

Child Trafficking in India: A Legal Study with Special reference to Girl Child

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Abstract

Child trafficking is a trade carried upon children. According to universal law a person not completed the age of eighteen years of age is consider child. At the point when any injustice or abuse caused to children it is named as child trafficking. It is defined as an act of illegal transportation, buy and sell, receive for some commercial and for the purpose of exploitation within or outside the country. Children generally promised for earning daily wage but unfortunately reached in the hand of traffickers who exploits them. There are many factors responsible for child trafficking such as poverty, globalization, maltreatment etc. Exploitation of trafficked girl child is very augur ill for entire nation progress. Girl child are used for sexual slavery, forced marriage, pornography, sex tourism etc. But despite of the being people of nation engrossed with these crimes some country is having legal framework for preventing child trafficking. Also NGOs and Judiciary plays a vital role to tackle child trafficking at great instance.

Introduction

Trafficking implies a trade which is illegal. Child trafficking commonly characterized as the act of harboring, transferring and accepting of the child beneath 18 years old who are kidnapped and taken without their consent and sold for cash in the unlawful market. India has an extremely high volume of child trafficking. According to the National Crime Records Bureau in every eight minutes one child disappears. The malpractice of child trafficking is done for several reasons. Generally children are trafficked for begging, illegal activities, forced labour, pornography, sexual abuse etc.

Purposes for Child Trafficking

Child trafficking is rapidly spreading crime. Trafficking of child may be for the various purposes. Young person specially children are sexually exploited or abused by giving things like money, drugs, gifts, status and affection in exchange for performing illicit and sexual activities. Children, particularly young dame children are baited into moving to another city and are constrained into harlotry, sex tourism and sex entertainment. They abused and forced to take part in sexual activities. Apart from performing sexual activities children are kidnapped and are regularly compelled to get alms and sometimes their organs like kidney and so forth are sold. Children are tricked by trafficker and trapped by them to provide money, shelter, cloths etc. but instead of fulfilling these dreams showing by them to children they exploit them and forced for begging purposes and sometimes their organs and kidneys are sold to rich patient in exchange of

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money. These children are frequently used for tranquilize trafficking purposes, they used for supplying illegal narcotics and drugs. As it is a fact that child are innocent and nobody have beady eyes on them and because of this children easily carry drugs, and with the passage of time they also indulge into drugs and become habitual to it. Some trafficked children bought into city are sold as fortified work to industry proprietor. They are often placed at factories of floor covering weaving, diamond cutting etc. which are detrimental to their health. They are forced to work, if they refused then they are been beaten by proprietor till they agree to do so. Also children are trafficked to circus dance troupe, bear bar, camel jockey etc².

Factors responsible for child trafficking

Demand factor is a pattern of development like industrialization, rural to urban migration of people particularly males generate demands for commercial sex³. As the commercial sex industry rising rapidly and the demand of large number of minors are increasing for the services of workers. Younger women and children are preferred more for commercial sex because of the fear of HIV infection. Children and women are also trafficked because of high demand for the employment at cheap labour. Supply factor is also an important factor, high demand leads to the high volume of supply. Increasing demand from consumer for cheap labour often forced those at the bottom of supply chain to exploit their worker. Expectational factor is also a type of factor in which trafficker allure the children by promising higher income and upward social mobility. They promises to children that they will provide work so that children can escape from poverty and become capable to support parents and families. Apart from above mentioned factor there are some other reasons which are responsible for child trafficking. Like, children who are being maltreated and not taken care of run away from their homes in which this happens⁴. The vast majorities of children are bamboozled and end up in the hand of trafficker. Also outfitted clashes can lead to massive constrained relocation of people groups. War makes large number orphans and road children who are exceptionally helpless against trafficking. In addition to this social and culture practice is also a reason of child trafficking as in our society women and girls are devalue, abuse and exploit by societies creating abject living condition for these women. With the little chance of upward mobility, they are more vulnerable to human trafficking.

Consequences / Impact of Child Trafficking

Trafficking is very illicit practice which has very bad impact on the victim of trafficking. Victim of human trafficking can encounter destroying mental impacts during and after the trafficking experiences. Many survivors may end up experiencing post-traumatic stress, difficulty in relationships, depression, memory loss, anxiety, fear, guilt, shame, and other severe forms of

² Dr. S.K.Chatterjee, Offences against Children & Juvenile Offence 60 (Central Law Publication, Allahabad,1st edn., 2013)

³ Ibid.

⁴ <https://passnownow.com/factors-responsible-for-children-women-trafficking/>(Visited on February 10, 2020).

mental trauma⁵. Numerous victims also experiences physical wounds. The individual who have been sexually misused are often abused by their trafficker and clients. They might be assaulted, beaten and subjected to abuse over a significant stretch of time. There is also a higher risk of contracting sexually disease, malignant growth, and different ailment. An absence of appropriate medical care allows these conditions to spread. Victims of constrained work may work in hazardous condition for long hours doing repetitive tasks. They may also be exposed to perilous contaminant or work with heavy equipment. Subsequently, many are exposed to genuine diseases, respiratory problems, injuries, weakness and exhaustion.

People who are being trafficked can quickly become isolated from companions, family and other groups of friend. This may be due to their own sentiments of blame and disgrace or because they have relocated and now live far away from their locals. Some people who get back or get away from a trafficking situation may even be excluded from social group because of a shame they presently face. They might be shunned by their loved ones and feel disliked and unwanted. Unfortunately, this disconnection can make them defenseless against being trafficked again or lead them to return to an abusive lifestyle. Numerous victims who get away from trafficking situation lack advanced education and resources expected to live freely. They may not comprehend the laws in the nation where they are currently lives or may not speak the language. They may have been trafficked at a young age and could not go to class or set off for college. After being confined to the same job for an extensive stretch of time and not being permitted to learn new abilities, victims can become dependent. At the point when the opportunity arrives, they may have a hard time living on their own.

Trafficking of Girl Child

The trafficker sell, transport young girl and women are called trafficking. The main reason to traffic girl child is for the physical beauty and young age, so that they can be easily victimized into sexual slavery for financial benefit⁶.

It is true in the essence to say that, that period has gone when girls used to remain in veils and yashmak. Nowadays they are rubbing shoulder with boys. It is also sooth to say that nowadays girls are tantamount to boys, they are showing their flairs in every field, they are getting upper hand in every field, and they have an edge over boys. We know that our society is changing but still there are not very promising position of girls are. Girls are uses as an object for selling, trafficking or handed over for immemorial trafficking business. Trafficking is basically done for the purposes of sexual and other form of exploitation and victim never gives 'consent' to such suffering. Regardless of whether there is consent as the victim is attracted, cheated, adulterated, beguiled and falsified, it is in fact, a facade of consent and not informed consent.

⁵ <https://blog.theexodusroad.com/causes-effects-of-human-trafficking> (Visited on February 10, 2020).

⁶ Dr. S.K.Chatterjee, Offences against Children & Juvenile Offence 60 (Central Law Publication, Allahabad,1st edn., 2013)

Children are very helpless when it came to their trafficking. Especially girl child because she does not know what their future is. Whether they are going to live a harsh life or her life is going to be far bad and abject then the hard one because she may be used as the sex slave or used as harlot or may be forcefully married to anyone. When the girl child trafficked and used for sexual slavery and sexual exploitation is attaching the right of ownership over one or more people with the intent of coercing or otherwise forcing them to engage in sexual activities⁷. This incorporates forced labour, lessening a person to a servile status (counting constrained marriage) and sex dealing people, for example, the sexual trafficking of children.

Child prostitution is worst form of prostitution in which girl child has to offer her body in exchange of money. It is to provide sexual entertainment for price. These children usually come from poor family and allure by the trafficker who promise them food and shelter. The life, of child prostitute is very pathetic and miserable. They have to work throughout the year against their will. Physical abuse and verbal abuse are very common for them. If they refuse to do this illicit practice then they used to be beaten and at the end they have to agree for this. Child prostitute are not safe physically and mentally. They live life with aggression, depression, anxiety, worries, humiliation, and rejection. They go through various physical problems like vaginal injuries, infection, and fear of HIV/AIDS. Most of the child prostitutes numb their pains by taking drugs and alcohols from their early age and become habituated⁸. In addition to this they are deprive of their childhood.

Over the past decades sex industry in India is rapidly increasing. It incorporates sexual exploitation of girls involving activities connected to prostitution, pornography and sex tourism and other commercial sexual services. The World Tourism Organization become actively involved in the struggle against the organized sex tourism and particularly the sexual exploitation of children, who are mainly trafficked for this purposes.

Girls child are trafficked for the purpose of sex industry, including pornography. Child pornography is distributing and transmitting obscene material of children in electronic structure. In recent years child pornography has increased due to the easy access of the internet and easily available videos on the internet⁹. Child pornography is the most offensive wrongdoing which occur and has prompted different other crimes, for example, sex tourism, sexual maltreatment of child. The girl facing the poverty and teenager are becoming victim of pornography on the internet.

⁷ https://en.wikipedia.org/wiki/Sexual_slavery (Visited on February 11, 2020).

⁸ Dr. S.K.Chatterjee, Offences against Children & Juvenile Offence 250 (Central Law Publication, Allahabad,1st edn., 2013)

⁹ <http://www.legalserviceindia.com/legal/article-986-child-pornography-a-comparative-analysis.html> (Visited on February 10,2020).

Laws against the Child Trafficking in India

Trade carried upon human being is a heinous crime, and nowadays child trafficking is very much in practice. To stop this Indian Legal system provides provisions which help in reducing child trafficking.

Article 23 of the Constitution of India states that “human trafficking and forced labour are prohibited and anyone violates this Article will be punished according to law”.

Article 39 (e) of Directive Principles of State Policy state that it is the duty of the state to secure that the tender age children is not to be exploited and not to be forced into activities which are not suitable according to their age and strength due to any economic and financial necessity¹⁰. Article 39 (f) of the Directive Principles of State Policy imposes an obligation upon the state to direct policies in such a manner that children get the facilities and opportunities to grow in a healthy environment¹¹.

Article 15 says that “There shall be no discrimination on the ground of sex¹².”

Section 366-A of Indian Penal Code state that “Whoever, using any and all means whatsoever, incites any minor girl below the eighteen years to go from whatsoever or do any act with expectation that such minor might be, or knowingly that it is likely that she will be, constrained or tempted to illegal intercourse with someone else shall be punishable with the imprisonment which may be extended to 10 years shall also liable to fine.”

Section 373 of Indian Penal Code state that “whoever, sell, lets to hire or otherwise disposes of any person below the age of eighteen years old that such person will at any age be utilized or utilized with the end of goal of prostitution or illicit intercourse with any person or for any unlawful and immoral purposes, or realizing that it generally will be likely that such person will at any age be utilized or utilized for such purposes, shall be punished with imprisonment of either description for a term which may be extend to 10 years and shall also be liable to fine.”

Immoral Traffic (Prevention) Act, 1956 is the legislation for preventing the trafficking for commercial sexual exploitation. It dealt with the suppression of Immoral Traffic in women and Girls. This statute focused on the issue of trafficking especially for the purposes of prostitution. This Act restrict the running of brothels. Any person found with child in brothel presumed that he committed the offence of detaining a person in premises where prostitution is carried on, shall be punished not less than seven years and also liable for fine.

Juvenile Justice (Care and Protection of Children) Act, 2015, bans employing a child for the purpose of begging, cruelty, forcing a child into dangerous work or hazardous employment etc.

¹⁰ Constitution of India, 1950

¹¹ Ibid.

¹² Ibid.

The Act give a system to giving instruction, professional preparing, care, insurance, treatment and so forth to helpless children who may get exploited if not provided with legal support.

Protection of Children from sexual offences is a special law for the protection of children from sexual abuse and exploitation. It also defined various types of sexual abuse like penetrative sex and non - penetrative sex¹³.

Some others laws protecting Child trafficking are:-

- Child Marriage Act, 2006,
- Bonded Labour System (Abolition) Act, 1976,
- Child Labour (Prohibition and Regulation) Act, 1986,
- Transplantation of Human Organs Act, 1994

Role of NGOs on Trafficking

Non- Governmental Organization work either through the monetary help gave by government or self- financing also. Their motive is to provide service to the defenseless segment of society and uplift them so as to make them truly and intellectually suitable to sustain and battle against the different sort of exploitation in this world. NGOs field of work or areas of concern may be different but their motive or objectives are for the downtrodden sections of society¹⁴.

Numerous Non - Governmental Organization have stepped up to addressing this serious issue of human trafficking either by organizing with the governmental or they work freely. They have adequately contributed to execution of arrangement of Immoral Trafficking Prevention Act, 1956 and had also demanded the administration in achieving various changes in the trafficking enactment so as to secure the survivors of trafficking.

NGOs adopted different methods to combat human trafficking. Role of NGOs vary from cases to cases. NGOs rescued victims, support them, counseling them, provide financial support, provide them job and educate them.

Many NGOs and some other networks who working in the field of trafficking in India have shown huge results are , 'End Child Prostitution in Asian Tourism ' (ECPAT), ' Action Against Trafficking and Sexual Exploitation of Children' (ATSEC) ' The Network against Child Sexual

¹³ The Prevention Of Children From Sexual Offences Act, 2012

¹⁴ <http://jsslawcollege.in/wp-content/uploads/2013/12/ROLE-OF-NON-GOVERNMENTAL-ORGANIZATIONS-IN-COMBATING-HUMAN-TRAFFICKING%E2%80%93AN-CRITICAL-ANALYSIS.pdf> (Visited on February 11, 2020)

Exploitation and Trafficking (NACSET), 'Action Aid', 'SOS' 'Movement, 'Campaign Against Child Trafficking' (CACT), 'Sanlaap', 'Prerna' etc¹⁵.

Role of Judiciary combating Child Trafficking

Judiciary is known as the guardian of constitution. The Court has power to make decision and also enforce the law. Judiciary plays a vital role in preventing and combating trafficking by giving some landmark judgment.

Forced prostitution of women and children is very heinous and wrongful act which is also wrong notion for any society. In this regard in Vishal Jeet v. Union of India¹⁶, Supreme Court held that forced sexual exploitation or forced prostitution trafficked women and children are not only socio but also socio-economic problem. Supreme Court directed the state government and center government to constitute a central advisory committee to make suggestion regarding measures to be taken for eradicating child prostitution, for the protection, treatment of rescued girl and for the examination of the Devdasi and Jogin tradition.

Rape after murder is not a new offence in the society. Dhananjoy v. Union of India¹⁷, is a case of rape and murder of a vulnerable and defenseless school girl by a security guard. It was held that the offence was not only inhuman but barbaric. High Court assent the death sentence imposed by Trial Court. The Supreme Court observed that, a large number of criminals leave without getting punishment for their crimes that's why it encourages the criminals and the ultimate, making the justice suffered by weakening the system's credibility. The Court must note only keep view on the rights of criminals but also the rights of the victim and the society.

In Public at large v. State of Maharashtra and others¹⁸, the petition emerged due to suo motu notice taken by the court of a newspaper article which showed that minor girls were wrongfully bound and compelled to be sex workers. The respondent were guided by the Court to show cause regarding why activities had not been taken under section 366 and 399 of Indian Penal Code and section 5 and 6 of the suppression of Immoral Trafficking in women and girls Act 1956. The Court passed directions:

- (i) To frame a proper scheme so that the women including minors who are produces for sexual slavery are released from the confinement of their procurers; and
- (ii) For implementing this scheme , a proper cell, also involving social workers, be created so that by regular checking minors and others can be released and rehabilitation in the society; etc.

¹⁵ Dr. S.K.Chatterjee, Offences against Children & Juvenile Offence 200 (Central Law Publication, Allahabad,1st edn., 2013

¹⁶ AIR 1990 SC 1412.

¹⁷ (1994) 2 SCC 220.

¹⁸ 1997 (4) Bom CR 171.

Conclusion

From this article it can be effectively conclude that child trafficking is a disturbing social issue, which is expanding because of globalization procedures and contrasts in ways of life individuals from various nations. It is viewed as that child trafficking rises to prostitution and sex work, but it is wider concept because it incorporates prostitution and sex work in as well as labour trafficking. As we know that child trafficking has a lot of negative moral, physical, psychological and health consequences. It is a very big problem in today's society. People should be more aware of trafficking. We should enforce policies and laws for tackling child trafficking and offender must prosecute under various applicable laws to combat child trafficking and send offenders behind the bars. Child trafficking can stop by spreading education, the more knowledge a person has about what trafficking is , the better prepared the person is to stop it. Child trafficking can be tackle by government if it issue policies and make strict laws about child trafficking. Government should make strict laws and protect the child from being trafficked. Judiciary can play important role to tackle child trafficking. As from this article we came to know that judiciary gave some judgment which protects the child and women from forced sex worker.