



# TRAFFICKING OF CHILDREN FOR SEXUAL EXPLOITATION

ADV. DR. PRIYA NAIR. V,  
Asst. Professor,  
Mar Gregorios College of Law,  
Thiruvananthapuram, Kerala State.

## INTRODUCTION

The human trafficking is a global phenomenon which has increased significantly over the past two decades both nationally and internationally. India is a source, destination, and transit country for men, women, and children trafficked for the purposes of forced labour and commercial sexual exploitation. Trafficking in persons, particularly in children for various purposes, such as, commercial sexual exploitation, forced labour, domestic servitude, begging etc. is a serious organized crime of the day which transcending cultures, geography, and time that gravely violates the basic human rights. The vulnerable sections of the society have become more prone to trafficking. Women and children are considered to be the most vulnerable sections of the society.

Children are trafficked for several reasons including sexual exploitation, adoption, and entertainment for example, acrobatics in circus, dance troupes, beer bars, marriage, forced labour, begging, organ trade and smuggling. Of these human trafficking the most common and one of the worst form is sexual exploitation. Trafficking of children for sexual exploitation usually happens through a well-organized networks. Family, relatives, friends, community leaders, brokers, the pimps and owners of brothels, the police, political connections and the criminal nexus, all or any of these have been found to be involved in the process of child trafficking.

## CHILD TRAFFICKING

Human trafficking especially child trafficking is a serious offence against basic human rights. Child sexual abuse is a wicked and greatest sin on the earth.<sup>1</sup> The most vulnerable age group for human trafficking is children below 18 years. As per the Immoral Traffic (Prevention) Act, 1956 child “means a person who has not completed the age of sixteen years”.<sup>2</sup>

The United Nations in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Trafficking Protocol), an international agreement under the UN Convention against Transnational Organised Crime (CTOC), which was adopted in the year 2000 and came into force in December 2003, defines trafficking under Article 3 as:-

(a) The recruitment, transportation, transfer, harbouring or receipt of persons, by means of 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.

(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;

<sup>1</sup> T.Srinivasa Rao, “The Protection of Children from Sexual Abuse and exploitation – An Analytical study”, *Supreme Court Journal* (2014), p.11.

<sup>2</sup> Sec.2(aa) of *Immoral Traffic (Prevention) Act, 1956*.

- (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 this article;
- (d) “Child” shall mean any person under eighteen years of age.

The definition has three distinct elements, which must be fulfilled for a situation to be included in trafficking - there must be an act, a means and a purpose. The act can be issues such as the recruitment, transportation, transfer, harbouring or receipt of persons.

The detailed definition of Human Trafficking has been put up under the Goa Children Act, 2003. As per the Article 2(z) of the Act, child trafficking “ means the procurement, recruitment, transportation, transfer, harbouring or[ receipt of children], legally or illegally, within or across borders, by means of 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 giving or receiving payments or benefits to achieve the consent of a person having control over another person, for monetary gain or otherwise”.

The World Health Organisation defines child sexual abuse is the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or that violates the laws or social taboos of society. It can be seen that child sexual exploitation threatens the vitality of our communities and also the nation.<sup>3</sup>

### CAUSES OF CHILD TRAFFICKING

Trafficking of children is a phenomenon affecting children, both male and female, worldwide. Poverty is the most common factor which pushes children into child labour and makes them vulnerable to trafficking. Their weak economic backgrounds limit their options and heighten the desire to find any work to sustain them. Hence, they are easily lured by traffickers with the promise of a better and more prosperous life. Many children are kidnapped and sold.

All over the world, girls and women are particularly vulnerable to being trafficked into the sex trade. This is because the sex industry worldwide is a profitable market and there is often a demand for girls who are in some way ‘different’ or ‘exotic’ by clients of the sex trade and by the brothel owners and pimps who provide services to them. The children involved in sex trade face severe exploitation.

The fast growth of commercial sex industry is seen as a key factor for the increased trafficking in children. The increased demand of children especially girls which forced them to work against their will and under terrible living and working conditions. Economic backwardness is the main cause of such kind of exploitation. Some parents sell their children either for adoption or for other purpose is, not just for the money, but also they are of the hope that their children will escape a situation of chronic poverty and move to a place where they will have a better life, education and more opportunities. Giving minor child especially girl child for adoption is one of the factor which leads to sexual exploitation. Due to poverty, illiteracy or helplessness of parents make the minor girl vulnerable to sexual exploitation. It is to be noted here that a strong guidelines must be put up in order that the life of the child in adoption is not exploited in any way.

In *Laxmi Kant Pandey vs Union of India*,<sup>4</sup> the Supreme Court while supporting inter-country adoption stated it is necessary to bear in mind that the primary object of giving the child in adoption being the welfare of the child, great care has to be exercised in permitting the child to be given in adoption to foreign parents, lest the child may be neglected or abandoned by the adoptive parents in the foreign country or the adoptive parents may not be able to provide to the child a life of moral or material security or the child may be subjected to moral or sexual abuse or forced labour and may be placed in a worse situation than that in his own country. The court has laid down procedures to check and monitor inter country adoptions so that the children don’t end up trafficked.

Sexual exploitation is particularly damaging to the health of children. They are even more likely than adults to lack accurate information about the transmission and prevention of sexually-transmitted infections, including HIV/AIDS. In addition to the elevated risk of HIV and other sexually transmitted infections, the traumatic sexualisation, betrayal, powerlessness and stigmatization involved in sexual exploitation are damaging to child and adolescent development. This can lead to an impaired ability to form attachments and succeed with interpersonal relationships, or to various types of psychiatric morbidity. Children are likely to experience the health and developmental effects of sexual exploitation well into adulthood.

### CONVENTIONS FOR THE PROTECTION OF CHILDREN

There are so many international instruments specifically addressing the trafficking of children. The ILO Convention No.182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999) considered prostitution of children under 18 years of age is a worst forms of child labour and is generally referred to as ‘commercial sexual

<sup>3</sup> P.Sathasivam, “Protection of Children from Sexual Offences Act, 2012”, *AIR* (2014), p.1.

<sup>4</sup> (1984) 2 SCC 244.

exploitation of children and it must be prohibited and eliminated. The UN Convention on the Rights of the Child (1989),<sup>5</sup> under Article 34 states “States parties to protect children from neglect, exploitation and abuse”. The Optional Protocol to the Convention on the Right of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000),<sup>6</sup> criminalises specific acts relating to the sale of children, child prostitution and pornography including attempt and complicity.

The Convention on Preventing and Combating Trafficking in Women and Children for Prostitution devised by the South Asian Association for Regional Cooperation (SAARC) in 2002, has also defined the term ‘trafficking’ as ‘the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking’. The Government of India has also ratified this Convention.

In South Asian Association for Regional Cooperation (SAARC) Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia (2002),<sup>7</sup> laid down the scope of the convention. The scope of the convention is to strengthening of existing arrangements on the protection of the right of women and children in South Asia and bringing to an end the illegal trafficking of women and children for sexual exploitation. Also to deals with various aspects of prevention, interdiction and suppression of trafficking in women and children, repatriation and rehabilitation of victims of trafficking and preventing the use of women and children in international commercial sexual exploitation networks.

### **COSTITUTIONAL PROVISIONS FOR THE PROTECTION OF CHILDREN**

The Constitution of India, the fundamental law of the land, forbids trafficking in persons. The Constitution of India Article 14 states equality before law and equal protection of laws within the territory of India. As per Article 15 (3) nothing in this article shall prevent the State from making any special provision for women and children. Article 21 provides right to life and personal liberty implicitly contains the mandate of protection against the immoral trafficking of children. In *Gaurav Jain v. Union of India*,<sup>8</sup> the Supreme Court while stating clearly the violation of right to life of trafficked victims, ordered the Union Government to form a Committee to frame the National Plan of Action and to implement it in mission mode. The court taking a proactive view believed and hoped that the directions would relieve the human problem by rehabilitation of the unfortunate fallen women and children caught in the trap of prostitution; to be brought into the mainstream of the social order; these directions would enable them to avail of the equality of opportunity and of status, with dignity of person which are the arch of the Constitution. Article 21A states that the State Shall provide free and compulsory education to all children of the age of six to fourteen years. Article 23 described the right against exploitation is directly concerned with fundamental human rights. Article 23 of the Constitution specifically prohibits traffic in human beings and beggar and other similar forms of forced labour. Article 24 further prohibits employment of children below 14 years of age in factories, mines or other hazardous employment.

In *Bachpan Bachao Andolan v Union of India*,<sup>9</sup> the Solicitor General of India provided report on the issue of child trafficking in India. The court laid down that “it may be pertinent to mention that the right of children to free and compulsory education has been made a fundamental right under Article 21A of the Constitution. Now every child of the age of 6 to 14 years has right to have free education in neighbourhood school till elementary education”.

The Directive Principles of State Policy articulated in the Constitution are also significant. Article 39A directs that the legal system should ensure that opportunities for securing justice are not denied to any citizen because of economic or other disabilities. Further, Article 39(e) directs that the State should, in particular, direct its policy towards securing that childhood and youth are protected against exploitation and against moral and material abandonment. These objectives reflect the great anxiety of the constitution makers to protect and safeguard the interest and welfare of the children of our country, who often become victims of immoral traffic.<sup>10</sup>

### **LAW TO COMBAT TRAFFICKING**

The Constitution of India guarantees equality and freedom to all citizens by virtue of fundamental rights vested in them. Trafficking is explicitly forbidden as it is opposed to the basic structure of the Constitution. These constitutional safeguards have been implemented by way of several central as well as state legislations.

The evil of human trafficking for sexual exploitation must be curbed. The Immoral Traffic (Prevention) Act, 1956 (ITPA), originally enacted as the ‘Suppression of Immoral Traffic in Women and Girls Act, 1956’, is the most important legislative instrument for the prevention and combat of trafficking in human beings in India. India enacted the ITPA in 1956, in pursuance

<sup>5</sup> UNICEF (2008).

<sup>6</sup> UNICEF (2009).

<sup>7</sup> UNODC, Government of India (2008).

<sup>8</sup>(1997) 8 SCC 114.

<sup>9</sup> 2011 SCC (5) 1.

<sup>10</sup> R.P.Kataria, *Law Relating to Prevention of Immoral Traffic in India* (2009), p.43.

to International Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of others signed at New York on 9th May, 1950. The key object of ITPA has been to inhibit or abolish traffic in women and girls with the intention to force them into prostitution as a means of earning their livelihood. There are provisions in ITPA providing penalty for immoral trafficking, punish traffickers, punish persons keeping a brothel,<sup>11</sup> Punish persons who live off the earnings of a woman,<sup>12</sup> and provides welfare measures focussed towards rehabilitation of sex workers. The emphasis is on punishment for the clients, pimps and brothel owners etc. and not the commercial sex workers.

The Criminal Law (Amendment) Bill 2013, was passed by both houses of Parliament in March, 2013. It provides for amendment of Indian Penal Code, Indian Evidence Act, and Code of Criminal Procedure on laws related to sexual offences. It adds Section 370A to the Indian Penal Code which criminalizes human trafficking. The definition provided under section 370A is not restricted to prostitution but also includes other forms of trafficking. This is evident from the use of the word "exploitation" instead of "prostitution" in the section. Thus, the scope of the section had been broadened. Stricter punishment has been given under the amendment. An offence of trafficking shall be punished with rigorous imprisonment for a term of at least seven years, but which may extend to ten years, and shall also be liable to fine. Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

The protection of Children from Sexual Offences Act, 2012 has been enacted to strengthen the legal provisions for the protection of children from sexual abuse and exploitation. For the first time, a special law has been passed to address the issue of sexual offences against children. The Act defines a child as any person below the age of 18 years and provides protection to all children under the age of 18 years from the offences of sexual assault, sexual harassment and pornography. These offences have been clearly defined for the first time in law. The Act provides for stringent punishments ranging from simple to rigorous imprisonment of varying periods.

The Juvenile Justice (Care and Protection of Children) Act, 2000 defines a child and provides provisions for care and protection of children. It has provisions which provide for protection measures for the repatriation and rehabilitation of children.

Under the Indian Penal Code buying and selling of minors for the purposes of prostitution i.e. trafficking, is a grave offence. As per section 372 and 373 of IPC i.e. selling and buying of minors for the purpose of prostitution is an offence, shall be punished for imprisonment for a term which may extend to 10 years.

In *Vishal Jeet v. Union of India*,<sup>13</sup> the Court after bestowing deep and anxious consideration on the human trafficking laid down guidelines for formation of Advisory Committee in all States and Central Government to oversee and prepare programme for combating trafficking.

In the September of 2006, the Indian government created an anti-trafficking law enforcement "nodal cell". It is a central department comprising two officials responsible for accumulating and analysing data relating to trafficking in persons in the country. Its duty also includes the action taken by the central and state governments to combat the evil of trafficking. In 2007, three state governments established anti-trafficking police units, the first of this kind in the India.

### CRITICISM

Sexual exploitation is what constitute the violations of the civil and basic human rights of so many trafficking victims. Regardless of how they are recruited and transported, most children trafficked for sexual exploitation are denied at some point the right to liberty, the right to live in full dignity, the right not to be held in slavery or involuntary servitude, the right to be free from cruel and inhumane treatment, the right to be free from violence, and the right to health and education.

The ITPA which has been enacted to provide a solution to the problem of trafficking. However, the Act has been criticised on various accounts. It provides a measly amount of Rs. 20,000 as compensation to victim. Nowadays it can be seen that the cost of living has increased. In such a situation such an amount is not enough to rehabilitate the victim or to provide such a person with alternate means of livelihood. There is every possibility and is a grave danger of the rescued persons falling back into the traps of the traffickers. Further, it can be seen that the punishment provided to the trafficker under Section 3 of the Act is only three years. Such punishment does not act as a deterrent to offenders. There have been very few instances of conviction under the Act indicating its failure in curbing trafficking. The ITPA only criminalizes trafficking with the objective of prostitution but ignores other aspects of trafficking.

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<sup>11</sup> Sec.3, *Supra* n.2.

<sup>12</sup> Sec.4, *ibid*.

<sup>13</sup> (1990) 3 SCC 318.



The ITPA allows for special courts,<sup>14</sup> to be set up for the purpose of trafficking cases. To date, none of these provisions have been enacted either by the State or Central Government. This makes the trail in trafficking cases unnecessarily lengthy and so the end result is lower conviction rates.

Another criticism is that the child sexual exploitation is one of the least prosecuted crimes in India. The fact that child are often the only eye-witness to the crime and concerning about the reliability of child testimony are considered to be the causes for the breakdown of prosecution case.

Poverty and economic backwardness are the main reasons for the child trafficking. The Government should make necessary arrangements for the rehabilitation of the trafficked victims. In *Vishal Jeet v. Union of India*,<sup>15</sup> The Supreme Court while putting on record the growing exploitation of young women and children for prostitution and trafficking reported that in spite of the stringent and rehabilitative provisions of law under various Acts, it cannot be said that the desired result has been achieved. The Supreme Court ordered for an objective multi-dimensional study and a searching investigation into the matter relating to the causes and effects of this evil and requiring most rational measures to weed out the vices of illicit trafficking. It stated that this malady is not only a social but also a socio-economic problem and, therefore, the measures to be taken in that regard should be more preventive rather than punitive.

In *Prerna v. State of Maharashtra*,<sup>16</sup> the Division Bench of the Bombay High Court while examining the court process for child victims of trafficking gave the guidelines to ensure that the child in need of care and protection must be dealt with bearing in mind the possibility of their reformation and rehabilitation. The Court stated that cases relating to sex trafficking should be disposed of expeditiously. Trial Courts ought to take victim's statement within one month and complete the trial within six months of the charge sheet being filed. India has a fairly wide range of laws prohibiting and protecting against trafficking.

The deficiency of satisfactory legislation, properly functioning administrative machinery and an effective judiciary are the most obvious causes of human trafficking. Many countries lack both relevant legislation and explicit policies on human trafficking. Where such policies do exist, they are often neither implemented nor followed up properly. In some countries where human trafficking or similar activities are criminal offences, punishment on conviction may be comparatively lenient. Those mentioned factors are the main obstacles for ending human trafficking.

### SUGGESTIONS

- Taking measures to raise levels of social protection and to create employment opportunities for all;
- Developing programmes that offer livelihood options and include basic education, literacy, communication and other skills;
- The importance of a 'victim-centered' approach that stems from an understanding of human trafficking as a violation of human rights;
- All states are urged to utilize the AHTUs as a key machinery to deal with the crimes of human trafficking in a holistic manner.
- Highlighting of the importance of strengthened guidelines and mechanisms for identification of victims, and the links between better identification and treatment of victims and more effective law enforcement;
- Every State Government should set-up a State Advisory Committee for preventing and combating trafficking of women and children for commercial sexual exploitation.
- Juvenile Justice Act provides comprehensive mechanism for care and protection of children including rehabilitation and social integration of children. Therefore, its implementation is essential to address trafficking of children.

### CONCLUSION

Prevention is better than cure. So in order to end trafficking there must be preventive measures. Prevention of trafficking involves interventions at various levels to combat the initiation of trafficking. Prevention has to be a combined effort of both governmental and non-governmental agencies.

The Government must make certain that good quality education, opportunities of employment and income generation programmes are put into operation to provide good quality life to highly susceptible persons. It should carry out routine programmes to educate and sensitize parents, teachers, and community workers about trafficking. More stringent laws and better implementation are rule of law, one of the pillars of sustained economic growth. Stricter punishments shall act as a deterrent to other traffickers required to curb the problem. But simply enacting trafficking legislation is not enough. Provide

<sup>14</sup> Sec.22-A of *Immoral Traffic (Prevention) Act*, 1956.

<sup>15</sup> *Supra* n.12

<sup>16</sup> 2003 (2) Mah.L. J. 105

for tougher prosecution of criminals, greater support and protection for victims, and stronger warning messages to prevent innocent men, women and children from being lured into exploitation. Failure to adequately address human trafficking weakens the. Policies are required to be framed in the direction of creation of rehabilitation facilities for victims rescued.

NGOs can contribute by spreading awareness in community members about the prevalence of trafficking in humans. They should also remain vigilant and report missing persons who may be victims of trafficking. This can be helpful in identifying traffickers and their hideouts. NGOs working in rural area may carry out workshops to ensure that people are aware of safe migration practises and report inconsistent migration offers.

The Integrated Anti Human Trafficking Unit (IAHTU) is a unique structure that ensures complete integration between the activities of the police department the correctional –cum-development department and civil society to prevent and combat human trafficking. Apart from legal action, both the Central and the State Governments would have an obligation to safeguard the interest and welfare of the children and girls of this country and had to evaluate various measures and implement them in the right direction. Children are often considered the intrinsic wealth of any family setting. It is in the children of India the great faith is reposed so as to lead this nation into brighter chapters of the future.

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