

CHILD TRAFFICKING: RIGHTS AND PROTECTION AVAILABLE TO CHILDREN IN INDIA

Dr. Rohit P. Shabran* & Axita Srivastava**

Abstract

The existence of child trafficking in world in general and in India in particular is not a new practice, but what is new is little human awareness towards it and its perception as a social problem. In most of the developing countries child trafficking in one form or other still exists. It is one of the most dangerous, demeaning, inhuman activities existing in civilized world which can shake up any sensitive person. This paper is an attempt to study the various rights of children available in Indian Legislation to save them from Child trafficking.

Keywords: Child, Trafficking, Rights, Legislation, Child trafficking

* Head of Department (Law) @ School of Legal Studies, BBD University, Lucknow (U.P.)

** Research Scholar @ School of Legal Studies, BBD University, Lucknow (U.P.)

INTRODUCTION

Exploitation of man by man is not the new phenomenon in human history. There are various forms of social problem or issues related to exploitation of human beings and one of the alarming one is Child Trafficking. Child trafficking is the very sensitive and common problem faced by almost so many countries now a days and India is also not untouched with it. This practice hampered the growth and development of the Nation. Lot of efforts has been taken by the Indian legislature to keep a check on this evil practice and to protect the future youth of our Nation. Forced prostitution, child trafficking and abuse are real and sad facts of life and society. In the present world scenario traffic in persons and exploitation through the prostitution of others remain rife in various parts of the world and are acquiring new forms and being pursued on an industrial scale to a dangerous extent. Children from poor backgrounds are the key target groups, ethnic minorities, SCs, OBCs, indigenous people, hill tribes, refugees and illegal migrants are the easy victims. Poverty, deprivation, natural disasters, inadequate educational and employment opportunities, economic disparities, erosion of traditional family systems, war and violation of human rights are inter alia, some of the factors responsible for the growth of this malaise in society.

RESEARCH OBJECTIVE

The objective of this research is to study the root cause or the various factors responsible for practice of child trafficking in India and its effects on child as well as on society. Researcher also focuses on the different constitutional and legal provisions to prevent the children from child trafficking.

RESEARCH METHODOLOGY

This research study is basically based on the secondary data collected by the compilation of material from various books, articles, journals newspapers, research papers, etc., and from other miscellaneous sources the different governmental plans and policies to provide protection to the victims of child trafficking.

WHAT IS CHILD TRAFFICKING?

The dictionary meaning of Trafficking is 'Trade'. In simple words child trafficking is trade of Children. It is very important that before going into the depth of the various aspects of child

trafficking such as forms of child trafficking, causes and reason of child trafficking, different legislation for protection of children from trafficking, etc., we should know the legal definition of child, then only we are able to understand in real sense the concept of child trafficking.

DEFINITION OF CHILD

- As per English Oxford Living Dictionary, Child is, *“A young human being below the age of puberty or below the legal age of majority.”*
- In Cambridge Dictionary, Child is , defined as, *“A boy or girl from the time of birth until he or she is an adult, or a son or a daughter of any age: an eighteen year old child.”*
- The Factories Act, 1948 defines child in section 2(c) as, *‘child’ means a person who has not completed his fifteen year of age.’*
- The Child Labour (Prohibition and Regulation) Act, 1986 defines in section 2(ii) as, *‘child’ means a person who has not completed his fourteen year of age.*

CAUSES OF CHILD TRAFFICKING

There are so many factors responsible for child trafficking in all over the world as well as in India such as poverty, migration, political instability, militarism, civil unrest, natural disaster in homeland, unemployment, lack of educational opportunities, etc. Due to lack of home stability and lack of financial security children are thrown into the trade of trafficking. Rates of trafficking are usually high in those areas where there are limited job opportunities are available, where children are having less or minimal educational and vocational skills. Apart from this those children are the primary and easy target of the traffickers who are living without their parents or guardians. Porous borders and the presence of natural disasters or conflicts leads towards forced migration of the families from one state to another. Children without birth registration or identity documents also faced an extreme risk of trafficking. UNICEF remarks that, Traffickers exploit the fact that children have a less developed capacity than adults to assess the risk, to differentiate between right and wrong and to look after them. Unsurprisingly, trafficking frequently has devastating long-term effects on the mental and physical health of its victims.

IMPACT OF CHILD TRAFFICKING ON VICTIMS AND ON SOCIETY

In this piece of paper researcher tries to focus on the various aspects of child trafficking one of them is the impact of child trafficking on victims and on society. Victims of child trafficking are the children who has not completed the age of 18 years. Most of the victims are often experience harsh physical impact because of the excessive work load or the use of extreme force by the traffickers. Apart from this due to sexual exploitation victims are facing serious health issues such as HIV/AIDS, as well as serious mental health risks. Anxiety, insecurity, fear, and trauma are all products of trafficking. Being victims of child trafficking they lost support from family and community, there is loss of proper education, there is isolation from the society, etc. Not only victims but also the society has the harsh impact of child trafficking such as countries deprives of human capital, this practice of child trafficking promotes social breakdown, undermine public health, subverts government authority, imposes enormous economic cost, etc. so this practice of child trafficking affects both victims as well as society at large.

LEGAL FRAMEWORK TO PREVENT CHILD TRAFFICKING

There are following legal framework to keep a check on practice of child trafficking:

1. International Legal Instruments

The United Nations Convention on the Right of the Child, 1989 defines child prostitution as sexual exploitation of a child below the age of 18 years for remuneration in cash or kind. It is also important to note that child prostitution, in present days is very closely related to child pornography. The First World Congress held in Stockholm in 1996 against commercial sexual exploitation of children describes child pornography as any visual and audio material which uses children in sexual context. It consists of “the visual depiction of a child engaged in explicit sexual conduct, real or stimulated, or the lewd exhibition of the genitals intended for sexual gratification of the users”.

Besides, in 1999, the ILO adopted the convention concerning prohibition and in media Action for Elimination of Worst forms of Child Labour which addresses among other issues, sale and trafficking of children, child prostitution and child pornography. ILO also adopted the Forced Labour Convention, 1930 and the Migrant Workers Convention, 1949 to stop child trafficking for forced labour and exploitation of child as migrant workers. In May 2000, the UN General Assembly adopted an optional Protocol to the Conventions on the Rights of

the Child on the sale of children, child prostitution and child pornography. In October 2000, the United States Congress passed the Trafficking Victims Protection Act. This legislation seeks to dramatically change the way traffickers are prosecuted and victims are treated. This Act provides harsh penalties for traffickers, particularly those who traffic in children and witness protection and limited immigration for relief for victims. The Second World Congress against Commercial Exploitation of Children was held at Yokohama in Japan in December 2001. The Congress expressed concern over the major increase in the availability of child pornography because of the emergence of the internet.

2. Constitutional Provisions

Exploitation of man by man is not a new phenomenon in human history. The framers of the Constitution were aware of the various exploitative practices prevailing in the country. The Constitution in the Preamble promises to secure to all its citizens justice, liberty, and assures dignity of the individual. An exploited individual has no dignity. Therefore, Article 23 and 24 captioned as 'Right against exploitation' are meant to fulfil the assurances of the Preamble. These articles are available to all human beings and are not confined to citizens only. The directives contained in article 39(e) and 39(f) also direct the state in particular to protect men, women and children from abuse and exploitation respectively.

Article 23 prohibits traffic in human beings, beggar and other similar form of forced labour. Any person including the State employing these practices is punishable in accordance with law. The power to make law on such practices is exclusively with the parliament. State legislatures have no such power. Article 23 expressly prohibits three practices, namely:

- a) Beggar,
- b) Traffic in human beings, and
- c) Forced Labour.

Begging is also one of the purpose for which children are trafficked from one state to another state. Beggar is a form of forced labour under which a person is compelled to work involuntarily without any payment. Thus, beggar is a form of forced labour for which no wages are paid. Article 23(1) abolishes beggar and forced labour and such type of any practises are strictly prohibited.

Traffic in Human Beings means trade in human beings such as slave trade. It includes trade in women and children for immoral or other purposes. The parliament has enacted the Immoral Traffic (Prevention) Act, 1956 to punish persons who indulge in trafficking in human beings.

Besides beggar and traffic in human beings, especially in children, Article 23 of the Constitution of India also prohibits other similar forms of forced labour. Because usually children are trafficked for doing forced labour.

Slavery in its ancient form may not so much be a problem in every State today but its newer forms which are labelled in the Indian Constitution under the general term “Exploitation” are no less a serious challenge to human freedom and civilisation. It is in this view that our Constitution, instead of using the word ‘slavery’ uses the more comprehensive expression ‘traffic in human beings’ which includes a prohibition not only of slavery but also of traffic in women and children or the crippled, for immoral or other purposes. Our Constitution also prohibits forced labour of any form which is similar to beggar, an indigenous system under which landlords sometimes used to compel their tenants to render free service. What is prohibited by the clause is therefore the act of compelling a person to render gratuitous service where he was lawfully entitled either not to work or to receive remuneration for it. The clause therefore does not prohibit forced labour as punishment for criminal offence. Nor would it prevent the State from imposing compulsory recruitment or conscription for public purposes, such as military or social service.

3. National Legal Framework

Apart from International Instruments and Constitutional provision, there are other legal measures which are oriented towards the protection of rights of children from child trafficking such as:

- i. Immoral Traffic (Prevention) Act, 1956.
- ii. Indian Penal Code, 1860.
- iii. Juvenile Justice (Care and Protection of Children) Act, 2000.
- iv. The Protection of Children from Sexual Offences Act, 2012.
- v. The Child Labour (Prohibition and Regulation) Act, 1986.

- Immoral Traffic (Prevention) Act, 1956

Though there were a number of local Acts in force in the country they were neither effective nor uniform. In 1956, the Immoral Traffic in women and girls Act known as SITA, was passed. The basic objective of SITA was to punish brothel keepers, procurers and pimps and to prevent prostitution in or in the vicinity of public places. The Act was amended in 1978 and more recently in 1986 and is now titled 'The Immoral Traffic (Prevention) Act'. It is applicable to both men and women. It provides more stringent penalties, particularly with reference to offences against children and minors. It provides that the special trafficking police officer making a search shall be accompanied by at least two women police officers and a woman would be interrogated only by a women police officer and on their non-availability, in the presence of a social worker. The bona fides of those coming forward to take custody of rescued victims must now be investigated by a welfare institution or Organisation before she is released. Provisions are made for police officers to deal with offences of interstate ramifications when dealing with trafficking. Compulsory medical examination of those rescued and their rehabilitation are also provided for.

The object of the enactment was to inhibit or abolish the commercial vice of traffic in women, men and children for the purpose of prostitution as an organised means of living. The said Act criminalises the procurers, traffickers and profiteers of the trade but in no way does it define 'trafficking' per se in human beings. Under Immoral Traffic (Prevention) Act, 1956 stringent punishment has been prescribed which ranges from seven years to life imprisonment. The Act tries to define certain important expression such as Brothel, Prostitution, etc. It also provides punishment for keeping a brothel, for allowing premises to be used as brothel. Then provides punishment for living on the earnings of prostitution, for procuring, inducing or taking person for the sake of prostitution, for detaining a person in premises where prostitution is carried on, for prostitution in or in the vicinity of public places, for seduction- seducing or soliciting for prostitution.

This is a social legislation with a double objective, both penal and ameliorative, and the legislature not only wanted prostitution to be stopped but also to provide for the rehabilitation of prostitutes. Therefore, the provisions of the legislation are more preventive than punitive.

- The Indian Penal Code, 1860

The Indian Penal Code, 1860 for its part, contains various provisions related to child trafficking. It imposes, for instance, criminal penalties for kidnapping, abduction, buying or selling a minor for prostitution, unlawful compulsory labour, importing/procuring girls and buying or selling a person for slavery. In addition, sexual assault on a child under 16 years of age, even with formal consent, amounts to rape under the Indian Penal Code.

- The Juvenile Justice (Care and Protection of Children) Act, 2000

The Juvenile Justice (Care and Protection of Children) Act, 2000 is also relevant for the repression of child trafficking which includes prohibition on cruelty to child, employment of child for begging, providing a child with narcotic drugs or psychotropic substances and forcing a child into hazardous employment. Child is defined by the Act as a person under the age of 18. The important features of the Act are that it prescribes a uniform age for both boys and girls to be treated as children which are based on United Nations convention on the rights of child, 1989. There is differential treatment for two categories of children, namely child in need of care and protection and juvenile in conflict of law. For fulfilling the former purpose under section 29 of the Act the State Government may by notification constitute for every district one or more Child Welfare Committees for exercising the powers and discharging the duties conferred on such committees in relation to children in need of care and protection under this Act. This Act also provides for Children's Homes maintain by State government for their care, treatment, education, tanning and rehabilitation. It also provides for Shelter Homes which function as drop-in-centres for children brought in need of urgent support. Then Section 40 of the Act provides for rehabilitation and social reintegration of a child.

The Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 has inserted a new section 62-A which envisages constitution of a Child Protection Unit for every district consisting of such officers and other employees as may be appointed by that government to take up matters relating to children in need of care and protection and juveniles in conflict with law with a view to ensure the implementation of this Act. It includes the establishment and maintenance of homes, notification of competent authorities in relation to these children and their rehabilitation and coordination with various official and non-official agencies.

- The Protection of Children from Sexual Offences Act, 2012

This Act is relevant for protecting those children who are especially trafficked for sexual

activities. Article 15 of the Constitution, inter alia, confers upon the State powers to make special provisions for children. Further, Article 39, inter alia, provides that the State shall in particular direct its policy towards securing that the tender age of children are not abused and their childhood or youth are protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity.

The United Nations Convention on the Rights of Children, ratified by India on 11th December, 1992, requires the State Parties to undertake all appropriate national, bilateral and multilateral measures to prevent the inducement or coercion of a child to engage in any unlawful sexual activity, the exploitative use of children in prostitution or other unlawful sexual practices, the exploitative use of children in pornographic performances and materials.

The data collected by the National Crime Records Bureau shows that there has been an increase in cases of sexual offences against children. A large number of such offences are neither specifically provided for nor are they adequately penalized. The interest of child as a victim as well as a witness, need to be protected. It is felt that offences against children need to be defined explicitly and countered through commensurate penalties as an effective deterrence.

This Act provides for protection of children from the offences of sexual assault, sexual harassment and pornography with due regard for safeguarding the interest and wellbeing of the child at every stage of the Judicial process, incorporating child friendly procedures for reporting, recording of evidence, investigation and trial of offences and provision for establishment of Special Court for speedy trial of such offences.

- The Child Labour (Prohibition and Regulation) Act, 1986

This legislation is relevant for protecting those children who are especially trafficked and compelled to do forced labour. Children being of tender age faces so many problem, they are exploited and are forced to work in dangerous and hazardous industry due to which they are suffering from so many health issues. This Act is beneficial because it prohibits and regulates such type of practices.

4. National Policies and Plans

The National Child Labour Policy was approved by the cabinet on 14th August 1987 during

the Seventh Five Year Plan Period. The policy was formulated with the basic objective of suitably rehabilitating the children withdrawn from employment thereby reducing the incidence of child labour in areas of known concentration of child labour. Then the Government of India has formulated a National Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children in 1998, with the objective to mainstream and to reintegrate the women and child victims of commercial sexual exploitation in society. The National Plan of Action for Children, 2004 is very beneficial. According to this plan The Ministry of Women, Children and Social Welfare has developed a 10 year National Plan of Action for Children. The plan aims to improve quality of every child's life by promoting child-friendly environments focusing on education, health, nutrition and other sectors through increased access to all basic needs, facilities and services. The plan aims to eliminate all forms of exploitation, abuse and discrimination against children (MoWCSW, 2004).

5. Commissions

As we all know India participated in the United Nations (UN) General Assembly Summit in 1990, which adopted a Declaration on Survival, Protection and Development of Children. India also acceded to the Convention on the Rights of the Child, 1989 which makes it incumbent upon signatory States to take all necessary steps to protect Children's rights enumerated in the Convention. In order to ensure protection of rights of children, the Government has adopted the National Charter for children 2003. To fulfil its international commitment an Act, the Commission for Protection of Child Rights Act, 2005 was passed. It is an Act to provide for the constitution of a National Commission and State Commission for Protection of Child Rights and Children's Courts for providing speedy trial of offences against Children or of violation of child rights. By the commission for the Protection of Child Rights (Amendment) Act, 2006, in the proviso to section 4, for the words "Minister-in-charge of the Ministry of Human Resource Development", the words "Minister-in-charge of the Ministry or the Department of Woman and Child Development were substituted.

CONCLUSION

Addressing human trafficking truly requires a comprehensive and multi-faceted strategy, which includes efforts aimed at the rehabilitation and social reintegration of trafficked victims. Otherwise, the strategy will not be successful in the long run. In essence, at the very

core of any anti-trafficking strategy must be an unwavering commitment from individual countries and other multilateral actors to address human trafficking at every stage of this cycle, from prevention to recruitment, transportation to bonded labour, and from rescue to reintegration. Without this commitment, anti-trafficking efforts will be fundamentally unable to intervene on behalf of the trafficked victims whose human rights violations form the backbone of this exploitative trade.

Also, the enactment of the law on paper with no real training and support to the functionaries would be futile and therefore, what is needed now is “actual”, “planned” and “effective” implementation. Involving the community participation in the whole implementation process would create a greater impact. The procedures and technicalities should not reduce the ambitious legislations to empty words, because at stake here is the children- the future of the nation.

“Governments have to do more to guarantee children and young people their right to protection from trafficking. There is hope, and real and practical solutions exist. Trafficking of children for sexual purposes happens in virtually every country in the world, developed and developing and we must see governments uphold their commitments to those solutions.”

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5. The Protocol obligates ratifying states to introduce national trafficking legislation.
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7. Convention on the Rights of the Child, http://www.unicef.org/crc/index_30204.html
8. Section 366, Indian Penal Code
9. Section 372 and 373, Indian Penal Code
10. Renamed as such by drastic amendments to the Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA)
11. Section 5 of ITPA, 1956 provides punishment for Procuring, inducing or taking person for the sake of prostitution which is conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence

under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years

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