

SEX TRAFFICKING AND USE OF CHILDREN FOR PROSTITUTION

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**BESTOW BLESSINGS ON THOSE
LITTLE,
INNOCENT LIVES
BLOOMED ON EARTH,
WHO HAVE BROUGHT THE MESSAGE**

-RABINDRA NATH TAGORE

Sex-trafficking has been defined by United Nation Trafficking Protocol as- *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 a person having control over another person: for the purpose of exploitation.*

The Stockholm Agenda for Action defines it as: “A fundamental violation of children’s rights. It comprises sexual abuse by the adult and remuneration in cash or kind to the child or a third person or persons. The child is treated as a sexual object and as a commercial object. The commercial sexual exploitation of children constitutes a form of coercion and violence against children, and amounts to forced labour and a contemporary form of slavery”.

CHILD PROSTITUTION

Child prostitution is worst form of child abuse. To understand child prostitution it is better to have a brief understanding of who would fall under the definition of a child and what is constituted by the term ‘prostitution’. For this we will have to introduce ourselves to the meaning of these two terms in the Immoral Traffic Prevention Act-1956 that deals with trafficking of human for purpose of unlawful sexual activities.

* 4th Addl. Civil Judge (J.D.), Dehradun.

As defined by Section 2{aa} of the Immoral Traffic Prevention Act-1956- '*child*' is a person who has not completed 16 years of age. A minor under this Act means a person whose age lie between 16 and 18 years.

Prostitution is defined by Section 2{f} of the Act '*as the sexual exploitation or abuse of persons for commercial purpose*'. Normally, the word prostitution means an act of promiscuous sexual intercourse or any unlawful sexual act for hire.

The United Nations Convention on the Right of the Child 1989 defines child prostitution as *sexual exploitation of a child below the age of eighteen years for remuneration in cash or kind. Thus, children are engaged in sexual activities by which their key needs are fulfilled such as food, shelter or access to education.*

Thus child prostitution would mean sexual exploitation or abuse of a child for commercial purpose.

Child prostitution takes birth when someone benefits from a commercial transaction in which a child is available for sexual purposes. Children are controlled by an intermediary who manages or oversees the transaction, or by an exploiter who negotiates directly with a child. Children are involved in prostitution when they are engaged in sex and in return of which their basic needs such as food, shelter or safety, money for school fees, or extra pocket money to purchase house hold and consumer goods. The sex activities occur at different places and locations such as brothels, bars, clubs, homes, hotels or on the street. Sometimes child prostitution is not an organised activity, but it is either on a small scale through individual pimps or on a large scale through criminal networks.

The term trafficking in persons' is nowhere defined in law. It has however been defined in The United Nations Palermo Protocol as:

“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 receiving of payments or benefits to achieve the consent of a person having control over another person,

for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.

This definition has been adopted in the Goa Children’s Act, 2003.

Now-a-days men are indulging more in sex and they have digressed all the moral values and social-norms, by exploiting the beautiful creature of God ‘a child’ for sexual pleasure. The menace of child prostitution and sex trafficking is spreading its tentacles in an unprecedented pace. The consequences are saddening. The only affected persons of this illicit trade are the victims and their unfortunate families. The victims of this menace lose everything from a dignified independent life to social ostracization. The upsetting aspect of the whole matter is that the perpetrators go scot free without having to face any consequences, whatsoever.

As observed by The Hon’ble Supreme Court in the case of *Vishal Jeet vs. Union of India and Ors* (1990 AIR 1412)

“The malady of prostitution 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. This cannot be eradicated either by banishing, branding, scourging or inflicting severe punishment on the helpless and hapless victims most of whom are unwilling participants, and involuntary victims of compelled circumstances and who, finding no way to escape, are weeping or wailing throughout. This devastating malady can be suppressed and eradicated only if the law enforcing authorities in that regard take very severe and speedy action against all the erring persons such as pimps, brokers and brothel keepers.”

Again in the *Bachpan Bachao Andolan vs. Union of India* (2011) 5 SCC 1 the Hon’ble Supreme Court observed that:

“Trafficking in women and children has become an increasingly lucrative business especially since the risk of being prosecuted is very low. Women and children do not usually come to the brothels on their own will, but are brought through highly systematic, organised and illegal trafficking networks run by experienced individuals who buy, transport and sell children into

prostitution. Traffickers tend to work in groups and children being trafficked often change hands to ensure that neither the trafficker nor the child gets caught during transit. Different groups of traffickers include gang members, police, pimps and even politicians, all working as a nexus. Trafficking networks are well organised and have linkages both within the country and in the neighbouring countries. Most traffickers are men. The role of women in this business is restricted to recruitment at the brothels.”

Child prostitution is a kind of child labour, a force, a threat used to confine them. They cannot seek the help to release themselves. Child prostitution is a commercial exploitation of women and children, minors who are sexually abused used for monetary gain. It involves mental abuse, physical abuse, pornography, prostitution, smuggling of children for unlawful purposes. They are kidnapped, thrown into slavery, forced to labour and engage in other unlawful activities for economic gains by the traffickers. Treated as slave, they live a life of captivity. Their condition is unpleasant and highly disturbing. They are beaten, threatened and sexually exploited. They remain malnourished without proper food and basic human requirements.

In January 2013, in response to the outcry to end violence against women in India, the committee led by recently - deceased former Supreme Court Chief Justice J.S. Verma, released an investigative report took cognizance of the high prevalence of sex trafficking of women and girls in India. According to government and NGO reports, hundreds of thousands to millions of women and girls (median age of entry -11 years old) are subjected to prostitution in India, most of whom are victims of sex trafficking.*

CAUSES OF CHILD PROSTITUTION

The reasons contributable to the scourge of sex trafficking and child prostitution are poverty, high and large scale unemployment, degradation of cultural ethos etc as observed in India by the Hon'ble Supreme Court said while dealing with a PIL filed by an NGO “Bachapan Bachao Andolan”.

* www.equalitynow.org/take_action/sex_trafficking_action491

Causes of child prostitution are diverse. Extreme poverty has been attributed as the main cause. It makes people to turn evil, selling souls for money. Obligation to help and support the family to survive requires substantial sum of money. Many teenage female girls and boys are sold for small amount by their parents as they are unable to maintain and provide basic amenities on account of miseries. Cause also includes societal and family breakdown. High level of domestic violence, alcohol or drug consumption induces children to run away from home and fall victim to sex- traffickers. Divorce and remarriage and family conflict lead to erosion of family virtues and affected child may be drawn towards such activities by unsocial elements. Further, the allurements to earn more money is also one of the causes. Low value attached to education is another cause. Existence of certain traditional and religious practices in some communities, wherein girls are dedicated to the god and goddesses (for example devadasi and jogin tradition in south India) may also be cited as one of the reasons for these despicable activities. Low level of morality in many people is one another contributing cause. There are instances of husbands selling their wives by deception, forcing to cohabit with other males for economic gains as well as perverseness are increasing rampantly. On the part of the Government, the lack of strong political will to bring out reforms and address the issues along with weak enforcement machinery are other factors contributing to these illicit activities where women are used as commodities. An ever-expanding commercial sex entertainment industry employing large number of minor girls, growing number of night entertainment bars and discotheque have added to the woes of the society. Pervert preference for young children is woefully adding to child prostitution. The presence of military troops or of workers in large scale public works is also known to create demand for this illicit trade.

CONSEQUENCES OF CHILD PROSTITUTION

Child prostitution and trafficking of children are considered to be crimes of grave consequences for children particularly girls. The victims suffer irreparable damage to their physical and mental health. They have to live in disgust, disease and despair. Besides losing out on their childhood, such victims face early, immature and unwarranted pregnancies. They are subjected to grave risk of sexually transmitted diseases including the fatal AIDS. The victims of child prostitution may pose a greater public

health danger than adult prostitutes because children are weak, vulnerable and uninformed, and not in a position to seek out medical care if they become infected with a sexually transmitted disease. Victims of child prostitution are said to be used in war as spies, used as human bomber without forgetting that they have to also inadvertently satisfy the sexual need of ravaging men. Children forced to engage in prostitution are starved, tortured and raped every day. They suffer unspeakable humiliation. Child prostitution is a scourge for a civil society and a pathetic instance of human right violation.

LEGAL FORUMS DEALING WITH SEX TRAFFICKING AND CHILD PROSTITUTION.

The international forum has been resonant with call to protect the rights of a child. Article 35 and 36 of the Convention on The Rights of The Child states- *that all appropriate national, bilateral, and multilateral measures will be taken by the state to prevent abduction, sale and trafficking in children, coercion to engage in unlawful sexual activity, and all forms of exploitation such as prostitution or pornographic measures.*

Thus the mandate of the international community is strongly against sale, trafficking in children and their engagement in any unlawful sexual activity and all form of prostitution or pornographic activities.

Various attempts on the legal front have been made to prevent sex trafficking and child prostitution. The 1949 convention against trafficking gave rise to the first Indian law against trafficking. The framers of the Constitution of India were visionary enough to grasp the enormity of this problem and envisaged to address it through the provisions of Article 23 and later on Article 51 A (e) enjoined a fundamental duty upon the citizens of India to denounce practices derogatory to the dignity of women.

The laws enacted to deal with this menace in India broadly fall under following enactments:

- The Suppression of Immoral Traffic Women and Girls Act-1956.
- Children (Pledging of Labour) Act-1933.
- Immoral Traffic (Prevention) Act 1956.

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- Child labour (Prohibition and Regulation) Act 1986.
- Indian Penal Code-1860.
- Commission for Protection of Child Rights Act-1972
- The Protection of Children From Sexual Offence Act-2012

The IPC of 1860 has several significant and relevant provisions that seek to address trafficking of women. The best example include

- 1) Section 366A - which punishes procurement of a minor girl (below 18 years of age) from one part of the country with intent or knowledge that she would be forced or seduced to illicit intercourse with other person.
- 2) Section 366 B - which punishes importation of a girl below 21 year of age is with the intent or knowledge that she would be forced or seduced to illicit intercourse with other person.
- 3) Section 372 - which provides punishment for selling minor for purpose of prostitution, etc.
- 4) Section 373 - which provides punishment for buying a minor for the purpose of prostitution, etc.

All these legislations aim to put a stop to sex-trafficking and child prostitution.

Further, on the recommendation of the Justice Verma Report, the Government of India recently adopted anti-trafficking provisions in the Indian Penal Code (IPC) through the Criminal Law (Amendment) Act of 2013, to conform to the internationally-recognized definition of the crime of trafficking as outlined in the **Palermo Protocol**. However, India's other anti-trafficking legislation, which includes more comprehensive anti-trafficking laws, the Immoral Traffic (Prevention) Act (ITPA) of 1956, has not been changed in nearly thirty years. Therefore, NGOs like - 'Equality Now' and 'Apne Aap' are calling on the government to amend the ITPA by including specific provisions that will improve anti-trafficking efforts, protect children and survivors and address other shortcomings that still remain in the law dealing with the issue. Amending the ITPA will put India in line with its international legal obligations under the Protocol. The desirable provisions are:

1. Legal protection to women and children in prostitution and removal of criminal sanctions against them.
2. Criminalization of pimps and brothel keepers, not women or children in prostitution.
3. Punishment to those who pay for sex.
4. Strict liability for traffickers and buyers of a minor regardless of whether the perpetrators knew the victim's age.
5. Establishment of a fully government-funded Trafficking Victims Rehabilitation and Welfare Fund.

However the question, whether strict laws will effectively address this pathology, may remain unanswered in absence of the society's reluctance to realize the gravity of the problem and then to address it with individual and collective efforts. This is a realization that should dawn upon everyone that law is not the only way to stop this evil. The actual offenders are always able to circumvent law and to escape from its clutches; either because of lacuna in the law or the callousness and apathy of the law enforcement agencies. The victims and their family also back out due to fear of ostracization and lack of avenues for rehabilitation. The only way out is when every person on this earth realizes his or her duty towards the child who is the future of an individual, society and ultimately the country. Apathetic people need to put themselves in the shoes of the victim and her family. One effective way to eradicate this evil from the *society is when a person is able to put his own child in the victims place.*

WAYS AND MEANS TO REBUILD THE LIFE OF CHILD IN PROSTITUTION

Women and children who are sexually abused and work as prostitute, find their world turn upside down. Millions of children throughout the world are exploited for commercial sex. Bought and sold across borders, thrown into forced marriage, prostitution, child pornography their self esteem and confidence is thrashed.

There is an urgent need to take effective measures to prevent child prostitution and sex trafficking, as it is an unforgivable atrocity. It is ultimate evil denying the children their Fundamental Rights protected by

the Law of the land that is 'Right to Live a Dignified Life' by protecting their childhood.

There are certain measures which may helpful in rebuilding the life of victims of child prostitution. These include developing the alternative means of livelihood for child victims and their families, protecting child victim from being penalized, conducting information campaigns on human development and reproductive health of victims, increasing access to basic education for all the children, ensuring effective law enforcement, detecting and prosecuting of sex exploiters, abuser, traffickers, strengthening the public information campaigns to target traffickers/sex exploiters, protecting and making women and children aware of their rights, increasing public awareness among the masses as to what harm has been caused to them, keeping watch on new technologies like internet which create virtual image of women and children, educating the victims about the rights which have been infringed by the abusers, providing employment opportunities to lead a decent life, rehabilitation of such women and children must be done, improving the parental supervision of such children, strengthen cooperation between government and non-government sectors and utmost thing to do is giving them love, care and attention.

*“Child is the august creation of God
Who is to be cared, preserved, and blessed by us...
Their soul should be worshipped not hurt
Words and deed of child give immense pleasure
Give them a platform where they can blossom.
Mankind is ornamented by the smile of children.
And by the tear in eyes
Dreams shatter in our heart
When they are converted into child prostitutes
Raped and Dishonoured...
Bless them, love them
Coz women and child are jewels of GOD.”*
