

A study on Tourism and its negative impact - Exploitation of children and child sex tourism in India

YUMNAM PREMANANDA SINGH

Assistant Professor of Law

Govt. Mizoram Law College

c/o Dr. Rualkhuma Colney, Republic Vengthlang, Aizawl - 796001

Abstract: Tourism is promoted as a development tool to stimulate economic growth in local economies. Tourism development without responsibility, accountability and protective measures in India has also led to sexual exploitation of children in the form of child abuse, child trafficking, child prostitution, pornography and child sex tourism, and consequently increase in child labour. In turn increase vulnerability of children to drugs, crimes, HIV/AIDS, and alienation from communities and families. In this regard, international and national laws need to be in place to combat this negative aspect of tourism. The enforcement of the law is more important than the law itself. Legal axiom is business promotion and tourism promotions cannot be at the cost of human rights violations.

Keywords: Tourism, sexual exploitation of children, child sex tourism, international law and national law.

Introduction

Tourism is considered as the world's fastest growing industry and it has come to play an increasingly dominant role in the economies of developing countries. In India also tourism is viewed and promoted as a development tool to stimulate economic growth in local economies.

It is a fact that tourism has the potential to provide employment, cultivate tolerance and encourage knowledge of different cultures, while adding in the preservation of heritage and the environment. On the other hand, concerns about the adverse impacts of tourism are also growing. There is always a serious question that in what extent to which local communities actually benefit from it. In this regard, tourism development in India without responsibility, accountability and protective measures has led to sexual exploitation of children in the form of child abuse, child trafficking, child prostitution, pornography and child sex tourism, and consequently increase in child labour. All these in turn increase vulnerability of children to drugs, crimes, HIV/AIDS, and alienation from communities and families (Equations, 2008).

Many tourists have interpreted tourism as an opportunity to gratify their sexual proclivities. When a tourist is in a foreign land, the cloak of anonymity relieves him from the social and legal constraints of his own country. A Japanese proverb goes, "the traveler knows no shame, away from home he becomes less moral" and this is how the concept of sex tourism has evolved. The anonymity enjoyed by tourists, coupled with their craving for pleasure and excitement, and the poverty and unemployment of the local people, contribute to the growth of commercial sexual exploitation in areas frequented by the tourists. Not all tourists are sex tourists but some of them definitely are (NHRC, 2004). Pilgrims tourism/Pilgrimage centres have and continue to be seen as revered places, but increasingly the link between prostitution and pilgrim sites is growing.

In 1991 the issue of child sex tourism caught media and government attention when six men were accused of sexually abusing downtrodden children at an orphanage run by Freddy Albert Peats in Goa. They hailed from countries like Australia, New Zealand and Germany. Unfortunately, only Peats could be sentenced as the other managed to flee the country. Breaking the myth that child sexual abuse was a phenomenon limited to Goa and isolated to foreign tourists alone, a series of studies over the years published by important official agencies and organizations like National Human Rights Commission (NHRC), National Commission for Women (NCW), Ministry of Women and Child Development (MWCD), ECPAT International working on protection of children have highlighted the links between tourism and the rampant existence of child sexual abuse in other parts of the country.

Even though public opinion is on the rise about child sexual exploitation by tourists in India, little has been done to study the use of male children for prostitution in most places. Male children are also sexually abused and exploited at workplaces, in market place, hotels, bus stations, schools and other community places. This is a complex problem because of the double standards that society has about homosexuality and the fact that it still criminalized in India (under Sec. 377, I.P.C.) and a taboo subject in

society. The cases involving sexual exploitation of boys most often go unreported and are shrouded behind a veil of silence. Furthermore, in many cases children exploited in this fashion and circumstances go on to be involved in prostitution.

Methods and Materials

The researcher adopted collaborative legal research methodology; in particular, its doctrinal and empirical components. In order to undertake this academic exercise, the researcher formulated research problems concerning area of fundamental importance of conflicting interest of development and environment, by applying case study and analytical legal method of thought process after brief review of literature in the field. Primary sources like case law, legal documents, conference proceedings and secondary sources like commentary by authoritative experts and juristic writings are used in the process. Finally, comes to the generalization and interpretation of the study by tools of legal reasoning particularly through induction, deduction, analogy and dialectical methods.

Objectives

The main objectives of this present academic exercise is to investigate and raise awareness on the extent and nature, exploration of legal rules of sexual exploitation by collecting qualitative information on the nature, scope and manifestation of child particularly male child prostitution in tourist sector.

Result and discussion

A brief commentary on the result of this academic exercise is sufficed as separate headings and sub-headings and analytical discussion of the matter as follows:

Situating child sexual exploitation and tourism in India:

India is home to more than 375 million children, comprising nearly 40 per cent of the country's population, the largest number of minors in any country in the world. India is also symbolized by principles of non-violence, tolerance, spirituality. The darker side of the picture is that it has also the largest number of sexually abused children in the world. The procurement of children for exploitation are well organized rackets, be it traffickers, procurers, pimps or brothel operators.

The National Study on Child Abuse in April 2007, covering 13 states in India and a sample size of 12,446 children, commissioned by the MWCD, revealed that over half the surveyed children (53%) had been sexually abused. The report states that more boys (72.6%) than girls (65%) were harmed and 21% of the children reported severe abuse. The most affected were children at work (61% reported sexual abuse). Street children (54%) were highly vulnerable to sexual abuse.

The Justice Verma Committee (2013) strongly observed that one of the main reasons for human trafficking is for Commercial Sexual Exploitation (CSE) of children and women. This view has been reaffirmed by the Supreme Court in the decision of *Bachpan Bachao Andolan* case. Offences committed initially on them never come to light. Over time the sexual abuse becomes part of their life. It then gets termed as prostitution and then the abuse borders on being consensual. It is this vicious circle of missing children/women- trafficking-abuse-prostitution which needs to be curbed with urgent measures.

The NHRC (2007), in a report published on 'missing children' says that on an average 44000 children go missing in the country every year. Of these children, 11,000 remain untraced. It cannot be ignored that there are cases where children run away from their homes. However, it also cannot be ignored that many are taken away against their volition. It is unacceptable that cases of 'missing children', who may or may not be the result of trafficking in humans, is considered at par with a 'lost and found' situation of inanimate objects.

On August 8, 2012, in respect of a query raised by Mr. Dhiraj Prasad Sahu, MP (Rajya Sabha), the Ministry of Home Affairs had provided data, which was tabled before the Parliament. In the said response, which is based on (conservative) data available with National Crimes Record Bureau (NCRB) between 2009 and 2011, 2,05,028 children were reported to be missing (excluding States of Bihar, Goa, Jammu & Kashmir, Jharkhand, Maharashtra, Meghalaya, Odisha, Punjab, Tripura and Uttar Pradesh). In this aspect, the Justice Verma Committee (2013) observed that

“Trafficking is the process which may result in any kind of exploitation or might be, for kind of exploitation. If we consider that the majority of children are going missing or run away, to become victims of one or other exploitative situations, it can be safely said that majority of missing children can be victims of trafficking.”

Child abuse and tourism – evidence from studies and investigations:

The EQUATIONS (2002) study Coastal Sex Tourism and Gender, commissioned by the National Commission for Women (NCW), highlighted the prevalence of child sexual abuse and prostitution in Puri. The research showed enough evidence of male child sexual abuse as well.

Another EQUATIONS study (2003), Situational Analysis of Child Sex Tourism in India (Goa and Kerala), commissioned by ECPAT International, reported a rise in prostitute and trafficking in women and children for the purposes of sex tourism and labour. The study also revealed that child-sex tourism was facilitated with the help of intermediaries who assisted tourists in accessing the children, such as with local hotels and lodges, tour operators, former victims of paedophiles serving as procurers, beach boys, ‘pilots’ or motorcycle taxi drivers, and shack owners. Some advertisements about gaining access to children in prostitution are opened available on the web.

In 2004, an article by Sairam Bhat on the issue of children in Goa reported that “the State is now witnessing an alarming rise in sexual abuse against children in the 7-16 age group, the arrests and investigations by social groups reveal that more than 10,000 paedophiles visit the coastal State every year and molest children, especially brought in for the trade from Karnataka. The sexual exploitation of children is also carried out by local citizens, and is not limited to crimes committed by foreign tourists as generally assumed” (Equation: 2008).

A study on Trafficking of Women and Children in India (2006), commissioned by the National Human Rights Commission (NHRC), provided further evidence of the growing phenomena of child-sex tourism in pilgrim, coastal tourism and most major tourist destinations such as Kerala, Delhi, Agra (Uttar Pradesh), Jaipur (Rajasthan), Orissa, Andhra Pradesh, and Pondicherry. The study also noted that the beaches of Goa and Kovalam were increasingly becoming destinations for those seeking child prostitutes.

In places like Alappuzha, foreign tourists stay in houseboat sex tourism a new and thriving concept. This is a safe method, as there are hardly raids on houseboats.

The Women and Child Development Minister, Renuka Chowdhury (2007), revealed in the Lower House of Parliament (Lok Sabha) that studies conducted by the NHRC and the NCW show that sexual exploitation of children is quite widespread in pilgrim, heritage and costal tourism areas.

The report of the committee on child prostitution mentioned that one of the main reasons the issue must come to centre stage is because of the rapid growth of sex tourism, the entertainment industry, pornography in print, electronic and cyber-media (Gaurav Jain case, 1997).

In 2007, NHRC, along with NCW and MWCD created guidelines and a plan of action to prevent and combat human trafficking, with a special focus on children and women. This plan of action also recognized that tourism is one of the causes for trafficking and sexual exploitation.

A study ‘Situational analysis of child sex tourism in India – Kerala and Goa,’ carried out by Equations, also clearly revealed that Kovalam was a favourite haunt of foreign paedophiles (The Hindu: 2008).

It is pertinent to mentioned here that Puri, Tirupati and Guruvayoor aren’t just famous for their temples. They are also major hubs of sex tourism involving children. This is the finding of a new study on sex tourism in religious places in India conducted by Equations (2007). In Puri, home to the Jaganath temple, 13 boys who were interviewed by Equations said they got anything between Rs. 50 and Rs. 200 a day. They revealed they preferred foreign tourists to domestic visitors because foreigners gave them chocolates, toys and clothes. In Tirupati, Equations tracked down nine boys involved in the trade. “The children are contacted on phone or by email from a cyber café and the date and place to meet are fixed,” the study said.

Most of the children come from poor families and are forced into the trade. Once in, chances of getting out are slim. Money is a huge factor in this. Most children don’t object to the exploitation because they get many things in return. “Foreigners take the children with them for a few days and their families get a handsome amount for this,” the study said. Compared to Tirupati and Puri, there is less exploitation of children in Guruvayoo. The main reason for this is the ban on child labour, the study said.

The Code of conduct for safe and honourable tourism unveiled on 1st July, 2010 by Union Tourism Minister Kumari Selja in New Delhi, (though this not a legally binding instrument but a set of guidelines for the tourism industry) clearly states in its 2nd specific objectives as the linkage between tourism and child sex exploitation. The relevant part is reproduced as:

Aid the prevention of prostitution, sex tourism and forms of sexual exploitations like assaults and molestations in tourism to safeguard the safety of persons, in particular women and children.

Case study of some selected child sex exploitation

Case study of some selected child sex exploitation as cited in study of Equation/ECPAT, 2008 are discussed as follows:

The link between tourism and child exploitation came shocking to light through the case of *Freddy Peats*, 76 year old man who was arrested on 3 April 1991 for sex crimes against young boys (some as young as 3 years old). Until then, there was little or no awareness of the organized sexual exploitation of children in India, particularly trafficking, involving young boys, even though the involvement of female minors in prostitution was well known. In March 1996, Freddy Peats was convicted of sex crimes against young boys in Goa. This was the first conviction for running an organized paedophilia racket in India. However, the incident was dismissed as an aberration.

Soon after, the case of *Brinkman Helmut*, a 57 year old German paedophile was reported to the Calangute Police Station, Goa in 1999. He was found guilty by assistant sessions judge Panaji under Section 373 and 377 of the IPC, hiring of a minor for illicit or immoral purposes and for committing unnatural sexual offences. He was awarded six years rigorous imprisonment. However, on 29 September 2000, he was acquitted of the charges by the additional sessions judge Mapusa. Despite strong evidence against him, the case was dismissed because Helmut's whereabouts were unknown.

In the case against *Werner Wulf Ingo*, a 54 year old Australian paedophile, found guilty by the assistant sessions judge Panaji under Sections 373 and 377 of the IPC, he fled from India to Australia. In 2005, he was extradited from Australia to India by Australian Federal Government to face charges in his role in Freddy Peats' paedophile network. The case against him is still ongoing in the Court of Goa before the additional Sessions Judge.

The well known cases of abusing 100 boys by *Arjun Sah*, 40 year old man (Feb. 2008); *Jozef Achtergael*, 57 year old Belgian coach charged with paedophilia – five years in a Belgian prison for sexually abusing children in his country (2008); *Michael Joseph*, Australian man arrested in Kerala for indulging in unnatural sex with children, and released on bail (2008); *Jakob Spalti*, 80 year old Swiss paedophile, on repeated bail at Kovalam, Kerala (2008) are eye openers.

International standard on protection of children

The UN **Convention on the Rights of the Child**, adopted in 1989, in its Article 34, provides that:

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement of coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials”.

Further, Article 39 of the said Convention shows the ways how child victims of sexual exploitation should be dealt with by resolving that:

“States Parties shall take all appropriate measures to promote physical and psychological recovery and social re-integration of a child victim of any form of neglect, exploitation or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child”.

Furthermore, Article 19(1) clearly mandated the State Parties that:

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardians(s) or any other person who has the care of the child.

As in most cases, apart from physical and psychological exploitation, the sexual dominance and abuse of children also imply their economic exploitation, the tourism sector needs to look upon this problem, as much as it intervenes in its economic activities, from the point of view of child labour is relevant in this respect. ILO Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour is relevant in this regard.

Accordingly, as determined by the Convention, the term “the worst forms of child labour” comprises, inter alia:

“the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances” (Article 3(b))

“work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children” (Article 3(d)).

Relevant to the action by the tourism sector is also the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the UN Convention against transnational organized crime. In its Article 3(c) it stipulates that for the purposes of this Protocol:

“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 described in the general provision, such as ‘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 receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation’ while ‘exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, force labour or services, slavery or practices similar to slavery, servitude or the removal of organs” (Article 3(a)).

Relevant to the action by the tourism sector is also the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. In its Article 3(1) it stipulates that:

Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:

- (a) In the context of sale of children as defined in article 2:
 - (i) Offering, delivering or accepting, by whatever means, a child for the purpose of:
 - a. Sexual exploitation of the child;
 - b. Transfer of organs of the child for profit;
 - c. Engagement of the child in forced labour;
 - (ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;
- (b) Offering, obtaining, procuring or providing a child prostitution, as defined in article 2;
- (c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.

The Protocol also in article 10(1) stipulates that:

States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. State Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.

Legal framework in India

Child sexual abuse is the physical or mental violation of a child with sexual intent. It is usually committed by an older person who is in some position of trust and/or power with respect to the child.

The Constitution of India mandated the protection of child from sexual and other exploitation. The important provisions are enumerated as:

The State can make special provisions for children, (Article 15(3))

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, [Article 23(1)]

No child below the age of 14 years shall be employed to work in a factory, mine or any other hazardous employment, (Article 24)

The tender age of children is not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength (Article 39e),

Children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that youth are protected against exploitation and against moral and material abandonment (Article 39f)

The Goa Children's Act, 2003 (applicable only in Goa) is the first legislation that recognized exploitation of children in tourism and incorporated a section that recognizes and deals with the protection of children in the context of tourism. The Act attempts to place responsibility on different sectors of society and its institutions so that they can play a role in protecting all children and preventing the abuse of any child.

The Immoral Traffic Prevention Act, 1956 fall short of international standards to protect children from being prostituted, as set forth in the Optional Protocol on the sale of children, child prostitution and pornography (2002). Moreover, the Act does not directly address child abuse but only prescribes punishment of not less than seven years for inducing a child into prostitution. As rightly observed by Justice Verma Committee Report (2013) that the ITPA does not achieve the objective it is meant to achieve, primarily since it does not define 'trafficking', and is hence reduced to a legislation dealing with prostitution.

Ultimately, in 2013 after Delhi gang rape case and recommendation of Justice Verma Committee Report (2013), the Indian Penal Code has been amended and consequently many far-reaching important provisions of trafficking, prostitution and like are added (IPC was enacted in 1860, those provision has been added in 2013). Trafficking is defined as per international standard and severe punishment is also provided in the Code for the offence of trafficking of person and minor (Sec. 370). The IPC also deals with some traditional offences relating with sexual and other exploitation of child viz. Kidnapping or maiming a minor for purposes of begging (Sec. 363A), Procurement of minor girl (Sec. 366A), Importation of girl from foreign country (Sec. 366B), Trafficking of person (Sec. 370), Exploitation of a trafficked person including minor (Sec. 370A), Selling minor for purposes of prostitution (Sec. 372), 373. Buying minor for purposes of prostitution (Sec. 373), Rape (Sec. 375), Punishment for rape (Sec. 376), 376. Sexual intercourse by a person in authority (Sec. 376) and 377. Unnatural offences (Sec. 377)

The Protection of Children from Sexual Offences Act, 2012 is the latest recruitment to the India law to protect children from offences of sexual assault, sexual harassment and pornography and also provide for establishment of Special Courts for trial of such offences. The Act mandated that the Special Court must be completed trial as far as possible within a period of one year from the date of taking cognizance of the offence. The Act defines and accorded punishment for the following offences against minor:

Sexual offences against children – penetrative sexual assault, aggravated penetrative sexual assault, sexual assault, penetrative sexual assault, sexual harassment, use of child for pornographic purposes, storage of pornographic material involving child, obligation of media and photographic facilities to report cases.

The Juvenile Justice (Care and Protection of Children) Act, 2000, the Child Labour (Protection and Regulation) Act, 1986, Representation of Women (Prohibition) Act, 1986, Information Technology Act, 2000 and others legislation are also equally important in the process of prevention, protection and prosecution of child sexual and other exploitation.

Conclusion and major findings and suggestions

It is found that with the advent and importance of tourism in several parts of the country, sex tourism and related trafficking has also gone up. Sex tourists include both domestic and foreign tourists. The factors responsible for the growing phenomenon of child sex tourism include anonymity of the tourists, easy predator ship on the trafficked children, and lack of attention by law enforcement agencies etc. Moreover the feeling among certain foreign tourists that children from third world countries can be exploited as chances of detection are slender, the belief that children are less likely to contract sexually transmitted diseases (STDs) and hence sex with them is safe, the wrong notion of some people that sex with virgin girls cures HIV/AIDS, as well as the fact that the governments of many developing countries, with a view to encouraging tourism and consequent economic development turn a blind eye to these problems. Undoubtedly, economic development cannot be at the cost of exploitation and trafficking.

Technological advancements, especially in the IT sector, have been capitalized by paedophiles who form a major constituent of sex tourists. Cyber pornography has exacerbated the scope and extent of sex tourism. On the whole, there is hardly any awareness or any conscious effort to address the issues concerned. To top it all, there is total lack of coordination among the agencies concerned.

In this regard, it is submitted that the enforcement of the law is more important than the law itself and in turn business promotion and tourism promotions cannot be at the cost of human rights violations. There is also a linkage between 'missing persons' and trafficking of child.

It is also found that the Global Code of Ethics for Tourism in unequivocally declared that the exploitation of human beings in any form, particularly sexual, especially when applied to children, conflicts with the fundamental aims of tourism and is the negation of tourism; in accordance with international law, it should be energetically combated with the cooperation of all the States concerned and penalized without concession by the national legislation of both the countries visited and the countries of the perpetrators of these acts, even when they are carried out abroad.

It suggested that the elimination of sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking in children. Efforts to raise public awareness are needed to reduce consumer demand for the sale of children, child prostitution and child pornography, and believing further in the importance of strengthening global partnership among all actors and of improving law enforcement at national level.

The growing availability of child pornography on the Internet and other evolving technologies, it is urgently need for the worldwide criminalization of the product, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography, and stressing the importance of closer cooperation and partnership between Governments and the Internet industry.

It is highly required by Governments and other stakeholders in the tourism sector to consider introducing, as appropriate, the contents of the Global Code of Ethics for Tourism adopted by WTO General Assembly in relevant laws, regulations and professional practices.

It is important that the National and State Tourism Policies acknowledge the role of tourism in exploiting children, clearly denounce sexual exploitation of children and commit that tourism and tourists will be child exploitation free zones.

The existing laws need to be vigorously implemented and enforced so that sexual abuse and exploitation of children is considered a very serious crime and to impose very severe and deterrent punishment to the offenders, both Indians and foreigners who commit sexual exploitation against children in the context of tourism.

MWCD to pressurize Ministry of Home Affairs to come up with extradition laws to ensure that foreign perpetrators of crimes are brought to justice and to ensure that no foreigner escapes punishment by leaving the country.

Multi-disciplinary and holistic approach is the need of hours and national, regional and local level institutions and organizations including police also need to be re-activated in partnership and well-coordinated manner to tackle the problem in time.

To give awareness and capacity building programmes to all stakeholders including law enforcing authorities to effectively address cases of child sexual abuse including the process of penalizing the offenders and proper rehabilitation of the victims.

Although MWCD has taken good initiatives towards protecting and awareness building and have reported major gaps in implementing various schemes formulated for the protection of children on the issues of trafficking and sexual exploitation, they have not taken cognizance of male child exploitation. Their protection mechanisms and awareness building are very much focused on women and female children.

Last but not the least, the importance of the traditions and cultural values of each people should be taken into account for the protection and harmonious development of the child and tourism promotion cannot be at the expense of women and children. Protection of child rights and women's rights should form the core of tourism promotion initiatives, policies and programmes.

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