
CHILD TRAFFICKING: A LEGAL PERSPECTIVE WITH REFERENCE TO INDIA

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ABSTRACT

Trafficking is historically linked to slavery, which involves the sale and purchase of human beings as chattel, treating them as commodities that could be bought and sold. Child trafficking is generally defined as the process of recruitment transfer, transport, harbor, or receipt of a person under the age of 18 for the purpose of exploitation. The constitution of India explicitly prohibits trafficking of human beings and forced labour and makes both offences punishable under Article 23(1) of Indian Constitution. The international law says that the trafficked person cannot be discriminated simply because they are non-national. The international human law applies to everyone within a territory of jurisdiction regardless of the nationality or citizenship and how they came to be within the territory. The anti trafficking measures need to be spread throughout the globe especially in trafficking prone areas both rural and urban.

Keywords: Anti trafficking, Article 23, slavery child

Introduction

Child trafficking is defined as any person under 18 who is recruited, transferred, transported or received for the purpose of exploitation, either within or outside a country. According to the National Crime Records Bureau (NCRB) there have been many where children just disappear overnight, as many as one night every minutes. In India there is a large number of children transferred for various reason such as begging, forced labour and sexual exploitation. In India over the last decade, the volume of child trafficking has increased through exact numbers are not known still. It is one of the most lucrative criminal trade, which is undertaken highly organized criminals. The causes of child trafficking are poverty, lack of employment opportunities, or education, breakdown of social structures etc. It causes physical and mental exploitation of the victims and thereafter they are not able to lead a healthy life.

Definition

According to UNICEF

"Any person under 18 who is recruited, transported, transferred, harbored or received for the purpose of exploitation, either within or outside a country"

According to ILO

"Child trafficking is about taking out of their protective environment and praying on their vulnerability for the purpose of exploitation"

Human Rights of Trafficked persons:

The UN and universal declaration of Human Rights confirms that the rights are universal, they apply to everyone irrespective of their caste, sex, race, ethnic origin etc. Trafficked person are entitles to full range of human rights even if they are outside their country of residence. The international law says that trafficked person cannot be discriminated simply because they are non-nationals. The international human law applies to everyone within a state territory. Individuals who are belonging to specific

trafficking are subject to or may be in a position to claim additional rights. For example, The International Human Rights Law imposes important and additional responsibilities on state when it comes to child trafficking. The Government of India signed the Trafficking Protocol on 12th December 2002.

Anti-Trafficking Laws in India:-The Constitution of India:-

The constitution of India explicitly Prohibits Trafficking of Human beings and forced labour and makes both offences punishable under Article 23(1) of Indian Constitution. Article 23(1) provides that, Traffic in human beings and beggar and other similar form of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with Law.

Indian Penal Code 1860

The Indian Penal Code 1860 contain various provision related to child trafficking. For instance, criminal penalties for kidnapping, buying or selling minor for prostitution, abduction, unlawful compulsory labour which has been depicted in Section 374, Section 366A Procurement of a minor girl from one part of the country to another is punishable

The immoral traffic prevention Act 1956

It is the main legal instrument addressing the trafficking of human beings. The act is founded on trafficking for the purpose of prostitution. The prime objective has been to abolish traffic in women and girls for the purpose of prostitution as on organized means for living

The child labour (Prohibition and Regulation) Act 1976

This Act prohibits the employment of children in the specific occupation which is set forth in Part A of the schedule of the Act. As per the Act, no child can work for more than three hours and the interval of rest for at least a hour is stipulated.

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

The main focus of this Act, is to provide for proper care, treatment and protection of Childs Development section 29 of the Act,

Empowers state governments to constitute Child Welfare Committee section give there committees the ultimate authority to dispose the cases, under section 34, state government can establish and maintain children's home for the care and protection of children independently and section 39 in the prime objective of the children's home or shelter is the restoration and protection of child wood.

Goa's Children Act 2003

The features of this Act are as follows:-

- Trafficking was given a legal definition for the first time in the Indian Jurisprudence
- The definition of sexual assault was expanded to incorporate every type of sexual exploitation
- The photo studios are required to periodically report to the police that they have not shot any obscene photograph of children.

Present statues of Trafficking in India:

According to the National Crime Records Bureau there were about 2,200 cases of trafficking in 2019, in which 95 percent accounted for internal trafficking. In the official figures 6616 victim were reported to have been trafficked, including 2914 children. However say that the actual figure could be much higher as many victim to not register cases with largely because they do not know the law or fear traffickers. Save the children, a global child rights charity that works in over 12 states in India, believes that the push factors leading to child trafficking did increase during the pandemic 2020. The report also stated that in most states intra state trafficking was a common phenomenon. This was particularly true for a state like Tamilnadu, where out of 156 interviewed trafficked victims, 148 had been subjected to intra state trafficking. Similarly, in Rajasthan intra state

trafficking is 88.5 percent, followed by Assam and Meghalaya at

88.4 percent, Bihar 80.26 percent and Uttar Pradesh at 73.5 percent. 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 the new section is not restricted to prostitution but also includes other form of Trafficking. This is evident from the one of word "exploitation" instead of prostitution in the section. Then the scope of the section had been broadened.

Role of Judiciary:

In Gaurav Jain V Union of India

The supreme Court held that the children the prostitutes have the right to equality of opportunity, dignity, care, protection and rehabilitation, so as to be part of the mainstream of social life without any stigma attached on them.

In Vishal Jeet V Union of India:-

Hon'ble Supreme Court issued direction to the State government for setting up rehabilitate homes for children found begging in streets and also the minor girls pushed into flesh trade to protective homes.

Suggestion:

In India not only the central government but also the concerned State government, must act to uphold the constitutional principles and work toward the full enjoyment of rights by all citizen, regardless of caste or descent.

New laws should be enacted which include support for the victim of trafficking, such as legal support, mental support by helping to return their country, village and community.

- A child protection Authority should be established to address child abuse and

exploitation including trafficking and commercial exploitation

- Enact provision which protect children from becoming victim again, if once they have been rescued and also ensure that laws do not further victimize them for any offence they may have committed while being trafficked
- Judiciary shall carryout comprehensive and independent national surveys to identify the total number of child trafficking in the country. Prosecution must be initiated against all those who indulge in child trafficking use and against those who use intimidation and violence to retain children as trafficker.

Conclusion

The problem of Child trafficking cannot be handed in Isolation. But this problem can only be stopped if the king pin too are arrested and inorder to do so the police and the public have to become much more vigilant. It is a slur on police of administrate and Judiciary, rather it is the failure to take note of and to make an effort to put an end to child trafficking. The government has the resources and authority to implement the law, while community based organization have the grass roots level contacts and trust necessary to facilitate this implementation child trafficking is a vast, pernicious and long standing social ill and the tenancy of the must be attacked with similar tenacity, anything less than total commitment is certain to fail.