

# **STUDY ON CHILD RIGHTS AND CHILD TRAFFICKING: ROOT CAUSE OF PROBLEM<sup>1</sup>**

## **INTRODUCTION**

Trafficking in human beings, as specifically in children has become matter of serious national and international concern. Children are used for commercial exploitation and this becomes a huge organized crime and a multimillion dollar business. Every nation and international community trying to combat this trade through, legislative, executive, judicial and social actions.

Child trafficking is worldwide phenomena which affecting large numbers of children and their family over the world. Trafficking violates rights of children to live and to grow up in family environment and lead them to suffer dangers including violence and sexual abuse. If you talk about child trafficking in India, then we came to know that the volume of child trafficking has increased over the last decades.

Apart from having effective designed laws and implementation, the situation is still the same and children are continued to be trafficked. To stop this practice we need to coordinate efforts which can prevent child from trafficking. Now before understanding rights of child, we need to understand what is trafficking and how international law and laws in India trying to provide safeguard against this offence.

### **Trafficking definition:**

The Oxford English Dictionary<sup>2</sup> defines traffic as ‘trade, especially illegal (as in drugs). It has also been described as ‘the transportation of goods, the coming and going of people or goods by road, rail, air, sea, etc. The word trafficked or trafficking is described as ‘dealing in something, especially illegally (as in the case of trafficking narcotics)’. The most comprehensive definition of trafficking is the one adopted by the UN Office of Drugs and Crime in 2000, known as the “UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,” 2000 under the UN Convention against Transnational Organized Crime (UNTOC). This Convention has been signed by the government of India.

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<sup>1</sup> Rasika Singh & Kayalvizhi .G, The Tamil Nadu Dr. Ambedkar Law University, Chennai.

<sup>2</sup>Oxford English Dictionary.

Article 3:

a) Trafficking in persons shall mean 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 of 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 services, slavery or practices similar to slavery, servitude or the removal of organs.

b) The consent of a victim of trafficking in persons to the intended exploitation set forth in sub paragraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.

c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in sub paragraph (a) of the article.

d) Child shall mean any person not less than eighteen years of age.

**EXPANSE OF THE PROBLEM:**

The child trafficking is not only done for "sex trade" but also for other forms of non sex based exploitation including as domestic labour, industrial labour, agricultural labour, begging, organ trade and false marriage. If we talk about India, then "child trafficking is on rise, and nearly 60% of the victims of trafficking are below the age of 18 years (NCRB-National Crime Record Bureau, 2018)"<sup>3</sup>.

An estimate made by NGO called End of Children Prostitution in Asian Tourism reveals that around two million of prostitutes in India, 20% among them are minors.

**National Crime Data:**

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<sup>3</sup>National crime record bureau,2018

National Crime Data It should be noted that there is no available information on the scope of trafficking for purposes other than prostitution / commercial sex workers in the available sources and literature. A starting point for the analysis of available data is National Crime Record Bureau of the Indian Ministry of Home Affairs that collects data on trafficking through State Crime Report Bureaus and Union Territories, Subsidiaries of the NCRB that obtain data from District Crime Report Bureaus. This presents an indication of the level or reporting of trafficking within India. Data available through NCRB is collected through first information reports (FIRs), lodged in police stations. FIRs can be lodged by victims, NGOs and any member of civil society. National data from the NCRB provides an analysis of trends in various Indian Penal Code (IPC) crimes, including: importation of girls, kidnapping and abduction of girls, and offences under the Immoral Trafficking Prevention Act (ITPA), which are consolidated from information provided by State and Union Territories. 6 Given the criminal nature of the act, it is no surprise that there is very little data on the extent of trafficking. According to one estimate, 50% of the trafficked victims worldwide are children.

### **LEGAL FRAMEWORK- INDIA**

India has wide framework to address trafficking in India.

#### **National laws:**

**Article 23<sup>4</sup> of the Constitution:** Guarantees right against exploitation; prohibits traffic in human beings and forced labour and makes their practice punishable under law.

**Article 24 of the Constitution:** Prohibits employment of children below 14years of age in factories, mines or other hazardous employment.

**Indian Penal Code, 1860:** There are 25 provisions relevant to trafficking; significant among them are:

**Section 366A<sup>5</sup>** – procurement of a minor girl (below 18 years of age) from one part of the country to another is punishable.

**Section 366B** – importation of a girl below 21years of age is punishable.

**Section 374** – provides punishment for compelling any person to labour against his will.

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<sup>4</sup> P.M.Bakshi, “The Cconstitution of India”- universal law publication (15<sup>th</sup> edition).

<sup>5</sup> K.D. Gaur, “The Indian Penal Code”- universal law publishing co. (4<sup>th</sup> edition).

**Immoral Traffic (Prevention) Act, (ITPA) 1956 [renamed as such by drastic amendments to the Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA)]<sup>6</sup>:**

Deals exclusively with trafficking; objective is to inhibit / abolish traffic in women and girls for the purpose of prostitution as an organized means of living; offences specified are:

- Procuring, including or taking persons for prostitution.
- Detaining a person in premises where prostitution is carried on.
- Prostitution is or visibility of public places.
- Seducing or soliciting for prostitution.
- Living on the earnings of prostitution.
- Seduction of a person in custody.
- Keeping a brothel or allowing premises to be used as a brothel.

**Juvenile Justice (Care and Protection of Children) Act, 2000<sup>7</sup>:**

- Enacted in consonance with the Convention on the Rights of the Child (CRC).
- Consolidates and amends the law relating to juveniles in conflict with law and to children in need of care and protection.
- The law is especially relevant to children who are vulnerable and are therefore likely to be inducted into trafficking.

**Protection of children from sexual offence (POCSO) Act, 2012<sup>8</sup>:**

- The objectives of enacting the POCSO Act, 2012 are to protect the children from various types of sexual offences and to establish special court for providing speedy disposal of cases.
- Before this Act, most the sexual offences are covered under IPC, 1860, but IPC does not provide for all types of sexual offences against children and it is general legislation, it does not distinguish between adult and child victim.
- Sexual offences against boy also cover under POCSO Act, 2012; the Act does not distinguish between boy and girl.

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<sup>6</sup>Immoral Traffic (Prevention) Act, (ITPA) 1956 [renamed as such by drastic amendments to the Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA)].

<sup>7</sup>The Juvenile Justice (Care and Protection of Children) Act, 2000.

<sup>8</sup>Dr. Manjula S.R, "The children's and laws in India with reference to POCSO Act 2012"- Notion press publication (1<sup>st</sup> edition).

## **Regional laws:**

### **Karnataka Devadasi (Prohibition of Dedication) Act, 1982<sup>9</sup>-**

Act of dedication of girls for the ultimate purpose of engaging them in prostitution is declared unlawful – whether the dedication is done with or without consent of the dedicated persons.

### **Andhra Pradesh Devadasi (Prohibiting Dedication) Act, 1989<sup>10</sup>-**

Penalty of imprisonment for three years and fine are stipulated in respect of anyone, who performs, promotes, abets or takes part in Devadasi dedication Ceremony.

### **Goa Children's Act, 2003<sup>11</sup>-**

- Trafficking is specially defined.
- Every type of sexual exploitation is included in the definition of sexual assault.
- Responsibility of ensuring safety of children in hotel premises is assigned to the owner and manager of the establishment.
- Photo studios are required to periodically report to the police that they have not sought obscene photographs of children.
- Stringent control measures established to regulate access of children to pornographic materials.

## **INTERNATIONAL LAWS**

International laws lay down standards that have been agreed upon by all countries. By ratifying an international law or convention or a covenant, a country agrees to implement the same. To ensure compatibility and implementation, the standards set forth in these international conventions are to be reflected in domestic law. Implementing procedures are to be put in place as needed and the treaties must be properly enforced.

The following are the most important International Conventions regarding trafficking of children<sup>12</sup>:

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<sup>9</sup> Karnataka Devadasi (Prohibition of Dedication) Act, 1982.

<sup>10</sup> Andhra Pradesh Devadasi (Prohibiting Dedication) Act, 1989.

<sup>11</sup> Goa Children's Act, 2003.

<sup>12</sup> Anne T. Gallagher "The International law of Human Trafficking"- Cambridge university press publication (edition 2010).

1. The Convention on the Rights of the Child, 1989.
2. The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000.
3. The Convention on the Elimination of All forms of Discrimination against Women, (CEDAW) 1979<sup>13</sup>.
4. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.
5. Declaration on Social and legal principles relating to the Protection and Welfare of Children, with special reference to Foster placement and adoption nationally and internationally, 3 December, 1986.
6. SAARC Convention on Regional Arrangement for the Promotion of Child Welfare, 2002.

### **FACTORS LEADING TO TRAFFICKING**

“Poverty is not the only cause”<sup>14</sup>

#### **Supply factors:**

- Poverty
- Female
- Feticide / Infanticide
- Child marriage
- Natural Disasters (floods, cyclones etc.)
- Domestic violence
- Unemployment
- Lure of job / marriage with false promises

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<sup>13</sup>Rekharoy “Women and child trafficking in India- A human right perspective”- akansha publishing house(2010 edition).

<sup>14</sup>Siddarth Kara “Sex trafficking inside the business of modern slavery”- Columbia university press(2008 edition) .

- Domestic servitude
- Traditional / Religious prostitution (Devdasi)
- Lack of Employment opportunities

**Demand factors:**

- Migration
- Hope for jobs / marriage
- Demand for cheap labor
- Enhanced vulnerability due to lack of awareness
- Creation of need and market by sex traffickers for ‘experimental’ and ‘tender’ sex.
- Sex tourism
- Internet pornography
- Organized crime generating high profits with low risk for traffickers.

**LIMITATION AND COMBATING PROBLEM:**

**Criminal Justice System-**

Criminal justice model typically do very little to address the root cause of problem, criminal justice framework only select “bad actors”, rather than understanding complex, social, economic and political conditions that foster child trafficking<sup>15</sup>.

The root cause of child trafficking must be addressed- today many laws are working to combat problem but enforcement of law is not sufficient, we also need to draw other approaches and sector, which is strengthen over response to child trafficking.

Prevention of trafficking requires variety of strategies which helps to focus on such area which need help in combating the problem.

There are many fundamental factors which are need to be responsible to get adverse solution against child trafficking-

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<sup>15</sup>Article on “A child Rights framework for addressing trafficking of children” by Jonathan Todres.

### **Role of State-**

- Provide proper quality education and employment opportunity.
- Government should include sexual abuse and trafficking as subject in school curriculum.
- One state should share information with other state in order to prevent/help countries against child trafficking.

### **Role of NGOs-**

- Working in rural areas should ensure parents aware of safe migration practices.

### **Role of Media-** media should create awareness regarding-

- Illegal and negative consequences of trafficking.
- Where victim can seek remedy.
- Ensure that victim is not alone.

### **Awareness practices-**

- Awareness can be done from international to local level through workshops, songs, drama, poster etc.
- Government should promote media campaign to promote child rights and prevention from trafficking.

### **Role of Advocacy-**

- Represent and support children who there are “reasonable grounds to believe may be victims of human trafficking”.
- Be independent of any person responsible for making decisions about the child.
- Promote the child’s well-being and act in the child’s best interests.
- Assist the child in obtaining legal or other advice, assistance and representation.

## **CONCLUSION**

Trafficking is kind of modern day slavery which directly violates child rights and affects their family too. It requires multi-sector approach to understand problems and its roots and possible solution for it.



Child trafficking is an serious crime which violates dignity of the child and for fighting against it- the national factors and International community need to work together and effectively which includes- Governments, NGOs, Civil societies, International bodies etc. The law and its implementation cannot alone take care of this crime/problem.

