

CHILD TRAFFICKING: THE MODERN-DAY SLAVERY

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Abstract:

Trafficking has been followed in India since time immemorial, but engaging an innocent immature child in this kind of environment is unacceptable. Studies have concluded that eliminating child trafficking and putting children into education would have huge aggregate development. In an age where children should be sent to school for education, they are being dumped to brothel homes, Children are dumped into this black hole of prostitution, where it is just impossible for them to come out to the big bright world again; Once they get into this circle, they hardly have left with any other career option because their traffickers don't let them to come out of that environment. Pimps, traffickers and brothels are the main players of this market; they play with the rights of children every day and treat them as slaves. Trafficking is an outcome of economic pressure of life, where traffickers misuse the weakness of children. This paper aims for brief discussion on child trafficking and how they have been related to slaves. Also discusses the problems faced by children in this industry, and what makes them to work for sexual services.

Through this research the author asserts that implementation and execution holds the utmost value in law. There is a need of tough and strict laws with sincere implementation at each level of authority. We lack at many places and this piece of research aims to show where we lack as a society and what all gaps our legal system needs to fill.

I INTRODUCTION

"A toleration of slavery is, in effect, a toleration of inhumanity"

— Granville Sharp

We are guilty of many errors and many faults, but our worst crime is abandoning the children, neglecting the fountain of life. Many of the things we need can wait, but the child cannot. Right now is the time his bones are being formed, his blood is being made and his senses are being developed.

To him, we cannot answer ‘tomorrow’, his name is ‘today’- as said by Gabriela Mistral, the noble prize winner poet from Chile was very correct.¹

Child marriage, though prohibited by law, continues to exist and is merely unreported. Child trafficking for sexual purpose is also prohibited, but traffickers and brothel-keepers generally manage to escape the law. There are no sufficient laws to deal specifically with child sexual abuse-the existing provisions relating to sexual assault, trafficking and rape are all that are available². Child trafficking is seen as a factor contributing to dehumanization of future generation because it is destructing and detrimental to the child- socially, physically, emotionally and also deprives the child of his/her right to lead a normal life.³

The traffickers make huge amount of profit because in this fields there is availability of customers all the time. Traffickers firstly fulfill their personal sexual needs through these children; secondly make monetary benefits through them. With very less amount of spending they earn a lot. Traffickers kidnap children from rural areas and send them to metro cities which make it impossible to trace the location of these kids. Every day thousands of children are reported missing, many of them are never found. Where these children go? What kidnappers want from them? What happens with these innocent heads? Lot many questions come to our minds, There is only one answer to this entire phenomenon, many of these children are used in the prostitution trade. In this vicious racket, all the three parties get something; The *customer*, get to satisfy their lust, but for him the whole institution of prostitution would not exist once had his physical needs satisfied; the *pimp and traffickers*, gets their share of money for which they entertains the racket, but the *minor girl* being main subject of this circle gets the beatings, starvation, torture till the point of severe emotional breakdown. The traffickers have a conjoint relationship with the customers, preying on the ill-fated victims.⁴ Child Prostitution is none other than a trade which involves trafficking of children, sexual exploitation, sexual abuse, bodily harm and many more issues. It is a business where the main aim of the owner i.e. *the traffickers* is to sell and provide services through their goods and stock i.e. *children for sexual services* and to make profit through them.

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¹ Dr. S. K Chatterjee, Offence against children and juvenile offence 354 (2d ed. 2016).

² Kirti Singh & Diviya Kapur, *Law, Violence, and the Girl Child*, 5 Health and Human Rights 8,8(2001)

³ Dr. S. K Chatterjee, Offence against children and juvenile offence 243 (2d ed. 2016).

⁴ Poonam Pradhan Saxena, *Immoral traffic in women and girls: need for tougher laws and sincere implementation*, 44 ILL. 504,505 (2002)

We say that the slavery has vanished, but this is not true, slavery still exists in India and prostitution can be called as a kind of slavery. ‘Slave’ is a creature without any rights or any status whatsoever, who is or may become the property of another as a mere chattel, the owner having absolute power of disposal by sale, gift or otherwise, and even of life and death, over the slave, without being responsible to any other legal authority.⁵ In simple terms slavery means, “Exploiting person, restricting their freedom, making them excessive dependent for their basic needs, dehumanizing, forcing them to work by threat and by physical and mental injury”; all these are said characteristics of slavery, and all these characteristics are present in prostitution as well. Prostitution is a synonym of slavery; the only difference is, in prostitution a person is mainly exploited for sexual needs, prostitutes are slaves used for sexual advantages by their masters. Slavery is not expressly mentioned but there is no doubt that the expression “Traffic in human beings” would cover it.⁶

II DEFINING OF CHILDREN AND TRAFFICKING

To understand the nature of this industry, we need to understand the meaning of trafficking first.

Article 23 of the Indian Constitution, 1950 states prohibition of traffic in human beings and forced labour-

- (1) Traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law;
- (2) Nothing in this article shall prevent the state from imposing compulsory service for public purposes, and imposing such service the state shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

United Nation Convention on Right of children (UNCRC) strictly prohibits and prescribes that there should not be any kind of violence, trafficking, abuse and harm to children. According to Article 19 of The UNCRC, “there should be appropriate legislative, administrative, social and educational measures to protect the child from all forms of mental or physical violence, abuse, injury or negligent treatment, exploitation or maltreatment, including any kind to sexual abuse, while in care of parents, or guardian, or any other person whosoever having the child under care and protection.”

⁵ *Empress of India v. Ram Kuar*, (1880) 2 All 723,726(FB).

⁶ *Dubar Goala v. Union of India*, AIR 1952 Cal 496.

The Indian Penal Code of 1860 defines trafficking in section 370 of the code, whosoever, for the purpose of exploitation exploits, recruits, transports, harbors, transfers or receives a person by threat and control or by any other form of fear or injury shall be liable for trafficking⁷.

Who are children?

According to Article 1 of United Nation Convention on Right of children (UNCRC), “a ‘child’ means every human being below age of eighteen unless, under law applicable to child, majority is attained earlier”. Child according to section 2(aa) of The Immoral Traffic (Prevention) Act, 1956 “child” means a person who has not completed the age of sixteen years⁸.

Child according to section 2(d) of The Protection of Children from Sexual Offences Act, 2012, “child” means a person who has not completed the age of eighteen years.⁹

The act prescribes eighteen year as the age limit of children, but in an industry like trafficking, thousands of children are working as prostitutes who are below sixteen years of age. Many children of less than eighteen years of age are dumped into prostitution, where they don’t even understand what is going to happen with them, many cases of children below sixteen years have also been reported in prostitution and for these children my definition of prostitution is somewhat similar to the definition of Rape.

- Because they get sexually exploited;
- Customers penetrates, inserts any object or part of body in any of the sexual organ of the prostitute;
- This mostly happens against the of the child (prostitute);
- Often times this heinous act is committed by intoxicating the child, when they don’t understand what is happening with them.

Forced abuse is no different from rapes, in maximum number of cases sexual abuse is committed against the will of the child, and even if consent has been delivered, that consent is not a valid consent under law, and all these cases fall in the category of child rape. Trafficking here is including

⁷ The Indian Penal Code, 1860, Acts of Parliament (India).

⁸ The Immoral Traffic (Prevention) Act, 1956, Acts of Parliament (India).

⁹ The Protection of Children from Sexual Offences Act, 2012, Acts of Parliament (India).

selling of sexual services in exchange of money, and if a child is compelled to provide sexual services, it's Rape.

According to this clause, a woman below sixteen years of age is considered incapable of giving consent for sexual intercourse. In *Sidheswar Ganguly v. State of West Bengal*¹⁰, the Supreme Court held that, the consent of the victim is immaterial when she happened to be less than sixteen years of age on the date of occurrence. Similarly, in *re Harpal Singh*¹¹, It was also held that, even if the girl of fourteen years is a willing party and invited the accused to have sexual intercourse with her the accused would be liable for rape under this clause. A child is an innocent, does not understand the intensity of the act and so consent provided by a child is never consent. So, even if it was proved that a child voluntarily entered in the market of prostitution, consent can never be established.

Child Prostitution constitutes three heinous offences, firstly, providing children for sexual services and acts, secondly, committing rape with them continuously and thirdly, and treating them as slaves.

III WHO ARE BEING TARGETED?

Child trafficking is just not an offence, but many sex rackets are deriving monetary benefit out of it by sending the trafficked children into sexual abuse. Young girls are the main target of traffickers; girls below 18 year of age are the main subject of this market. Many innocents have been dragged to this trap, like:-

1. Minorities, backward class people, hill tribes, illegal migrants, socially backward group, minority groups are the easy victims. Traffickers look for easy available people, so girls and children belonging to such groups are the prey for traffickers.
2. Girls who are unaware of their legal and constitutional rights are also easy to exploit. These girls don't even know whom to contact when they get stuck into this business. They feel themselves to be so helpless and incapable to protect their life.
3. Children of Orphanage: Life of children living in orphanage is way tougher than any other exploited person. Being so vulnerable, they accept all kind of work available to them, they have

¹⁰ AIR 1958 SC 143

¹¹ AIR 1981 SC 361

very less options available to them because they don't have any person who can act as their guardian, Very rare Orphanage owners actually take care of the orphans as their guardian, others have made it a business where they exploit children, abuse them, make them available for prostitution, commit rape with them, and make all this as a condition for their living.

4. Missing Children: The statistics which have been found are somber, heart breaking and depressing. Every two out of three children in India remain untraced. On the occasion of International Missing Children's Day on 25 May, Child Rights and You (CRY) compiled some sobering statistics in a report that also noted that the number of untraced children has witnessed a sharp increase in the country¹². Between 2013 and 2014, at least 67,000 children in India went missing, of whom 45% were minors trafficked into prostitution. According to the National Crime Records Bureau, a girl is abducted every eight minutes in India. A US report on human trafficking states that India is one of the world's main hubs for child sex trafficking.¹³ The high rate of kidnappings and reports of missing women and children bares and ends up in the dangerous and vicious proportions of trafficking¹⁴
5. Parents selling daughters for prostitution: Parents and other guardians, well wishers and relations, all are in fact culprits as despite enough ground for suspicion and the unreal situation, they deliberately enter into the transaction blinded by the lure of money, taking shelter later behind their poverty and inexperience.¹⁵ This is often practiced in India. Fathers have started through their daughters through prostitution! This is out of my thinking, imagination and acceptance.

Ilyas, a poor labour having seven daughters earns Rs. 3000 a month, His neighbour suggested him to sell his daughter to meet his needs. He thought about it for many days and finally sold his daughter for Rs. 50,000 to a man who said he wanted to marry her. The man was over 50, and after a month he sent the girl out to work as a prostitute.¹⁶

¹² Dipin Damodharan, *180 Children Go Missing In India Every Day. Most May Never Be Found*, HUFFPOST, https://www.huffingtonpost.in/dipin-damodharan/180-children-go-missing-e_b_10114654.html

¹³ Shibaji Roychoudhury, *Half of India's missing children last year were sold into prostitution*, SCROLL.IN (Sep. 08, 2014, 04:30 pm) <https://scroll.in/article/677280/half-of-indias-missing-children-last-year-were-sold-into-prostitution>

¹⁴ Poonam Pradhan Saxena, *Immoral traffic in women and girls: need for tougher laws and sincere implementation*, 44 ILL. 504, 506 (2002).

¹⁵ *Ibid*, 505.

¹⁶ Alaiwah, *Poverty Compels Parents to Sell Daughters into Prostitution*, NEVER MIND (May 3, 2010), <https://alaiwah.wordpress.com/2010/05/03/poverty-compels-parents-to-sell-daughters-into-prostitution/>

6. Children born in communities where cultural norms of these committees force them to join prostitution such as *jogin*, *devadasis*, *bancharas*, *domm-aras*, *basavis*, *venkatasanis* etc.

All these factors are the promoters of child abuse in trafficking. Traffickers get promoted when they get a child so easily by just purchasing them through a parent. What kind of helplessness do force these parents to do so, is it really helplessness or parents did this just for some extra monetary benefit. The main concern is many of the above mentioned factors are illegal, but fewer cases are being reported every year. We hardly get to know about any father selling of his daughter in the statistics but actually rate of selling children by relatives and parents is very high. Many of the above mentioned factors are not even punishable under law. This gap needs to be filled by our legal system as soon as possible.

IV THE LAW

The expression 'human trafficking' is used in many international legal instruments nowadays, until December, 2000 it had not even been defined. The main reason for failure of the international community to arrive at an appropriate legal definition was the lack of an agreement on the different components of trafficking and its other underlying ingredients.¹⁷ It is very hard to digest that such an important term was not even defined till 2000. We are at an alarming stage where we should be having proper laws to curb this situation.

In the Indian Constitution, Article 21 gives a right to life and personal liberty. 'Right to life' does not merely mean animal existence but includes a right to live with human dignity. Article 23 of the Indian Constitution defines trafficking of human beings and it states that Traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law¹⁸. Similarly, article 24 prohibits employment of any child below the age of fourteen years to work in any factory or mine or engage

¹⁷Sarfaraz Ahmed Khan, *Human trafficking, Justice Verma Committee report and legal reform: an unaccomplished agenda* 56 ILJ 567, 568 (2014).

¹⁸INDIA CONST. art. 23, cl. 1.

in any other hazardous employment¹⁹; for a child below fourteen years indulging in sexual activity is also hazardous work.

Although there is no specific mention of children in Article 23 but it may be inferred that it do include 'children' in its contours as the children are regarded as most vulnerable and can be exploited at any time. The term traffic in human beings generally means to deal with men, women and children just like goods. It would include traffic in women and children for immoral and other purposes.²⁰ And so the Constitution covers the trafficking of human in sexual activities as well. Trafficking is a heinous and cognizable crime in India. Child abuse is an outcome of trafficking; it is hardly possible of a child voluntarily stepping into the industry of prostitution.

The Protection of Children from Sexual Offences Act, 2012, covers major sexual abuse matters related to children. The act defines 'sexual assault' and also all the related matters of sexual assaults committed with children.

The Indian Penal Code of 1860 defines trafficking in section 370 of the code, it starts with whosoever, exploits, recruits, transports, harbors, transfers or receives a person by threat and control or by any other form of fear or injury shall be liable for trafficking²¹. In the Indian Penal Code, under Section 370:(4) Where the offence involves the trafficking of a minor, shall be punished with rigorous imprisonment not less than ten years by which may extend to imprisonment of life, and fine;(5) Where the offence involves the trafficking of more than one minor, shall be punished with rigorous imprisonment not less than fourteen years by which may extend to imprisonment of life, and fine;(6)Where the offence involves the trafficking of minor on more than one occasion, shall be punished with rigorous imprisonment of life which mean imprisonment of person's nature life , and fine; Trafficking is one of the fastest growing forms of criminal activities today. Trafficking of Human beings and children is an offence as per the Indian Constitution and The Indian Penal Code.

It is not that we lack in our legal system, but the problem is we lack in our implementation system. Punishment clause has been given in the acts, but we majorly lack the execution part. We have major laws and provisions concerning the problem but conviction rate is very less, that makes all the offenders more powerful and fearless. Child rapes are common, rather very common; this belief is to

¹⁹ INDIA CONST. art. 24.

²⁰ Raj Bahadur v Legal Remembrancer, AIR 1953 Cal 522.

²¹ The Indian Penal Code, 1860

be changed in the society. As the conviction will grow, the fear will grow and eventually crime rates and trafficking cases will decline.

V THE REALITY

Despite of dozens of treaties, convention and laws, trafficking and child prostitution has not stopped, but increasing with each passing day. Some estimates provide that, prostitution is Rs. 40,000 cr. annual business. The largest Red light area in India, perhaps in the world, is the Kamathipura area of Mumbai, In Kamathipura three men a day buy more than 70,000 women and girls.²² The statistics is horrifying in itself.

We have become habitual of seeing one daughter of our Nation winning Gold and other crying in a full dark room. These two situations contain the utmost importance of our system and our Nation, and our aim should be to rescue all the helpless children from the dark rooms to the big bright world and to mitigate the gaps in the society.

Children have been subject to several other sexual offences in India. Offences which are covered under The 'Indian Penal Code' of 1860, The 'Protection of Children against Sexual Offences Act' of 2012, The Immoral Traffic (Prevention) Act of 1956, The Juvenile Justice Act, 1986 and several other related acts. It is very easy to make laws and pass amendments but it is very tough to implement them and to send the offender behind the bars.

Existing research in the Immoral Traffic (Prevention) Act of 1986 (ITPA) indicates that the police rarely use the law against the brothels keepers, traffickers and customers, and that sex workers are punished disproportionately under law.²³ In this trade, police corruption extended from brothels to the soliciting industry. They extorted protection, money from brothels and enjoyed free sex with women in return for which they guarantee immunity and protection to illegal brothels, massage parlors, dancing hall, bars, blue film stalls etc where all these sexual practices take place.²⁴ Traffickers have strong connectivity with influential and powerful people, which make it very easy for the traffickers to carry out their immoral trade easily. There is a complete chain of corruption at almost

²²Poonam Pradhan Saxena, *Immoral traffic in women and girls: need for tougher laws and sincere implementation*, 44 ILI. 504, 511 (2002).

²³Chaitanya Lakkimsetti, *"HIV Is Our Friend": Prostitution, Biopower, and the State in Postcolonial India* 40 Signs 201, 208 (2014).

²⁴Prerna v. State of Maharashtra, (2003) 1 ILD 438 (bom).

all the levels of security; the police officers, ministers, passport officers, head of panchayats, makes trafficking a smooth flowing process. The lack of seriousness and lure of money have made our system blind.

Let's see what our statistics has to say about this?

As per the records of 2018, as many as 109 children are sexually abused everyday in India. According to National Crime Record Bureau (NCRB) 32,608 cases were reported in 2017, and the numbers got increased to 39,827 in 2018 under the Protection of Children from sexual offence Act (POCSO). The crime rate has increased over six times in a decade from 2008-2018. The data provided by National Crime Records Bureau (NCRB) is increasing with every passing year. Crimes against children are nowhere decreasing, but a vast jump is noticed every time. Data provided by the National Crime Records Bureau (NCRB) reveals that in over 60 per cent of cases registered under Section 377, the victims are children. In 2015, the data shows, as many as 1,347 cases were lodged under Section 377 across the country. In 814 of them, the victims were children²⁵. They are being cornered by the human monsters of the society because children are the vulnerable group of the society. Traffickers, Rapist and kidnappers know that it is somewhere easy to target a child than to an adult.

They are innocent, pure, unknown to their rights, unknown to their identity, unknown to their families; they are easy prey for the well established player of this market; they are small, soft, stainless and unguarded; they have all the qualities that a trafficker is looking forward to.

Justice Bhagwati, while emphasizing the importance of the children, once said that, "It is obvious that in a civilized society the importance of child welfare cannot be over-emphasized, because the welfare of the entire community, its growth and development, depend on the health and well-being of the children, 'children are the supremely important National asset' and the future well-being of the Nation depends on how its children grow and develop". Therefore, apart from legal action, both the central and the state government have got an obligation to safeguard the interest and welfare of the children and girls of this country.²⁶

The Supreme Court while interpreting Article 21 of the Constitution has repeatedly has declared that this article is the backbone of Indian Constitution and it also includes the right to live with dignity

²⁵Deeptiman Tiwary, *Children victims in 60 percent cases under Section 377: NCRB data*, The IE, October 21, 2016.

²⁶Lakshikant Pandey v. Union of India, (1984) 2 SCC 244.

and right to privacy.²⁷ But the children forced into prostitution of Indian have neither dignity nor privacy. They are subjected to life if extreme humiliation, exploitation, miseries, and darkness. Further, the Convention on the rights of the child (CRC), 1989 also enshrines the right to survival, education and good health for all children. But, practically these are really myths for these children, which is nothing but the blatant violation of children's human rights.²⁸ The United Nation Convention on Right of children (UNCRC) also provides Article 6, which says that," that every child has the inherent right to life, and maximum level of development for the child." All these statements are purely unrealistic for the trafficked children, it is a long way process for them to reach up to the level of dignity, primarily they are fighting just for a better life than from a life full of slavery.

VI CONCLUSION

From the above discussion, we can derive that circumstances in which sexually exploited children live are not morally, socially, psychologically appropriate. Still then they are bound and compelled to live in these areas due to several factors. They have no right to say about their human rights; they have no right to dream; they have no right to a decent life; they have no education; they have no scope for a better career and after all they have no right to raise any voice against anyone and if they do so they are tortured and they have to face a lot of troubles including inhuman behaviors. Despite a dozens of conventions, legislations and judicial pronouncements, this phenomenon is still going on and rising day by day. Therefore, mere identification and rehabilitation is not sufficient, in addition to that proper education, moral values and change in the socio-economic conditions of the poverty stricken people are also to some extent required for the suppression of this malady.

We need to make parents liable for certain responsibilities; hiding behind poverty is not expected. Parents cannot just absolve from their duties. Treating their daughter as burden and using them for monetary benefit is nothing new for Indians, and so this need to be stop as soon as possible. Legal measures are undoubtedly necessary but experience has proved that they are not sufficient by themselves. The main problem, therefore, is not enforcement or inadequacy of law but the ignorance of the government of the real causes of exploitation.

²⁷Maneka Gandhi vs Union Of India, 1978 AIR 597.

²⁸ Dr. S. K Chatterjee, Offence against children and juvenile offence 354 (2d ed. 2016).

Trafficking and forcing and indulging a child into sexual services is the ultimate abuse against an innocent on this planet, this is even worse than rape. Trafficking, using children for sexual use, prostitution are different form of modern day slavery. We just need stricter implementation and a serious structure to curb out this problem. This is might take a decade to see literal outcome of our stricter policies, but with passage of time, we will be able to meet and fill all our loopholes.