, those children were covered under the category of 'neglected child' under the old Act. But the new Juvenile justice Act 2000 is silent about the consideration of child beggars either as juvenile in conflict of law or as neglected child.

The Apex court of our country has also accepted that child trafficking is a factor which leads to child begging, and also said that not even a single scheme of the government of india address the need of child beggars. It is good that supreme court has accepted the fact that none of the legislation or scheme of the parliament are able to solve this problem.

The apex court in another of its judgment accepts that children who are socially handicapped either become delinquent or they are being forced to beg or else live in distress. The court says that these children must be provided facilities for education, training and rehabilitation which will help them become useful citizens.

PROBLEMS, REASONS OF CHILD BEGGING AND THEIR CONSEQUENCES

In India around 10 million people work and sleep on streets every day. These children who beg daily on the streets are highly susceptible to social crimes and terrorist activities a report states.

Another thing which has been seen in the past is that of increase in the number of child beggars, what can be reasons behind in it ? Recently as per a survey conducted families prefer sending their children to beg rather than to school because these children earn not only huge amount of

Indian currency but also foreign currency. These family of around 3000 families earn on an average Rs 20000/- per month and they call it as their business and are not ready to give it up. The same survey also shows that out of the survey conducted on 6000 children 95 percent of the children have never gone to a school, 80 percent of the children are residing under the bridges and near traffic signals, and 20 percent came to Gurgaon from the village nearby. Most of these beggars belong to Rajasthan, Bihar, Jharkhand, Uttar Pradesh, Madhya Pradesh and around 10 percent of the children were brought by the contractors from the rural areas of Bihar and Jharkhand and they were forced to beg by these contractors. These children were able to earn Rs 5000/- on an average and sometimes even more than Rs 12000/- a month.

Again an NGO claims that these child beggars on an average earn Rs 200/- daily and as it is a profitable business more and more children are brought into begging without sending them to schools. It is also been observed that a large number of missing children ends up with begging or some other dark businesses. The NGO claims that the average age of these children is 5 years and these children are even not provided with proper food and are also given harmful drugs like sleeping tablets to smaller children so that sleep without crying. They request not to give money to these children because we think that in a way we are helping these children but ultimately we are not giving these children any benefit because the money goes to the organizers (Begging Mafia).

As per the census of Street Children of Delhi in which approximately 51,000 children below the age of 18 were identified as street children in Delhi during the duration of 12th July to 28th August 2010. This constituted 1 percent of the total number of children of Delhi. Majority of these children belonged to street families. On surveying these children it came out that every fifth street child is involved in Rag picking which constituted 20.3 per cent, the next was street vending (15.8 per cent), child begging (15 per cent), working in repair shops (12.19 per cent), hotels/ dhabas (6.24 per cent) and in manufacturing units (1.22 per cent). It was also observed that some of the children who were doing the work of rag picking were often seen to be begging. It was also observed that one of the four children from North Delhi, East Delhi and West Delhi districts were engaged in begging. The lowest number of child beggars were found in Central and South Delhi. On doing the analysis why these children are found in the streets of Delhi, it

was observed that out of every three children (34 per cent) was on the street because of poverty and hunger, 30 per cent were in search of job (this includes child begging), 9 per cent of the children on the street came there after running away from their home or they have been kidnapped or they been lost due to accidents, riots or any other factor. Now let us see the living condition of these children around 39 percent of these children live in slums, 46 percent in open/public places and only 4 percent lives in the shelter provided by ngo's or by the government. It was also observed that 50 percent of the children were born outside delhi and later came to delhi. These Migrant children either end up their life on street if they are migrated with their family, or if these children are kidnapped they are either send to begging by the criminals or they are sent for some other anti-social activities. Some other processes were also observed during this survey which are 1) Working under agents – children work under agents and pays they a part of the product they sell or what they get from begging, 2) Working with parents/ with family members – it was seen if the parents of a child are begging his children also begs and whatever they get from begging it goes to the parents, 3) School going street venders – these are children engages in begging or other such activities after their normal school hours, 4) Working children in street enterprises. We see the data on the basis of gender it was observed that 21 percent of the girls were involved in the activity of child begging whereas on the other hand only 13 per cent of the boys were involved in the activity of child begging, this was because as a young boy grows up he does not want to be completely dependent on begging so he starts looking up for some jobs. It was also highlighted that the activity of child begging was taken up by the weaker people in the society like small children, females with young children, physically handicapped child, etc. which basically means weaker section of the society takes up the job of begging, where as other prefer to work over begging. It was also seen that young children below the age of 5 years were only involved in begging, which also shows that the work of begging does not require any skills and also young children get more sympathy and thereby earn more money, on the other hand it was also seen that engagement in begging above the age of 10 years was not preferred. These children who were begging were often seen asking for drinking water if they see a water bottle in the hands of others, because there in proper drinking water available to them. During Summers water pots at taxi stand is their only source of water.

In another report a total of 682 children were found working on selected 8 railway station while doing a journey from Hazrat Nizamuddin to Bhopal. These children were involved in various activities like vending, begging, rag picking, bottle picking, acrobat, shoe shinning, cleaning, and selling refilled water bottle. It was also found that 80 per cent of children were badly abused by the police and railway authorities because of their unauthorised occupation on the railway platforms. Around 20.5 per cent were found begging of which 28 per cent are girls. Several times fight between children begging in same railway compartment was observed. More than 60 per cent of the children were working on railway station for more than a year, whereas 75 per cent children expressed that they were working for more than 8 hours a day. 55.8 per cent children working on the railway station or railway compartments were below the age of 14 years. The average age of children found working on railway station is 9 years. It was also observed that those children who live with their family on railway station were found doing begging, while children coming from home usually do shoe shinning and vending but occasionally they also do child begging. Many children were found living with contractors in group of 6 to 18. A child averagely earns Rs 100 to Rs 150 daily. The overall health of 54 per cent of the children was found to be average, while 23 per cent children were reported in bad condition. Children who were moving from in one train to another or staying in one platform or another do not visit their home frequently. These children doesn't have a proper source of entertainment, one 52.8 per cent children were found either playing or watching movie or television during their spare time. While observing the working of Juvenile Justice System in the four states covered during the journey (i.e. Delhi, Haryana, Uttar Pradesh and Madhya Pradesh) it was observed that there was confusion regarding the working of child welfare committee and juvenile justice board, In Haryana, Uttar Pradesh and Madhya Pradesh Juvenile Justice Board and Child Welfare Committee is constituted in only few districts which creates problem whenever a child is booked under the act and is supposed to be taken to Juvenile Justice Board or Child Welfare Committee, the condition of child prison or children home were found to be in a very bad condition in many cases it was found that children were kept in adults prison, No NGO was found to be working in any of the station which is in coordination with the Juvenile Justice Board or Child Welfare Committee, Conflict between railway and state police laws was observed and none of the two police is using the provision of Juvenile Justice Act that may go in favour of a child. It was seen

that these children were having 2 times meals mostly from nearby dhabbas which does not provide then proper nutrition and makes them vulnerable to infections, in addition improper medical facilities and lack of accessibility to medical facilities worsen the situation. Children working on station do not have proper access to bathing facilities. Lack of proper shelter food, shelter, proper clothing, hygienic condition, medical facilities, are the problem faced by these children. These children even does not have knowledge of their birth certificate, which acknowledges their identity, these children mostly care for good food and clothes. As these children do not proper identity proof they cannot enrol in a school for education without having a proper identity proof.

And lets move towards some articles written by different authors on the topic of child begging and understand their views on it.

The article written by Himansu Nahak he says that India is one of the leading economies in the world but still you see a lot children begging in its major cities like Delhi, Mumbai, Banglore, Pune, etc. These children do not beg on their own but they are forced to beg and they hardly gets anything they are exploited by the mafia gangs and gang leaders. This has become a kind of forced labour or slavery. Training is provided by the mafia people to the children who are generally kidnapped and then forced to beg, if any child oppose this he is brutally hit by the mafia people. The author says that instead of giving these children money, one should directly provide treatment or food to these children. This shows that the problem forced begging is very common in big cities.

An article by Nitin Kumar gives a warning to the tourists who visit India and warn them how to deal with the children involved in the activity of begging. Tourists being chased by the child beggars is a common sight at all the tourist spots. Beggars often position themselves at key points like footbridge, railway station, traffic signals, where there are chances of tourist or pedestrian stopping. Tourist are often forced to believe that children beg due to poverty but actually the children who beg are the victim of child trafficking and the money goes in the hands of criminal groups. These groups often divide the areas among the children and force them to beg in that area. This is how these children are being trained bu these criminal groups so that they can earn the maximum from it.

This is an article by Abhishyant Kidangoor which tells that Children are found begging in all the cities in our country. People out of sympathy give money to child beggars which is the main aim of the mafia. The beggar mafia thrives majorly on child abduction as using children for the purpose is far more effective, as it helps gain sympathy. It has been found out from previous studies that the children are kidnapped and starved for a period of time, or even worse maimed beyond recognition. Often they are tortured brutally if they come back with an amount less than what is expected of them. Due to this the number of kidnapping cases has increased in the country. It is a serious issue if the number of kidnapping cases is on the rise because of forced begging.

The article is written from the side of child beggars by Mahitha Kasireddi, where they tell their story how they live in poverty and are a burden for their family, many of them are stolen from the hospital and are left to live their own life. Some of them are even from different caste and slums and are forced to steal or beg. They are trapped by the beggar mafia and are given daily targets, if they do not meet these targets they are abused and not given food for that day. Their body is disfigured or maimed so that they earn more out of the sympathy of the people. They are provided with drugs and alcohol so that they forget about themselves. This shows that how these children are forced to beg and in order to earn more money these begging mafia maimed the body of these children without even thinking that these children are the future of our country.

Child begging has been in existence in India from the past, and has increased because proper attention was not given to this problem. These children have to beg even in extreme weather condition, irrespective of their health even if they are ill they have to beg, they don't have any other option. These people need the help of the public so that they can be rescued from this. Child beggars are a part of forced beggary racket and are paid Rs 10 -20 as commission from their daily earning. The teenage girls suffer the most as people see them from evil intention. Sociologists say that the problem of begging exists due to the absence of organized system of

charity. This article by Raghubar tells us that how these children beg in vulnerable weather condition, and also how girls face abuse from the men.

The author Rohit Telekar starts his article while he was travelling in a local train in Mumbai, where a girl came and put a play card a new form of begging. He sees begging everywhere at railway stations, traffic signals. These children generally do not leave you until and unless they get some money. The author says the main reason for all this is POVERTY. Then he quotes a famous dialogue of the movie slumdog millennium Salim had said to Latika: '*Chhote Bacche ko saath legi to dugna kamayegi*'. The government has allocated crores of rupees for poor welfare but poor's are hardly benefited from it due to high corruption in the government. The author then suggests certain measures from which this problem can be solved.

Now as we have seen the problem, reasons behind child begging and its consequences which these children faces, the next chapter is to deal with the suggestions to eradicate this social problem from our society.

SUGGESTIONS

Till now we have seen the problem, reasons and consequences associated with child begging. We now take a step forward on how to eradicate this social evil form our society. Children which are the future of our country if they involve in these kind of activities how is our country going to progress. This is a serious problem of our country and the law maker s of our country must take this problem seriously and try to solve this problem as soon as possible. I hereby present some of the possible solution to the problem based on various research paper and articles.

- Advocacy of child friendly policy : we should promote child friendly policy at various levels which in turn result in formation of child friendly policy which will ultimately help in reducing the problem of child begging.
- Proper Training of the stakeholders : All the possible stakeholder like Police, Juvenile Justice Board Members, Child Welfare Committee members, NGOs, Concerned Citizen,

etc. Must be trained in order to how to deal with the problem of child begging and how to deal with the victim of child begging. How to rehabilitate these children.

- Proper Rehabilitation centre for the children who are being rescued from the child begging.
- Implementation of Right to Education Act in a proper way to provide good education to these children.
- Make a law similar to Ladli Lakshmi Yojna in which when a girl child passes her 12th she receives Rs 100000/- from the government, similarly the government should provide for some monetary benefit to a child who completes his higher secondary education. In this it will not help in reducing the problem of child begging but also improve the educational standard of our country.
- Strict punishment to government employees who are found abusing children.
- It has been observed that many children are not able to enrol in a school because do not have proper identity proof, the government should help these children in getting identity proof so that they can get admitted in a school with the help of these identity proof.
- Increasing a number of night shelters for street children, and the government should pay more attention towards girls.
- Intervention of the government to stop migration of children from rural area to urban area, who came to urban area in search of a job or work.
- Increase the number of boarding school with better quality education in both rural and urban areas of the country.
- As we have seen that the health of the children found in streets or the children found at railway station is not up to the mark. These children suffer from various skin problems, cuts, wounds, fever, gynaecological problem with girls, etc. A programme must be developed by the government so as to eradicate this problem and these children also live a decent life as guaranteed under Article 21.

- It has also been observed that a lot many children who work on streets for various purposes including begging are being drug addicted. An immediately plan must be made to de-addict these children from the drug.
- Vocational training must be provided to these children.
- In Media it is sad to say that media is not concerned with social issues it mainly focuses on yellow journalism. Media should take these issues to the national level which will attract the attention of people towards this problem and thereby try to help in solving it.
- Workshops must be conducted from time to time for the NGOs and government departments.
- Police must act strictly if there is any kind of abuse against a child.
- A proper training in the governmental departments for better coordination.
- Any child rescued must be counselled by properly trained staff.
- Strict punishment to the people involved in the begging mafia, a minimum imprisonment of 5 years and a fine of Rs1,00,000/- must be there to stop this problem.

CONCLUSIONS

Till now I have discussed all the problems, reasons and consequences of Child Begging. In the hypothesis I have believed that Child Begging is a result of Poverty, but in reality that's not that case Child Begging is not only a result of poverty but also a result of other social as well as criminal problems like Child trafficking, Forced Begging, etc.

The problem of child begging cannot be solved until and unless government makes proper rules and regulation regarding the same.

BRIDE TRAFFICKING: A BY PRODUCT OF FEMALE FOETICIDE²⁰

ABSTRACT

Human trafficking is the trade in humans, most commonly for the purpose of sexual slavery, forced labor or commercial sexual exploitation for the trafficker or others; or for the extraction of organs or tissues, including surrogacy and ova removal; or for providing a spouse in the context of forced marriage. Bride trafficking is the industry or trade of “purchasing a bride” to become property and at times as property that can be resold or repurchased for reselling. Bride trafficking is a crime eating into our country as a plague.

Based on secondary data like news items and articles published on the related topic, the paper tries to analyse the causes behind bride trafficking becoming a widespread malpractice. With the help of case studies the plight of the victims will be demonstrated. Statistics have been cited in the paper to prove the gravity of the problem. Legalities have been used to understand India’s weapons to fight against the growth of this malpractice. Conflict theory, Marxist feminism and victim precipitation theory helps explain the theoretical framework behind the phenomenon.

While the magnitude of the problem of trafficking into coerced marriage is enormous in the country and depends upon the various socio-economic, political and cultural factors such as family and community hierarchies, cultural, traditions and values that encourage gender discrimination and a disregard for children’s rights, in Haryana and its surrounding areas in Punjab, the buying of women for marriage is directly fueled by and result of adverse sex ratio which is in turn a result of female foeticide.

The grave problem of female foeticide and extreme poverty suffered by our country are found to be the main reasons leading to bride trafficking. However towards the end it is found that bride

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trafficking; an organized racket now has not just cropped out of nowhere but is a by product of another widely practiced phenomenon in the name of culture and tradition- female foeticide.

INTRODUCTION

Article 3, paragraph (a) of the *Protocol To Prevent, Suppress And Punish Trafficking In Persons, Especially Women And Children, Supplementing The United Nations Convention Against Transnational Organized Crime* defines trafficking in persons as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”

Trafficking of women for the purpose of marriage as brides is known as bride trafficking. Wikipedia defines bride buying or bride purchasing as an industry or trade of purchasing a bride to become property and at times as property that can be resold or repurchased for reselling. A forced marriage is a marriage where one or both participants are married without their freely given consent. *Servile marriage* is defined as a marriage involving a person being sold, transferred or inherited into that marriage.

Goa Children’s Act, 2003 is the sole act to define trafficking in India. This is a loophole in the Immoral Trafficking Prevention Act, 1956 which has failed to define trafficking being the prime act related to trafficking in India. This need to define trafficking was felt by the Justice J. S. Verma committee which was setup on December 23rd, 2012 to look into possible amendments in

the Criminal Law to provide for quicker trial and enhanced punishments for criminals committing sexual assault of extreme nature against women.

Female foeticide is the act of aborting a foetus because it is female. The frequency of female foeticide is indirectly estimated from the observed high birth sex ratio, which is the ratio of boys to girls at birth. The natural ratio is assumed to be between 103 to 107, and any number above it is considered as suggestive of female foeticide.

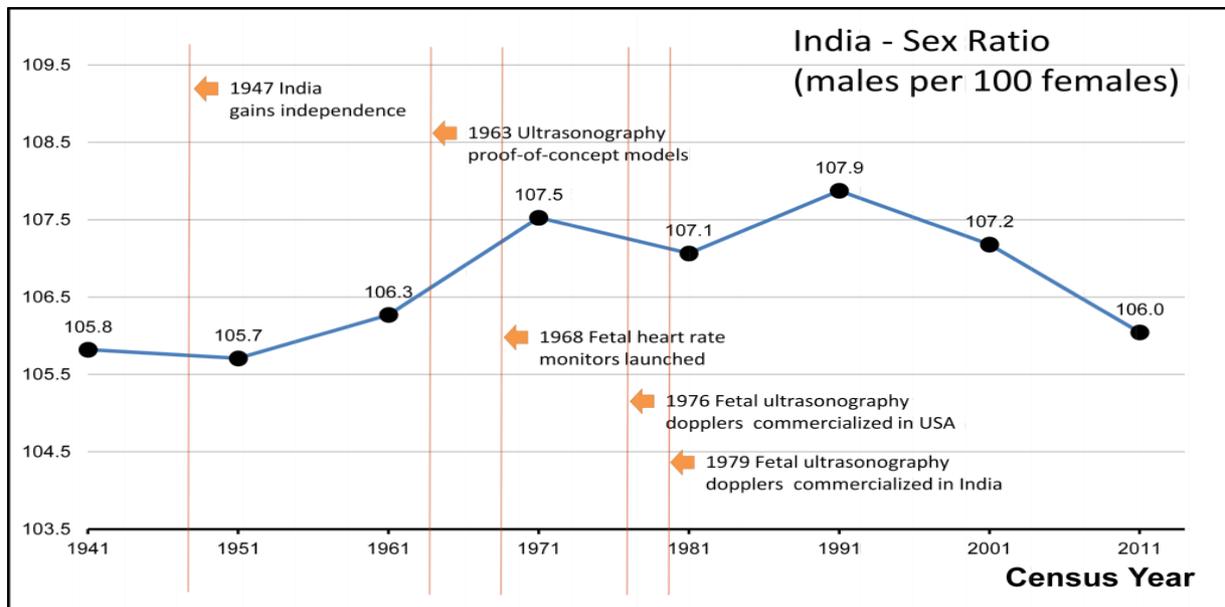
PURPOSE OF RESEARCH

This paper based on secondary data is an exploratory study as no previous academic research has been conducted on the topic. The main purpose of the research is to establish a relation between bride trafficking and female foeticide using statistics and the cases brought forward through news and time to time reports of certain NGOs and thus prove that bride trafficking has not cropped up from nowhere but is a byproduct of another deadly phenomenon of female foeticide that has already rotten the roots of our society.

MAGNITUDE OF THE PROBLEM

Bride trafficking is just one part of human trafficking and the statistics are generally covered under human trafficking. The toll of crimes reported under human trafficking has seen a rise from 2848 in 2009 to 3940 recorded in 2013. This hike shows a rise of 38.3% over 2009 in 2013. According to the 2013 National Crime Records Bureau (NCRB) report, 24,749 children and women between the ages of 15 and 30 were kidnapped and sold into marriage across the country.

India's child sex ratio was 108 according to its 2001 census, and 109 according to its 2011 census. Both the ratio suggests female foeticide being practiced at a large scale under the nose of the government despite many actions taken to curb the malpractice.



As per the Indian census 2011 report, the sex ratio of India (females per 1000 males) is as follows:

Average India sex ratio:- 933

Rural sex ratio:- 946

Urban sex ratio:- 900

State with highest female sex ratio : Kerala – 1058

State with lowest female sex ratio: Haryana- 861

BRIDE TRAFFICKING

Bride purchasing is the illegal industry of purchasing a bride as a property. Every year thousands of young women and girls in northern India are lured or sold into involuntary marriage. They are bartered at prices that vary depending on their age, beauty and virginity, exploited under conditions that amounts to a modern form of slavery. Bride buying is an old practice in many regions in India. Bride purchasing is common in the states of India such as Haryana, Jharkhand, Uttar Pradesh and Punjab. According to CNN- IBN women are bought, sold, trafficked, raped and married off without consent across some parts of India. Bride purchases are usually outsourced from Bihar, Assam, West Bengal and Odisha as per various news reported in cases related to bride trafficking.

A field study on the impact of sex ratio on marriage by NGO Drishti Stree Adhyayan Prabodhan Kendra that covered over 10000 households in Haryana found that over 9000 married women were bought from other states.

The brides bought and sold through bride trafficking rackets are commonly known as *paros or molkis* which roughly translates as *outsider*. The price set for them can range from as low as Rs.500 to any extremes.

According to Om Prakash Dhankar, Sarv Khap Panchayat coordinator in Haryana, the scarcity of women for long has lead to the practice of polyandry and as the brides are purchased the men think they can do anything and everything with them. Rakesh Senger from NGO Bachpan Bachao Andolan reports that earlier brides were purchased from nearby regions like Alwar area of Rajasthan and Ganganagar, but now they are bought from regions all over the country like Assam, West Bengal, Bihar, Odisha or even southern states of the country like Andhra Pradesh or Kerala. He also endorses the fact that since these women are bought as commodities they are supposed to work as sex and labour slaves as per the wishes of her husband or owner.

In Haryana maximum residents were employed in police, army and transport mainly as truck drivers who during their visits and travel to other region started marrying outside their own society. These marriages provided links for bride trafficking as parents from poor families used to marry their daughters to such people who did not demand for dowry thus saving themselves from the expenses of a marriage. While the truck drivers used to marry such girls to be used as bonded labours in their land for booming agriculture in the beginning but slowly with time this practice became quite regular and for purposes to suit a man's needs. These marriages however famous as *thag vivahs* in source states are still practiced to get rid of dowry. Girls in such marriages usually get the status of third fourth or fifth wife or just a domestic or sex slave of a husband double their age.

According to a Punjabi writer Kirpal Kazak selling of women started after the arrival of Mughals. He mentions that bride selling in Jharkhand began after the arrivals of the Rajputs. The tribe used to decorate their women with ornaments for sale the rate of which declined after the green revolution in India, spread of literacy and improvement of male female ratio in 1911 which

however declined yet again in 2011. Since then it has been observed that bride buying or selling has been confined to poverty stricken states. Shafiqur Rehman, a researcher for Jagori says women in India have always been treated as an object since they formed a part of the loot by local tribes.

The present conditions of women are even more deplorable compared to yesteryears. According to a report by Akanksha Saxena and Neha Sharma for BBC News, there are 879 women per 1000 men in Mewat district in Northern state of Haryana while national average is 927 women per 1000 men. The dearth of women for so many men explains the need for trafficking of young girls to be married off to local men. These girls known as *paros* are sold and resold many a times or even forced to become the bride for all the men of the family. The fate of these women is generally decided by their buyers. They are forced not only to be an unwilling bride for aged men but also domestic workers, farm labourers as well as sex slaves.

The plights of such women are terrible as they cannot even play the role of a whistleblower due to the fear of being ostracized by the society. They are never given the status equivalent to the local girls as they are outsiders. The *paros* or *molkis* live in a deplorable condition and are forced to bear all kinds of abuses. These girls are sold and resold again and again for more and more money. Many of them land up in the prostitution racket or other such troublesome crimes.

A report of field work by NGO Empower People quotes that reasons for importing girls include practice of *karewa* (widow remarriage), cheap labour, scarcity of girls, over age and heavy dowry.

Bride trafficking is a world of crime which is flourishing prosperously with the growing demand for brides in a few states of north India like Haryana, Punjab and Uttar Pradesh. There are various reasons behind the prosperous flourishing of such a society plaguing phenomenon. Such reasons are analysed while discussing a few bride trafficking cases below:

- Permila a resident of Bihar was sold off by her parents who lived in extreme poverty in exchange of some money to a man in Punjab. Poor girl was abused in several ways by her so called husband and his male relatives and later sold to a prostitution ring in New Delhi. This case is just

one example of many girls sold and resold daily for marriage purposes and later ending up in the prostitution ring.

- In yet another case reported in IOL News, Sumari presently in Mewat was bought from her native village to northern India sold and resold several times where once she and her daughter was imprisoned and abused till she was sold yet again to finally find a husband who was good enough to take care of her and her daughter. But after his death her in laws threw her out thus forcing her to lead an isolated life.
- Hemeedan in her late 30s at present was cheated by an acquaintance that laced her food and brought her to Mewat from Assam when she was 16 and forced her into marrying a man in late 50s.
- Razia was brought from Bihar at the age of 14 from Bhagalpur District of Bihar to Rajasthan. She doesn't remember the features of that man even though he raped her for 3 continuous days because she has been sold several times since then. She was dumped a few years later to a village in Mewat district of Haryana to some Shehnawaz, married and father of six, who just married her for the sake of a male child. While Razia was pregnant for the second time she was sold yet again by her in laws for a sum of Rs.25000/- . She however managed to escape from there and return to Shehnawaz demanding her rights of a wife which she was awarded but later after Shehnawaz's death; she was thrown out of the house and forced to struggle to earn a living for her kids and herself.
- Lakshmi was 12 years old when she and her sister was bought for twelve thousand rupees by a broker from her father by confirming that she would be married to a nice groom and have a great future ahead. Lakshmi was however taken to Haryana and handed over to a man in late 50s who was actually the proposed groom's uncle. She was abused by her broker when she opposed for her sale. She was taken back to her father and demanded six thousand rupees for her to be handed over back to him. Lack of money forced her into bride selling once again when her broker sold her for ten thousand rupees to a truck driver who remains out of town for maximum time of the year and returns home to just abuse her physically and sexually.

- In an article reported in the Hindustan times a man named Khalil resident of Mewat claims his second wife to be a *paro* brought from West Bengal, he however denies involvement of money, has been living with his first wife. Though he says both the wives are given equal status in the family a clear difference in their standard of living was observed by the reporter. As reported the first wife lives in a spacious house and hardly goes out for work hardly whereas on the other hand *paro* lives in not so spacious house and works whole day long. This article thus endorses the fact that women trafficked for marriage are not given an equal status as the local women.
- Ashwaq Masoodi has reported an article in the news about a case where the girl was first raped by her uncle in front of her aunt and then sold off to a 45 year old widower in Haryana for Rs.70000. The girl was forced into this outraging trade because she and her family members were suffering from malnutrition due to extreme poverty which was the result of sudden closure of tea estates in Siliguri. He however reports that this also happened as Haryana did not have enough girls to be married to the man because of its skewed sex ratio.
- In yet another case the reporter met Rekha who was sold in Haryana for Rs.50000 while she hailed from North Bengal. She was forced for marriage in 2007 since when she has been living and is now frequent with Haryana's local language and loves staying there as for her she has been lucky to have escaped poverty that she was made to suffer while in her maternal family.
- In Haryana a woman 30 years at the time case was reported was sold to a family where the groom had two brothers. She was physically and sexually assaulted by her in laws as well and forced to do all kinds of work for the house and is beaten by her husband quite often.

CASE ANALYSIS

In each and every case more or less a similar situation can be seen. The girls have faced a similar scenario in every condition. Only a few were lucky enough to have been rescued by the NGOs but not all had a similar fate. In one case the girl ended up in a prostitution racket, but that just one that came to the forefront. Many other girls face the same fate ultimately. The cases unanimously show only one reason for the need to buy a bride for any man and that is scarcity of girls in their neighbourhood.

The above cases bring out the pull and push factors into this terrible. Poverty and skewed sex ratio which is a resultant of malpractice of female foeticide stand out as the push and pull factors for bride trafficking. Where poverty stands out as the push factor skewed sex ratio and unavailability of girls for marriage is the main pull factor for bride trafficking. The demand for marriageable age girls is so intense that organized trafficking rackets have started operating in Haryana, Punjab and Uttar Pradesh. Bride trafficking and unavailability of girls can thus be said to be a demand and supply relationship which also proves the fact that to put a check on bride trafficking the first and foremost requirement is to put a strict end to the malpractice of female foeticide. Though this way it might take centuries to come to an end but this is the only option to kill the fruiting tree of bride trafficking from its roots.

- **Socio economic factors**: In a news article published in Hindustan Times a trafficker in the UN report of 2013 claims that poor people find selling their girls as brides a better option than marrying them in a proper way because it saves them from the burden of dowry in one hand and a chance to earn by selling their girls on the other. The girls are sold off at early ages like 15 or 16 to be married to men of double or even triple their age. According to a situational report by Shakti vahini in economically prosperous districts of Doaba region in Punjab the demand for cheap labour in agriculture, animal rearing, domestic services, brick kilns, stone cutting/policing, dhabas and begging have lead to trafficking of bride due to disproportionate development of the region compared to poor states. The migration of local population to developed countries has created a vacuum for work force in the region which in turn is attracting the work force from the less or under developed states of the country. Studies by various organisations have revealed that girls from poverty-stricken villages in Assam, West Bengal, Jharkhand, Bihar, Odisha and even from Uttar Pradesh, Madhya Pradesh and Andhra Pradesh, are trafficked to Haryana and Punjab via Delhi for forced marriages.
- **Cultural factors**: Gender discrimination is traditionally followed in India despite of caste, creed or economic status. To get rid of the burden of expenses for raising a girl child and payment of dowry; abortion of female foetuses and female infanticide are preferred. This malpractice at an alarming rate has led to gender imbalance across the country specially in states like Haryana, Uttar Pradesh and Punjab. The Prenatal diagnostics Techniques Act, 1994 has helped in

punishing the defaulters but has not been able to curb the crime of killing unborn female child completely.

Female foeticide has also shown an increasing trend over the years even though many steps have been taken by the state to curb this phenomenon. The growth in this phenomenon can be easily made out by the declining number of girls over the years as girls cannot just vanish but have been killed before or immediately after birth to save the family from the burden of a girl's expenses.

According to a report by UN Women and UNFPA the number of girls has dropped from 945 girls per 1000 boys in 1991 to 918 in 2011. The UN's Assistant Secretary General, Lakshmi Puri quotes that India's sex gap demonstrates that the economic and social progress in the country has had minimum bearing on the status of women and daughters in our society.

According to the Annual Health survey Report the depleting child sex ratio is also affected due to female infanticide of the age group of 0-4 years. The girls if born face neglect in the family and treated as a burden so killed and thus there is a gender imbalance seen and suffered by the country.

On the occasion of the Girl Child Day Ms Maneka Sanjay Gandhi the Union Minister for Women and Child made an appeal to combat foeticide. She stated "Today, we are proud that we are one of the fastest growing economies in the world. But the paradox remains that the girl child is denied the right to be born. It is a matter of great concern that gender biased sex selective elimination is continuing in many parts of our country. This is a violation of human rights and of the right to life guaranteed under our Constitution. The social biases against the girl child must be fought with all the resources at our command. The Prime Minister has brought these issues to the forefront through the "***BetiBachao, BetiPadhao initiative***" this year itself.

A study by an NGO has revealed that the state's infamous sex ratio has affected poor youngsters the most. According to the study, a majority of men who "bought" brides from different states were from poor families as they failed to get marriage proposals from their own state. Pune-based NGO Drishti Stree Adhyayan Prabodhan Kendra interviewed 230 men in Haryana

who bought brides from Uttar Pradesh, Bihar, West Bengal, Andhra Pradesh, Assam and even some parts of Haryana itself. Out of these, 40% admitted that poverty had forced them to pay a bride price.

Other than the reasons cited by the women suffering or people working for such women the men of Haryana deny female foeticide or the skewed sex ratio to be the reason behind bride trafficking as a flourishing trade. These men claim that girls of the region are comparatively more educated than boys so the men are forced to buy brides for them from outside Haryana. Secondly for a bride from the same village they would need to buy jewelry and gifts worth lakhs while for a molki they only need to pay the bare essentials like mangalsutra and gold ring which saves them a fortune. Moreover the khap rules also forbids the boys to marry girls from the same gotra and thus they find marrying a molki an easier and better option compared to a normal bride from Haryana.

THEORETICAL FRAMEWORK

Conflict theory, Marxist feminism and victim precipitation theory best describes the behavior of trafficker as well that of the victims and also explains the causes responsible behind the plight of the victims. In cases of bride trafficking these three theories help explain the phenomenon in detail.

Conflict theories are perspectives in sociology that emphasize the social, political, or material inequality of a social group, that critique the broad socio-political system. Social conflict theory is a Marxist-based social theory which argues that individuals and groups within society have differing amounts of material and non-material resources and that the more powerful groups use their power in order to exploit groups with less power. Conflict theories draw attention to power differentials, such as class conflict, and generally contrast historically dominant ideologies. According to conflict theory, inequality exists because those in control of a disproportionate share of society's resources actively defend their advantages. In this perspective attention is paid to class, race and gender because they are seen as the grounds of the most

pertinent and enduring struggles in society. Conflict theory sees social life as a competition and focuses on the distribution of resources, power and inequality.

According to C.Wright Mills, founder of the modern conflict theory, social structures are created because of conflict between differing interests. People are then impacted by the creation of social structures and the usual result is a differential of power between the elite and the others.

Marxist feminism is a sub type of feminist theory which focuses on the social institutions of private property and capitalism to explain and criticize gender inequality and oppression. According to Marxist feminists private property gives rise to economic inequality, dependence, political and domestic struggle between the sexes and is the root of women's oppression in the current social context. This theory is focused on investigating and explaining the ways in which women are oppressed through systems of capitalism and private property.

Victim precipitation theory also fits with bride trafficking especially with passive precipitation. Passive precipitation relates to power imbalance. Wolfgang is considered to have formally introduced victim precipitation in his seminal work on homicides. It is owing to some personal characteristics of the victim that they are singled out for attack and manipulation. Behavior by a victim that initiates subsequent behavior of the victimizer is referred to as victim precipitation. Attaining economic power is one significant gain. The girls are lured by traffickers into forced marriage by false promises of education, money, job, marriage and love.

LEGAL REMEDIES

The Indian justice system has the innumerable laws to help the system fight against various types of crimes prevalent in the society. The Immoral Trafficking Prevention Act though namely talks about trafficking, it does not define trafficking or even covers all forms of trafficking. This Act covers prostitution completely but is not competent enough to help to curb or even check bride trafficking. The Bonded Labour Act and Juvenile Justice Act equally fail to cover bride trafficking in its purview.

However Prenatal Diagnostics Techniques Act, 1994 was formulated to keep a check or punish doctors, parents and others involved in sex selective abortion. This law was further amended into the Pre-Conception and Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) (PCPNDT) Act in 2004 to deter and punish prenatal sex screening and female foeticide. But the continuous skewed sex ratio till date however mocks the implementation of the Act.

The police officials clearly declares themselves incapable to take action against bride trafficking as no girl comes up complaining of being sold or forced marriage as they fear of being ostracized by the society for being a paro. No girl dare to raise their voice against traffickers or their assaulters since they might be beaten or resold to even worse scenarios like brothels. The police also claim that since marrying someone is not illegal they cannot take action against anyone.

In this trade of brides, lucky are those who timely get rescued and sent back to their homes, while in majority of cases, the cries and screams go unnoticed. The administration at Destination, transit as well as source areas gives deaf ears to these victims. Once a girl goes missing from her home, the law enforcement agencies fails to report and investigate the matter. The agencies at transit points hardly pay attention towards the movement of people into or from their jurisdictions. Irony is that at destination point, the police fail to take action against the offenders even after the rescue of the girls.

CONCLUSION

Bride trafficking is one of traditional slavery system which has a deeper history of the region so rescue and some other immediate relief or any harsh law cannot change the phenomenon. It can only be abolished by cultural renaissance and sensitization of people. This phenomenon is like demand supply feature of any product or commodity sold in the market. The phenomenon will continue till there is a demand for brides in states with skewed sex ratio and comparatively lower number of girls compared to boys. Thus female foeticide and infanticide needs to be abolished or curbed to atleast keep a check on the by products of this phenomenon like bride trafficking which in itself has become a widespread phenomenon in today's scenario.

Brides for sale Large-scale bride trafficking has been taking place in Haryana, Punjab and other low-sex-ratio states for over two decades, say NGOs. Even if the Haryana government ensures that not a single sex-determination test or sex-selective abortion takes place, demographers believe it will take 50 years for the population to stabilize and return to its natural ratio. The challenge before not just Haryana but also western Uttar Pradesh, Punjab and Rajasthan is to ensure that bride demand is not catered through human trafficking.

A girl who is supposed to be in school at the tender age of 14 or 15 to be able to shape her future in the proper direction with proper opportunities to be made available to her, it is a sad plight to find her being forced into so called marriage institution with men double or triple her age. The deplorable condition of such girls can be made out by the fact that such girls work as domestic slaves during the day and sex slaves at night.

It can be thus be concluded where a girl child is received unpleasantly and considered a burden, bride buying becomes a by product as an absurd reality.

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