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# THE DUAL TRAUMA OF HUMAN TRAFFICKING AND CHILD SEXUAL ABUSE: VULNERABILITY TO VIOLATION

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*“The best way to make the children good is to make them happy”*

- Oscar Wilde

## ABSTRACT

Among many trafficking crimes, Child Sexual Abuse (CSA) is a serious violation of children rights. Trafficking a child for the purpose of sexual exploitation is considered as grave violation of human rights. Children are being voiceless victims of trafficking for variety of reasons and CSA has become one. The intersection of both crimes results in a dual trauma that has a major adverse effect on victims' social, psychological, and physical health, especially in youngsters. This trauma not only destroys victim's childhood but also leaves a scar which affects the child wellbeing. Studies in this regard point out that human trafficking is an international phenomenon irrespective of status of the country as developed or developing nations. Despite the International Convention abolishes slavery in the early 20<sup>th</sup> century, human trafficking exists even today. The problem of tackling human trafficking cases is very complicated because of its invisibility in nature of crime and lack of reporting of cases. The study highlights existing legal frame work in India and role of stakeholders in combating these dual crimes. The study concludes by making an argument that more than severe penalties are needed to address the dual trauma of child sexual abuse and human trafficking, it requires a structural change based on human rights, gender sensitivity, and child protection. The state, civil society and international community are capable of breaking the pattern of vulnerability and violation by collaborating in a compassionate and organized manner.

## **1. Introduction:**

Human trafficking is one of the heinous crimes mankind has witnessed. Trafficking takes place due to variety of reasons, like domestic labours, organ transplantation, medical testing, for sex working/prostitution etc. Most of the time young children from economically background families were targeted by the middlemen's by creating assurance of good life and pay.<sup>1</sup> These children were made to work in hazardous places and in unhygienic state. They are physically, mentally and sexually exploited. Human trafficking is considered as world third organised crime, globally every year thousands of men, women and children are trafficked in their own countries by their own people and abroad as well. Human trafficking networks can operate successfully only where there is some kind of coordination of effort among recruiters, transporters and exploiters. These three interconnected networks are separated only by their "product," which in the case of human trafficking is individuals at risk who are exploited because of their vulnerability. The human trafficking is defined as the act of recruiting, transporting, harbouring, or receiving of individuals (the means) for the purpose of various forms of exploitation through the use or threat of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or payment or benefits to a person in control of the victim (the means). Forced labour and sex trafficking are the two primary ways that people are exploited and trafficked. Other objectives include fraud, forced marriage, begging, organ removal, and pornography. This study focuses on trafficking of young women/girls for the purpose of sexual exploitation.

## **2. Reasons for Human Trafficking:**

Human trafficking happens in every country, the reasons behind trafficking remain almost same in every country. The traffickers' targets people belonging to socio-economic background, orphans. They promise them for better life and exploit them as modern day slaves. Poverty is the root cause for many problems in India including human trafficking. Uneven employment, gender discrimination, harmful traditional and cultural practices and lack of proper policy implementation adds as a reason for human trafficking in India. We often notice that, It is always women and children being vulnerable groups becomes victims of exploitation. Migrant and refugees are targeted by organised crimes and they become the victim of sexual

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<sup>1</sup> Kavitha Singh, child friendly anti human trafficking police, ILI Journal, vol.62, No. 4(Oct-Dec 2020)pp.459-475

exploitation. Children who are separated from families because of armed conflict, war, natural calamities, orphans, children from broken families, street children are targeted by the traffickers.

The basis of this organized crime is provided by a number of push and pull elements. Push factors refer to the elements that encourage victims to leave their home nation in search of a better life. On the other hand, pull factors are the results of modernity and globalization and function in the country of destination. These consist of increased employment prospects in the host nations, improved living standards, political stability, etc.

Women and children being vulnerable groups experiences Sexual Abuse as a result of trafficking. Trafficking of women and girls is influenced by forced labour, the declining sex ratio, and trafficking for marriage. Poor living conditions and cultural practices such as the devadasi system and the child marriage can lead to the trafficking of Indian women and girls.

According to the latest report of the National Crime Records Bureau (NCRB) annual publication 'crime in India' which was published in the year 2022 says that, in the year 2022, 3098 victims who were under the age of 18 years were rescued.<sup>2</sup> People who are from the war zone are more prone to human trafficking. Human trafficking being international crime and in most of the cases victims who are trafficked and harboured to other countries do not know the local language or culture because of which they remain more vulnerable and prevented from communicating their rights. Child trafficking has escalated out of control and reached epidemic proportions. In the year 2005, it was reported by US Department of State, and it examined almost 140 countries and listed 24 countries whose efforts were deemed to failing short to tackle trafficking.<sup>3</sup> India is one among this 24 countries.

### **3. Offenders and Victims:**

There are several members involved in Human trafficking and they all put together called as 'traffickers'. Most of the times these traffickers/offender belong to organised crime syndicate, they operate through agencies like fake employment bureau, travel agencies, transport agencies, brothel homes, bars, night clubs, massage parlour etc. they help in harbouring

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<sup>2</sup> NCRB, Release ID: 2039058, posted on 30 Jul 2024, by PIB Delhi

<sup>3</sup> Marie vlachova, Trafficking in Humans: The slavery of Our Age, Partnership for Peace Consortium of Defence Academics and Security Studies Institutes, Vol.4, No.04(Winter 2005), pp. 1-16

trafficked person. It was reported by one of the NGO that, 80% of the trafficked persons are sold by know people and they encash the vulnerability of victims.<sup>4</sup> More than One Million Children are trafficked annually.<sup>5</sup> The reason why there is significant increase in number of child trafficking and why offender prefer trafficking children is, children are going to fit in production and manufacturing industries such as agriculture, hotel industry, mines, jewellery making, sex industry etc.

#### **4.Stakeholders Holders in protection of Children from trafficking and Abuse Sexual Abuse:**

Several stake holders like cyber cells, forensic experts, child protection agencies like child welfare commission(CWC), Support persons appointed by CWC, NGOs working for women and child development, Doctors/medical practitioners, Social workers, Special Public Prosecutor appointed under the POCSO Act and the Judges of POCSO Courts act as a stakeholders in handling child sexual abuse. They play a crucial role in handling sensitive matters of CSA. Support persons and NGOs helps victim and family in various stages of cases, starting from filing complaint, going through medical examination and fighting the case before the court of law and in getting relief/compensation.

#### **5. International Legal Frame Work:**

Human rights law has recognized that human beings cannot be sold like a commodity. The 1926 Convention to Suppress the Slave Trade and Slavery is considered as earliest among the human rights conventions. The built-in immorality and illegality of one person taking another's legal individuality, labour, or humanity is denounced by human rights law. Additionally, it prohibits discrimination based on sex and race. It demands equal rights for foreigners, or at least some essential rights. In addition to condemning and outlawing forced labour, forced marriage, debt bondage, arbitrary imprisonment, and the commercial sexual exploitation of women and children, it also supports freedom of movement and the right to go abroad and return to one's home country.

##### **5.1 ILO Convention, 1930:**

This Convention basically calls for the suppression of forced or compulsory labour in all its

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<sup>4</sup> La strada, Trafficking in Human Beings , 8-9

<sup>5</sup> UNICEF, [www.unicef.org/protection/index\\_exploitation.html](http://www.unicef.org/protection/index_exploitation.html).

forms. Forced labour is defined as “*all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily*”.

This convention is the most ratified convention among all the ILO conventions.

### **5.2 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1951:**

The Convention specifically declares that the main reason behind the commercial sexual exploitation of women and children is their dependency and it is against their dignity and fundamental rights. The Convention provides a number of activities aiming at preventing commercial sexual exploitation and at restriction on pornography through criminalization and punishment of all forms of acquirement. Member States commit themselves to eliminating all forms of discriminations that ostracize victims of commercial sexual exploitation.

### **5.3 United Nations Convention Against Transnational Organized Crime, 2000 (UNTOC):**

A resolution passed by the Assembly on November 15, 2000, established UNTOC, the first international tool to combat transnational organized crime. Among other things, the 41 provisions of this Convention mandate that States Parties make corruption, money laundering, and membership in an organized group illegal. Additionally, States Parties must enact measures for the prosecution of violators and the seizure and confiscation of the proceeds of such crimes. The three distinct sub-areas of transnational organized crime that are the focus of each protocol are outlined along with a number of responsibilities.

Trafficking in Persons is defined as the recruitment, transportation, transfer, harbouring, or receipt of individuals through the use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability, or the giving or receiving of payments or benefits in order to obtain the consent of a person in a position of control over another individual, with the intention of exploiting them. This definition is found in Article 3, paragraph (a) of the UN Protocol to Prevent, Suppress, and Punish. The exploitation of others through prostitution or other sexual exploitation, forced labour or services, slavery or acts resembling slavery, servitude, or organ removal are all considered kinds of exploitation.

### **5.4 South Asian Association for Regional Cooperation (SAARC), 2002**

In order to effectively address the various facets of human trafficking, including the prevention

of the use of women and children in international prostitution networks, especially when SAARC countries serve as the countries of origin, transit, and destination, as well as the repatriation and rehabilitation of trafficking victims, the primary goal of this Convention is to foster cooperation among Member States.

Trafficking is described as the transportation, sale, or purchase of women and children for the purpose of prostitution both domestically and abroad, for financial or other reasons, and with or without the victim's permission.

## **6. Indian Legal Framework on Trafficking and Child Sexual Exploitation:**

The Indian legal landscape on trafficking encompasses two strands of criminal law:- the general criminal law, namely the IPC, 1860 and now it is replaced by BNS, 2024.

### **Other special legislations such as:**

The Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA) (now the ITPA), passed pursuant to the ratification of the 1949 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, addressing trafficking in the context of sex work (UN 1949). Karnataka Devadasi (Prohibition of Dedication) Act, 1982, Andhra Pradesh Devadasi (Prohibiting Dedication) Act, 1989, Information Technology Act, 2000, Juvenile Justice (Care and Protection of Children) Act, 2000, The Protection of Children from Sexual Offences (POCSO) Act, 2012.

When the children below the age group of 18 trafficked for the purpose of sexual exploitation, the offence can be tried under Immoral Trafficking Prevention Act and POCSO Act. Among these many special legislatures, the POCSO Act exclusively deals with child sexual abuse, sexual exploitation and child pornography.

One-fourth of India's total population falls below the age group of 0-14years<sup>6</sup>. In the year 2021 it was noticed that out of total number of crimes committed against children, 39% was sexual crimes against girls<sup>7</sup>. Child Sexual Abuse is traumatic event in the life of child and it is going

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<sup>6</sup> Manya Rathore, "Children in India Statistics & facts", (Aug 23, 2024) <<https://www.statista.com/topics/9677/children-in-india/#topicOverview>> accessed on 11.12.2024

<sup>7</sup> Manya Rathore, "Sexual crime against girls as a share of total crime against children in India"(2015-2021, Jul 29,2024) <<https://www.statista.com/statistics/1155513/india-sexual-crime-against-girls-as-a-share-of-total-crime-against-children/>> accessed on 11.12.2024

to hamper the child mental, physical and physiological growth.

### **6.1 Constitutional provision:**

The Indian Constitution being law of the land guarantees children several rights under Part III, Fundamental Rights. Article 23(1) expressly forbids both forced labour and human trafficking. It says that "traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law." Although sexual exploitation is not directly mentioned in the Article, it is protected by the Constitution against trafficking, even for commercial sexual purposes. Furthermore, in order to prevent such exploitation, this clause gives the state the authority to pass legislation like the Protection of Children from Sexual Offences (POCSO) Act of 2012 and the Immoral Traffic (Prevention) Act of 1956.

**6.2 ITPA, 1956** - Sex trafficking interventions often involve direct rescue targeted at the sex worker irrespective of whether she is a trafficking victim, her age, or her wish to continue work in the commercial sex trade. As her consent, opinions and choices are disregarded in the process of rescue, she may encounter disrespect, indifference and violence at different points on the rescue and rehabilitation pathway from unsensitized police personnel, shelter home staff, or even members of the civil society. ITPA does not have any measures for rehabilitating the sex workers it "rescues," rules for investigating trafficking crimes, provisions for victim compensation, or facilities to link the rescued sex worker with health services. Whereas POCSO being gender neutral law, irrespective of gender the victims of sexual abuse are protected at various stages of handling case. There are several stake holders like child welfare commission, NGOs, Medical practitioners, Advocates etc., help victim and family from filing complaint, going through medical examination, rehabilitation, attending trials in the court and in getting compensation. Special Courts were set up and special public prosecutor appointed for speedy disposal of cases. The Act is child friendly, where the child identity is kept anonymous, in camera proceedings are entertained and there are Provision for awarding adequate compensation and interim compensation to the abused child. The Act amended twice to meet the necessities.

### **6.3 Judicial Responses on Human Trafficking and Child Sexual Abuse:**

The Supreme Court and various other High Courts have been considering cases pertaining to

the statutory agencies and institutional machinery that are required by different statutes. Various rehabilitation programs for victims of human trafficking have also been monitored. A number of panels and committees have also been established by the Supreme Court to guarantee that the law is implemented and that different monitoring mechanisms are in place for the protection of the rights of victims of human trafficking. Apart from this the courts have also been creating mechanism for victim protection and various guidelines for victims rights in terms of court procedure. The Supreme Court has also stepped in and issued guidelines to tackle the problem of missing children.

In *Vishal Jeet v. Union of India*,<sup>8</sup> The Supreme Court noted that notwithstanding the strict and restorative legal requirements under numerous Acts, it cannot be argued that the intended outcome has been accomplished in light of the escalating exploitation of young women and children for prostitution and trafficking. The Supreme Court mandated that the roots and consequences of this evil be thoroughly investigated, as well as that the most reasonable steps be taken to eradicate the vices of illegal trafficking.

The Court established rules for the establishment of advisory committees in every State and the Central Government to supervise and develop programs to combat human trafficking after giving this issue careful and concerned thought.

In *Gaurav Jain v. Union of India*,<sup>9</sup> in this case the Supreme Court mandated that the Union Government establish a committee to draft the National Plan of Action and carry it out in mission mode, all the while emphasizing the violation of the trafficked victims' right to life. The Supreme Court mandated the creation of a committee to thoroughly examine these issues and develop appropriate plans for the rehabilitation of women and children who have been trafficked. A permanent Committee of Secretaries was established to oversee the implementation process annually and take any additional actions that might be necessary to ensure the schemes are implemented effectively.

The court, adopting a proactive approach, hoped that the directives would alleviate the human problem by rehabilitating the unfortunate women who had fallen into the prostitution trap and integrating their children into society. These directives would allow them to benefit from equality of opportunity and status, as well as the dignity of person that is the cornerstone of the

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<sup>8</sup> (1990) 3 SCC 318

<sup>9</sup> (1997) 8 SCC

Constitution.

### **7. Conclusion:**

A multifaceted strategy including institutional, cultural, and legal reforms is needed to address child sexual abuse and human trafficking. Legislature should frame stringent laws and strengthen existing laws to convict traffickers who indulge in trafficking of women and children. Stricter implementation of the Juvenile Justice Act, POCSO Act, and Immoral Traffic (Prevention) Act are necessary. Rehabilitation to victim, providing psychological support to victim, and helping them in reintegrate into society shall be given high priority. There shall be an improved co-ordination between the law enforcement agencies, CWC, Non-governmental organizations, and International Bodies while handling trafficking and CSA cases. Victim response will be improved by educating and sensitizing the police, courts, and social workers about trauma-informed care and child protection. Campaigns for public awareness must dispel societal taboos, promote reporting, and inform local populations about the warning signs and dangers of abuse and human trafficking.

To identify trafficking networks, technologies like data-sharing platforms, AI-based surveillance, and web tracking might be used. Poverty and ignorance are root causes of exploitation, special attention should be paid to the people who are vulnerable. Comprehensive sex education and child safety programs must be implemented in schools. Finally, to end this dual trauma of trafficking and CSA, civil society and the media should keep an eye on state accountability and promote children's rights.