



TRAFFICKING OF WOMEN AND CHILDREN IN INDIA – A CRITICAL ANALYSIS

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ABSTRACT

Trafficking in women and children is longstanding issue worldwide. It is hard to think about more principle basic liberties than the right to bodily integrity. However everywhere on over the world, youngsters' and ladies' bodies are misused. Sexual abuse of child and women takes various forms yet principally happens in three regions for example trafficking for sexual reason, prostitution and pornography. Trafficking is made with the end goal of forced labour, business reason, regularly including ladies and youngsters in exercises extending from drug managing to sexual abuse, prostitution, pornography, mock marriage, organ transplantation, unlawful variation, child labour misuse and different types of sale. The fundamental reasons of trafficking of children and women in India are distort culture like system of devadasi, deprivation, low status of ladies and young girls and social customs like dowry, polygamy and child marriage that make a stage for women's vulnerability.



KEYWORDS: women and children , ladies' bodies , pornography.

INTRODUCTION

In the event that we focus on the trafficking under criminal justice framework, it found that criminal justice system is to keep up right of the person. The criminal justice system gives different criminal law and provisions of Constitution for the security of child and women from trafficking. It is discovered that all these laws place an essential duty on the State to shield all the children and women from such sort of culpability.

NATURE AND SCOPE OF TRAFFICKING OF WOMEN AND CHILDREN:

Section 5 of Immoral Traffic Prevention Act (ITPA), 1956 provides the meaning of 'Trafficking' that procuring, taking and even initiating an individual for prostitution includes in the definition of trafficking. As indicated by this section, even endeavor to procure and endeavor to take or cause an individual to carry on prostitution amounts to trafficking. In this way 'Trafficking' has given an expansive extension.

Section 2 (z) of Goa Children's Act, 2003 provides the definition of 'Child Trafficking' as "the procurement, recruitment, transportation, transfer, harboring or receipt of person, legally or illegally, within or across borders, by means of threat or use of force or other forms of coercion, of abduction,

fraud, deception, abuse of power or of a position of vulnerability or of giving or receiving payments or benefits to achieve the consent of a person having control over another person, for monetary gain or otherwise”.¹

The South Asian Association for Regional Co-operation (SAARC) convention on prevention and combating trafficking in women and children for prostitution has additionally provides the definition of Trafficking as “Moving, Selling or buying of women and children for prostitution within or outside a country for monetary or other considerations with or without consent of the person subjected to trafficking.”²

There are various definitions of the term ‘Trafficking’ which are practically speaking on the planet. India follows the definition as given in the Protocol to prevent suppression and punish trafficking in an individual particularly women and children under the UN convention against Transnational Organized Crime. This Convention has been signed by the Government of India. The definition of the Trafficking is, “The recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion of abduction, 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, 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.”³

This is the primary universally acknowledged meaning of trafficking and it came into force from 25th December, 2003. This definition manages the methods for trafficking, exploitative outcomes of trafficking and all the more critically the issue of force or compulsion that isolates the wrongdoing from migration and smuggling. Trafficking is fundamentally accomplished with end goal of sexual and different types of ‘abuse’.

CAUSES OF HUMAN TRAFFICKING:

Vulnerability makes open door for traffickers. Person living in troublesome conditions can get edgy, and that urgency makes them helpless. The accompanying classifications make a condition of weakness and ideal open doors for traffickers to strike.

1. **Globalization:** Globalization is one of the variables which make the weakness for trafficking in women and children. Globalization included the opening up of business sectors and fringes and the improvement of foundation, subsequently expanding the mobility of individuals. Globalization has likewise acquired headways correspondence and data that have broadened the span of criminals and have expanded the effectiveness with which they can work, while keeping up the ideal degree of secrecy. The accessibility of new mediums, for example, Polaroid film, Digital Video Disk (DVD) recording, interactive DVD’s, camcorders, PC scanners, sesame transmission (live video and sound transmission) and PC cameras have all made the creation and proliferation of sexual entertainment simple. Internet, email, message boards, live video and chat rooms, pornographic sites, shared organizations have made the commercial of whores and sexual entertainment and the dispersion of obscene material, speedy and simple. The offer of sex over the web is currently an exceptionally serious market and subsequently web sexual entertainment has gotten more unpleasant, more savage and degrading.

¹ Human Trafficking. Available on <https://vakaspedia.in> Visited on 12/09/2020

² SAARC Convention on Preventing and Combating the Trafficking in Women and Children for Prostitution. Available on <https://www.jus.uio.no> Visited on 12/09/2020

³ Art. 3 of Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME AND THE PROTOCOLS THERETO. Available on [www.unodc.org>documentsPDF](http://www.unodc.org/documents/PDF) Visited on 12/09/2020.

2. **Poverty:** When somebody living in neediness, for example, a widow or single parent who battles to accommodate her children, is urgent to meet an essential need, she is in a weak position. A trafficker, acquainted with this situation, may extend to her an employment opportunity that empowers her to take care of her kids. If this situation appears to be her only option, she may acknowledge and be ready to do whatever the trafficker asks of her.
3. **Displacement:** War, political precariousness, and catastrophic events can dislodge people or whole families. At the point when individuals are compelled to escape their homes and communities, they can encounter economical difficulty, vagrancy. Kids and ladies who have lost their parents are obviously easy targets for traffickers. Without a sheltered spot to call home or a guardian to accommodate and secure them, these youngsters and ladies become helpless against misuse, unfair treatment, and trafficking.
4. **Broken Families:** Individuals who are projected out of their homes, relinquished, or put into the child welfare system are profoundly powerless against illegal exploitation. At the point when somebody feels alone or disliked or has been abused previously, they might happy to face incredible challenges. They may feel like they have little to lose or may even discover comfort living with their trafficker. Traffickers offer love and acknowledgment and convince such persons to work for them.
5. **Cultural Practices:** In certain societies, it is generally acknowledged to debase and abuse women and children. This viewpoint is instilled into the brains of such women and children in specific societies like the system of Devadasi, which makes an immense open door for traffickers. Sometime, parent themselves might be eager to sell a girl and send her into a universe of abuse. Some girls and women may venture out from home voluntarily if they have been raised to accept them are inferior to men in their families and communities. In conventional cultures where arranged marriages are normal, young girls are forced to child marriage, which can likewise be distinguished as a type of illegal exploitation.

CONSTITUTIONAL AND LEGISLATIVE PROTECTION:

The Government of India ratified an international convention for the suppression of indecent traffic in person and the abuse of the prostitution in 1950. Our Constitution maintains the standards of humanism, social and economic justice and the respect of the person with equal protection of law for every one of its citizens. Victims of prostitution can in no way, shape or form, be suspended from these constitutional rights. In order to combat the issue of trafficking of women and children some constitutional provisions might be talked about.

Article 15 of the Constitution of India makes sure about the citizens from every kind of discrimination by the State, on the grounds of religion, race, cast, sex or place of birth or any of them. However, this Article doesn't keep the State from making any special provision for women or children. Further, it additionally permits the State to extend special provisions for socially and economically backward classes for their advancement.⁴

Article 16 of Indian Constitution guarantees equality of opportunity in matters of public employment and prevents the State from any kind of discrimination on the grounds of religion, race, rank, sex, caste, place of birth, residence or any of them.⁵ This Article likewise provides the autonomy to the State to make special provisions for backward classes, SC and ST for the posts under the State. Local candidates and women may also be given preference for specific posts under the State.

Article 23 of the Indian Constitution forbids traffic in human being and bagger and other similar forms of forced labor. The second part of this Article pronounces that any contravention of this provision shall be punishable offence as per law.⁶ Article 24 provides protection to the children below the age of 14 years from the employment in hazardous places. This Article provides for the prohibition of employment of children in factories, etc. No child below the age of fourteen years shall be employed

⁴ Article 15 of the Constitution of India.

⁵ Article 16 of the Constitution of India

⁶ Article 23 of the Constitution of India

to work in any factory or mine or engaged in any other hazardous employment.⁷ This provision is absolutely in light of a legitimate concern for public and security of the life of the children.

Article 51A of the Constitution of India accommodates the fundamental duties to be followed by each citizen. It explicitly states that it will be the duty of each citizen of India to advance harmony and the spirit of common brotherhood among all the individuals of India transcending religious, linguistic and regional or sectional assorted varieties and to revoke the acts of disparaging to the dignity of women. It further impose the duty to endeavor towards excellence in all circles of individual and aggregate action so that the country continually rises to significant levels of endeavor and accomplishment; who is a parent or guardian to give opportunities to education to his children or, by and large, ward between the age of six and fourteen years.⁸

Indian Penal Code has number of provisions dealing with the different aspects of human trafficking. Section 370 of Indian Penal Code provides that whoever, for the purpose of exploitation, recruits, transports, harbors, transfers, or receive, a person by using threats, or using force, or any other form of coercion, or by abduction, or by practicing fraud, or deception, or by abusing of power, or by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harbored, transferred or received, commits the offence of trafficking.⁹ Indian Penal Code also provides punishment for kidnapping or maiming a minor for the purpose of begging, procuring a minor girl for sexual abuse, and importation of a girl from a foreign country for sexual abuse under Sec. 363A, 366A and 366B.

Immoral Traffic (Prevention) Act, 1956 renamed as Suppression of Immoral Traffic Act, 1956 (SITA) endorses tough action against those instigating children under 16 years of the age in the offence or getting or taking an individual for prostitution. The goals of the Act are in two folds: firstly, it needs to check sexual misuse and maltreatment of women and children by recommending substantial punishment to the offenders and secondly, it seeks to protect victims from sexual abuse and those in moral peril by accommodating a salvage and rehabilitative machinery.

The Commissions for Protection of Child Right Act, 2006 came into force on 20th Jan. 2006. The Act accommodates the constitution of National Commission and State Commissions for security of children's rights and children's courts for providing speedy trial for offenses against children or of infringement of children rights and for issues associated there with or coincidental thereto. Section 13 (1) (d) of this Act imposes an obligation upon the Commission to analyze all factors that repress the enjoyment of rights of children influenced by illegal intimidation, communal brutality, riots, cataclysmic event, domestic violence, sex misuse, trafficking and maltreatment. The Commission shall have power to inquire into such cases and forward them to Magistrate having jurisdiction to try those cases. In order to provide speedy trial of offences against children or of infringement of children's rights, the State Government, with the concurrence of the Chief Justice of the High Court may establish special court or at least specify Court of Session to be a Children's Court to conduct such offenses. The Act further accommodates provisions of special public prosecutors for the Children's Court.

Juvenile Justice (Care and Protection of Children) Amended Act, 2015 is enacted in consonance with the convention on the rights of children and combines and amends the law relating to juveniles in conflict with law and to children needing care and protection. The law is particularly applicable to children who are defenseless and are in this manner prone to be actuated into trafficking. This law brought into existence to accommodate the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to juvenile delinquents.

⁷ Article 24 of the Constitution of India.

⁸ Article 51A of the Indian Constitution.

⁹ Section 370 (1) of IPC, 1860.

CONCLUSION:

The problem of trafficking of children and women is an overall issue so it is so immense in nature. It has grave results for women and children, however poses grave danger for human security. The primary reasons to fall the victims in this crime are the neediness, lack of education, traditions and so forth. Numerous women constrained into prostitution or commercial sexual misuse either by their parents, spouses or boyfriends or because of the troublesome financial and social conditions in which they find themselves. The trafficking is closely connected with sex the travel industry, pornography, culture or customs like Devadasi, prostitution, mock marriage, organ transplantation, illicit appropriation, child labor exploitation and different types of sale.

Thus, in order to combat with the problem of trafficking there are numerous activities and policies adopted by India. For the protection of children and women from such criminal activities of trafficking different shields are provided to children and women at national and international level. There are various constitutional provisions, protective laws and legislations are in existence in India which comprises of different provisions for the checking of trafficking. Despite the fact that the problem of trafficking is not abolished from the nation due to the lack of proper implementation of provisions of these laws. The reality about these laws is that all these provisions of laws are merely on the paper. Therefore, Central and State Government should take effective, speedy and practical approach to ensure the strict enforcement of the existing legal provisions against the trafficking of women and children.

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