



Child Trafficking In India: Law And Challenges

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Abstract

According to the law person who have not completed eighteen years of age comes under the category of child. When any injustice or exploitation caused to such children it is termed as child trafficking. It is defined as act of cruelty where illegal transportation of child, act of buying and selling for some commercial use and for the purpose of exploitation which is performed within or outside the country. There are many ways through which the children's have reached in the traffickers but generally these children are promised for an daily wage to support their family and in some cases the parents themselves insist their children due to poverty considering them as an asset to the family rather than providing them education but in reality they are bought into forced slavery or transported to various regions for begging, labour and sexual exploitation. It is difficult to find out traffickers involved in such activities since there is lack of proper enforcement of such laws over the issue which is otherwise called as an silent crime unless and until there is traces of such activities found no one will be aware of illegal prevailing of such crimes. The cause of child trafficking is generally due to poverty, unrecovered bond or debt of their parents or ancestors indulging children into forced and bonded labour. Children can be trafficked with the intention of adopting them. over the past few decades the rate of child trafficking has become more and in the previous two years children have been abducted, kidnapped and harboured. The general crimes against children are child and bonded labour, sexual exploitation, child servitude, involuntary domestic servitude, child soldiers etc.

Key Words: Transportation, buying, unrecoverable, poverty, abduction, intention, slavery.

What is Trafficking?

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. Article 3 of the Convention says:

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's, 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 subpara graph (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, habouring 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

d) Child shall mean any person less than eighteen years of age.

The definition of trafficking can be found in the various sections of ITPA. Section 5 speaks about procuring, taking and even inducing a person for the sake of prostitution. According to this section, even attempt to procure and attempt to take or cause a person to carry on prostitution amounts to trafficking. Therefore „trafficking“ has been given a broad scope.

Child Trafficking a Grim Reality In India

In India, a large number of children are trafficked not only for the sex „trade“ but also for other forms of non-sex based exploitation that includes servitude of various kinds, as domestic labour, industrial labour, agricultural labour, begging, organ trade and false marriage. Trafficking in children is on rise, and nearly 60% of the victims of trafficking are below 18 years of age (NCRB, 2005).

A rough estimate prepared by an NGO called End children's prostitution in Asian Tourism reveals that there are around 2 million prostitutes in India. 20% among them are minors.

The invisible and clandestine nature of trafficking and the lack of strong data collection make it difficult to know the global number of child victims. However, according to the latest estimates available, some 1.2 million children are trafficked worldwide every year.

Trafficking in children for commercial sexual exploitation is one of the primary manifestations of commercial sexual exploitation of children in India, which exists on a large scale and in many forms (NHRC, Action Research Study, 2005).

The substantive law in India is the Indian Penal Code (IPC) of 1860. The IPC addresses issues of the buying and sale of minors, importation of girls etc. Existing rape, assault and abduction laws can also be used to address the abuse of women and girls in brothels.

Who gets trafficked?

Children, especially those from poor families, are most vulnerable to trafficking. The National Human Rights Commission (NHRC) Action Research Study conducted in 2005 found that a



majority of trafficking victims belong to socially deprived sections of society, including Scheduled Castes, Scheduled Tribes, etc. Children from drought-prone areas and places affected by natural or human-made disasters are also more likely to fall prey to traffickers.

The NHRC estimates that almost half of the children trafficked within India are between the ages of 11 and 14; they are subjected to physical and sexual abuse and kept in conditions similar to slavery and bondage.

Debt bondage is one of many strategies used by exploiters to keep children in constant servitude. Children from Bangladesh and Nepal are trafficked into India and through India to Pakistan and the Middle East.

In recent years, there have also been cases of trafficking of girls from India to Bangladesh for child marriage. Many of these girls eventually end up being sexually exploited in other ways.

However, the majority of trafficking in underage girls for sexual exploitation, however, happens within the country. Children are trafficked to and from states such as Andhra Pradesh, Bihar, Karnataka, Uttar Pradesh, Maharashtra, Madhya Pradesh, Rajasthan and West Bengal. For instance, among the 23 districts of the State of Andhra Pradesh, 16 are identified as sending districts. Similarly, in the State of Bihar, 24 out of 37 districts are highly affected by trafficking in women and children.

There are so many Human Rights violations that take place on trafficked person which are as follows:

1. Deprivation of the right to life (slave like conditions).
2. Deprivation of the right to security.
3. Deprivation of dignity.
4. Deprivation of the right to access to justice and redressal of grievances.
5. Denial of access to health services.
6. Denial of right to self determination (e.g. when the victim is re trafficked).
7. Denial of right to return to own community.
8. Double jeopardy (e.g., a person trafficked across a border is sometimes convicted for non-possession of passport/visa, etc. and is simultaneously punished for „soliciting“).
9. Denial of right to representation.
10. Denial of right to be heard before decision making.



Child ‘Trafficked’ and ‘Trafficker’

Child trafficking is a combination or series of events that may take place in the child’s home community, at transit points and at final destinations. The recruitment and movement may appear voluntary initially but then take on aspects of coercion by a third person or a group. The relocation may be across borders or within a country. Exploitation may occur at the beginning, middle or end of the trafficking process or indeed at several points.

Child trafficking is difficult to stop because of its clandestine and dynamic nature. Those who engage in it may operate independently or in networks, following trafficking routes that change to evade law enforcement. Sometimes corrupt law enforcement officials facilitate trafficking or may be involved themselves in many ways. Trafficked children frequently find themselves shifted from one form of work into another depending on the will of the traffickers.

Children are trafficked for:

1. Labour
 - Bonded labour
 - Domestic work
 - Agricultural labour
 - Construction work
 - Carpet industry, garment industry, fish / shrimp export as well as other sites of work in the formal and informal economy.
2. Illegal Activities
 - Begging
 - Organ trade
 - Drug peddling smuggling
3. Sexual Exploitation
 - Forced prostitution
 - Socially and religiously sanctified forms of prostitutions
 - Sex tourism
 - Pornography
4. Entertainment and Sports
 - Circus, dance troupes, beer bars etc.
 - Camel jockeys
5. for and through marriage
6. for and through adoption
7. as child soldiers or combatants in armed conflicts



Causes, risk factors and vulnerability of trafficking in India

Over the years, trafficking was thought of in the narrow sense of kidnapping, abduction and selling of children. Experience gained from numerous projects to combat child trafficking carried out by the ILO and other organizations has demonstrated that the issue is considerably more complex today and has multiple causes, risk factors and manifestations.

complex today and has multiple causes, risk factors and manifestations. Poverty usually plays the key role, but poverty alone does not explain why certain poor families fall victim to trafficking and others not. However, there are often a number of risk factors at source, transit and destination points that, if combined, make children more likely to be trafficked. Additional risk factors include, for example, parent illiteracy, illness or death of one of the main family breadwinners, unemployment, early school drop-out of the concerned children, absence of workplace inspection or policing, and a specific demand for child labour. Other factors responsible for child trafficking.

1. Low valuation of girls
2. Vulnerability of children as compared to adults
3. Loss of traditional sources of livelihood
4. Growing unemployment,
5. Inadequate legislation
6. Weak law enforcement
7. Increasing breakdown of social structures (Which results in a loss of family and community support networks, making families, particularly women and children, increasingly vulnerable to traffickers' demands and threats)
8. Globalization and economic disparities between countries, and porous borders (facilitates easy movement of people and large-scale illegal migration of women and children into India from the neighbouring countries and this illegal migration are exploited by the traffickers to traffic women and children into exploitative situations, including prostitution and labour.
9. Supply factors such as:
 - Poverty
 - Female
 - Foeticide / Infanticide
 - Child marriage
 - Natural Disasters (floods, cyclones etc.)



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- Domestic violence
 - Unemployment
 - Lure of job / marriage with false promises
 - Domestic servitude
 - Traditional / Religious prostitution (Devdasi system)
 - Lack of Employment opportunities

10. Demand factors such as:

- Migration
- Hope for jobs / marriage
- Demand for cheap labour
- 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.

International Laws

International laws, conventions lay down standards that have been agreed upon by all countries today. To ensure compatibility and implementation, the standards set forth in these international conventions are to be reflected in domestic law. The following are the most important International Conventions regarding trafficking of children:

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.
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, December, 1986.

6. SAARC Convention on Regional Arrangement for the Promotion of Child Welfare, 2002.

Legal framework to prevent trafficking in India

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)]

Child Labour (Prohibition and Regulation) Act, 1986 Prohibits employment of children in certain specified occupations and also lays down conditions of work of children.

Information Technology Act, 2000

Penalizes publication or transmission in electronic form of any material which is lascivious or appeals to prurient interest or if its effect is such as to tend to deprive and corrupt persons to read, see or hear the matter contained or embodied therein. The law has relevance to addressing the problem of pornography. India has also adopted a code of conduct for Internet Service Providers with the objective to enunciate and maintain high standard of ethical and professional practices in the field of Internet and related services.

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

Section 366A – 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 21 years of age is punishable.

Section 374 – provides punishment for compelling any person to labour against his will. Some states also enacted their own Acts.

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

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.



Initiatives undertaken by the Indian Government to improve the protection of children

1. **Establishing Child Line:** This 24-hour phone service can be accessed by a child in distress or an adult on his/her behalf by dialing the number 1098. Child Line provides emergency assistance to a child and is based upon the child's need.
2. **UJWALA Scheme:** Launched by the Ministry in 2007-08 for the benefit of women and girls in difficult circumstances, with specific focus on the special needs of trafficking victims.
3. **Kishori Shakti Yojana:** A holistic initiative supporting the development of adolescent girls (11-18 years) to promote awareness of health, hygiene and nutrition, as well as link girls to opportunities for learning life skills, returning to school and developing a better understanding of their social environment.
4. **Scheme for rescuing trafficking victims:** This scheme is to address trafficking in women and children for commercial sexual exploitation through small pilot projects.
5. **Community- based prevention measures on child trafficking:** Preventing children from falling prey to sex traffickers is the first step that must be taken in the range of comprehensive measures needed to guarantee the protection of children. Prevention encompasses a broad range of multi- dimensional interventions from mobilization and awareness building among families and the general public to more targeted and specific interventions that reach children at risk and vulnerable due to specific conditions in their lives. Comprehensive prevention programmes to combat child trafficking have to encompass measures at different levels to address the specific vulnerabilities of children and reinforce the families' abilities to care for and protect their children; to mobilize all stakeholders in the community and at the state level to establish strong protection systems for children, including social welfare and justice systems, but also to target the traffickers and curb the financial profits they are making through these criminal activities.

Need of the hour to prevent child trafficking in India

1. Understand the concepts and issues.
2. Building a protecting environment for the children.
3. Establishment of specific shelters for child victims of trafficking or existing shelters to be equipped to provide systematic adequate assistance and protection services, especially psychological counselling.
4. Notifying the Advisory Body (of NGOs mentioned in ITPA Act): As many states have not taken any initiatives in this direction, so all state governments should consider constituting an advisory body consisting of NGOs and respected members of public who are committed and working against trafficking.
5. Forming rules under ITPA: State governments should revise the rules mentioned long back under SITA (Suppression of Immoral Traffic Act, 1956) and issues a fresh set of rules under the



ITPA. Rules should also list out the procedure and protocols to be followed in rescue and post-rescue operations.

CONCLUSION

Child Trafficking is a very heinous Crime that not only violates human right but also child right and the dignity of the child at the same time. It is a crime that disgrace the entire humanity and is complex problem which requires very effective and stringent mechanism to control it. The Govt. of each/every nation is putting all out efforts to combat child trafficking. They are not lacking in their responsibility to put measures to fight against the crime. But traffickers always find new device/means of trafficking the child as it is most profitable business. This is the only reason that inspite of various legislative provisions introduced at both Nationally/Internationally, child trafficking is very much prevalent across the globe. The anti-trafficking measures need to be spread throughout the globe especially in trafficking prone area, both rural and urban. Poverty, Education and unemployment are the major factors behind the trafficking of children. Hence, there is need to introduce effective and stringent legislative provisions for the upliftment of poverty and for providing compulsory education to all children and steps should also be taken to reduce unemployment. Therefore, the Govt. of every country needs to play important role for introducing strict different/various laws. Only introducing the laws will not solve the problem, there is need for proper implementation of the laws as well. Moreover the education of child has to be made compulsory for all children and their parents should take the responsibility for providing education to their own child. Thus, In order to fight against trafficking government, and non-government organization, civil society, pressure groups, International bodies, all have to play an important role. Law alone cannot take care of all problems.

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