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Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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Child Trafficking And Sexual Abuse Of Women- A Critical Analysis

*Authored By- Abhishek Raj & Riya Kumari
Amity Institute Of Advance Legal Studies,
Amity University, Noida Up*

ABSTRACT

The Indian Constitution expressly prohibits human trafficking. Article 23 of the constitution's Fundamental Rights section forbids "human trafficking and other comparable types of forced labour." Because there is no clear definition of trafficking, it might be stated that trafficking always entails the movement or transportation of a person by force or deception, followed by exploitation and commercialization. Abusers, such as traffickers, recruiters, transporters, vendors, purchasers, end-users, and so on, take advantage of the vulnerable trafficked individual. With globalisation, human trafficking has increased dramatically. WHEREAS,

Sexual harassment in the workplace is an extension of daily violence and is unequal and exploitative since it impacts women's right to life and livelihood. It is a breach of a woman's fundamental rights to equality under Articles 14 and 15, as well as her liberty to live with respect under Article 21 of the Indian Constitution. On July 9, 1993, India signed the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). After the savage gang rape of Bhanwari Devi, a social worker from Rajasthan, a petition was brought in India's Supreme Court for the first time in 1997 to defend fundamental human rights of working women. In addition to the Vishaka recommendations in the case of Vishaka & Ors. v. State of Rajasthan, the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (hereafter referred to as the POSH Act) was passed. The study critically examines the current Sexual Harassment statute in India. Every parties' support and dedication are required for the law to work properly and successfully.

WHAT EXACTLY IS CHILD TRAFFICKING?

Any individual under the age of 18 who is solicited, transferred, transported, or received for the purpose of exploitation, whether within or outside of a nation, is considered a victim of child trafficking. According to the National Crime Records Bureau (NCRB), there have been several examples of children just disappearing overnight, with one occurring every eight minutes. In India, a considerable number of children are trafficked for a variety of purposes, including begging, forced labour, and sexual exploitation. The amount of child trafficking in India has grown over the previous decade, while specific figures are still unknown. . It is one of the most profitable illicit trades carried out by highly organised criminals. Poverty, a lack of jobs or education, the disintegration of social systems, and other factors contribute to child trafficking. It causes victims' physical and emotional exploitation, and as a result, they are unable to live a healthy and stable life. Human trafficking, particularly of women and children, has become a major national and worldwide problem. Women and children have been exposed to unparalleled vulnerabilities, resulting in a vast organised crime and multimillion-dollar enterprise today.

HUMAN RIGHTS OF TRAFFICKED CHILDREN

The United Nations and the Universal Declaration of Human Rights indicate that the rights are universal and apply to everyone, regardless of caste, gender, colour, ethnic origin, or other factors. Even though they are not in their own country, trafficked individuals are entitled to the entire spectrum of human rights. According to international law, trafficking individuals cannot be discriminated against solely because they are non-nationals. International human law extends to everyone inside a State's territory or authority, regardless of nationality or citizenship or how they arrived there. Persons involved in specialised trafficking are susceptible to or may be able to claim extra rights. For example, whenever it comes to child trafficking, international law on human rights puts significant and extra duties on states. On December 12, 2002, the Indian government signed the Trafficking Protocol. This is a significant step forward in the advancement of trafficked people's human rights since it not only prevents and safeguards victims of trafficking but also punishes traffickers.

INDIA'S ANTI-TRAFFICKING LAWS

The Indian Constitution

The Indian constitution expressly outlaws human trafficking and forced labour, and both violations are penalised under Article 23(1) of the Indian Constitution. Article 23(1) states that "traffic in humans and beggars, as well as other comparable types of forced labour, are banned, and any violation of this article shall be penalised in accordance with law."

The Indian Criminal Code of 1860

The India Criminal Code, 1860, has many laws concerning child trafficking. For example, criminal penalties for abduction, buying or selling a minor for prostitute, abduction (even for the purpose of forcing marriage), illegal forced labour, importing/procuring girls, and purchasing or selling a person for slavery.

1956 Immoral Traffic Prevention Act

It is the primary legal tool addressing human trafficking. The Legislation focuses on human trafficking for prostitution. The primary goal has been to eliminate trafficking of women and girl child for the reason of engaging in prostitution as an organised means of subsistence.

The 1976 Child Labour (Prohibition and Regulation) Act

This Act forbids the child labour in the specified occupations listed in Part A of the Act's schedule. According to the Act, no youngster may labour for more than 3 hours without a break of at least one hour.

The Goa Children Act of 2003

This Act has the following features:

1. For the very first time in Indian law, trafficking was granted a legal definition.
2. The concept of sexual assault was broadened to include all forms of sexual exploitation.
3. The photo studios are obligated to report to the police on a regular basis that they have not taken any indecent images of youngsters.

INDIA'S CURRENT TRAFFICKING STATUS

Comprehensive statistics on the level of human trafficking in India is difficult to get. It is widely known that India is a primary source, destination, and transit point for human trafficking, especially the trafficking of young girls. According to the End of Child Prostitution in Asian Tourism (ECPAT), 150,000 women & children are smuggled from South Asia each year, with the majority coming from, passing through, or going to India. Figures for Nepal and Bangladesh vary from 500 to 10,000 girls trafficked to India each year; another estimate puts the total at more than 200,000 during a seven-year period. There are currently no rules restricting the repatriation of trafficking victims from India to Bangladesh and Nepal, and concerned groups have attempted to help girls in reaching their homes by coordinating with partner organisations in these countries.

According to India's National Crime Records Bureau (NCRB), 65,038 children went missing in the country in 2012.

Yet, official authorities' capacity to quantify the scope of child trafficking is restricted, and their estimations fall well short of those of researchers and activists. Human trafficking has made India a destination, as well as an origin and transit point. Due to increased trans-border migration, there has been a continuous increase in the trafficking of children from the country for the past two decades.

WHAT EXACTLY IS SEXUAL HARASSMENT?

As a result of the rising prominence of this issue, S. 354A was introduced to the IPC by way of the Criminal Law (Amendment) Act, 2013, which enumerates the conduct that constitute sexual harassment offences. Physical contact and approaches including unwanted and explicit sexual solicitations; or a demand or solicitation for sexual favours; or exhibiting pornography against a woman's will; or making sexually charged remarks

There were previously no equivalent laws in the Indian Criminal Code that could be used. To deal with such offences, the Indian Criminal Code included three sections: S. 94, 354, and 509. Yet, these linked regulations are presented as both an offence that either amounts to public obscenity or behaviours that are seen to offend women's modesty. Although Section 294 IPC applies both for men and women, the subsequent two are geared exclusively for women.

CONSTITUTIONAL PROTECTIONS AGAINST SEXUAL HARRASMENT AT THE WORK PLACE

Article 19(1) of the Indian Constitution secures and guarantees every citizen the right "to practise any profession, or to carry on any employment, trade, or business" (g). Every woman has a fundamental right to engage in public employment, which is violated by sexual harassment, forcing her to avoid such job. Sexual harassment of women at work exposes them to significant danger and hazard, putting them in an inequitable situation in comparison to other employees, and has a negative impact on their capacity to exercise their constitutionally granted right under Article 19(1). (g).

Sexual harassment of women at work also violates the right to life and personal liberty, as stated in Article 21, which states that no one should be deprived of his life or personal liberty. The right to subsistence is an essential part of the fundamental right to life.

Sexual harassment is a violation of one's right to a living. According to Article 21 of the Indian Constitution, every woman has the right to be free of impediments and gender discrimination in order to live a meaningful life. Because the 'Right to Work' is dependent on the availability of a safe working environment and the right to live a dignified life, the dangers created by sexual harassment must be addressed for these rights to be meaningful.

The preamble to India's Constitution states that it would ensure "equality of status and opportunity" to all people. Sexual harassment undermines this fundamental goal of the constitution's founders.

The notion of gender equality enshrined in our Constitution would be rendered ineffectual if a woman's right to privacy is not recognised as a right to life and liberty protected by Article 21 of the Indian Constitution.

Since sexual harassment of women at work destroys their sense of respect and their ability to make a living with dignity, it is a violation of their fundamental rights and basic human rights.

SEXUAL HARASSMENT LEGISLATION

DEVELOPMENT IN INDIA

The Vishaka Decision

The Supreme Court of India acknowledged workplace sexual harassment for the first time in its historic decision *Vishaka & Ors vs State Of Rajasthan & Ors*. Vishaka and other women's organisations launched a Public Interest Lawsuit against the State of Rajasthan and the Union of India to defend the basic rights of working women guaranteed by Articles 14, 19, and 21 of the Indian Constitution. The suit was brought in response to the savage gang rape of Bhanwari Devi, a social worker in Rajasthan, for opposing a child marriage. The Supreme Court of India established legally enforceable rules based on the right to equality and dignity guaranteed by the Indian Constitution and the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

The Guidelines laid down are as follows:

- a. "It shall be the obligation of the employer or other responsible individuals in workplaces or other institutions to avoid or deter the commission of sexual harassment acts and to establish processes for the resolution, settlement, or prosecution of sexual harassment acts by taking all necessary efforts."
- b. Sexual harassment includes the following unwelcome sexually determined behaviour (whether directly or indirectly):
 - physical contact and advances;
 - a demand or request for sexual favours;
 - sexually-coloured remarks;
 - showing pornography; and
 - any other unwelcome sexually determined physical, verbal, or nonverbal conduct.
- c. All employers or those in control of workplaces, whether public or private, should take proper efforts to avoid sexual harassment. Without limiting the scope of this commitment, they shall take the following steps:
 - The express prohibitions of sexual harassment in the workplace, as established above, shall be reported, publicised, and distributed in suitable manner.

- Government and public sector entities' rules/regulations on conduct and discipline shall include rules/regulations against sexual harassment and provide for suitable punishments against the perpetrator.
- d. In the case of private employers, efforts should be taken to add the aforementioned restrictions in the Industrial Employment (Standing Rules) Act, 1946.
- e. Adequate work conditions in terms of work, leisure, health, and hygiene shall be given to further guarantee that there is no hostile atmosphere for women at workplaces and that no woman has reasonable reasons to feel she is hampered in association with her employment.

DEVELOPMENTS IN THE AFTERMATH OF VISHAKA

The Central Civil Services (Conduct) Rules 1964/130 were revised in 1998 to include r.3C, which forbids sexual harassment of working women, in response to the Vishaka decision. After Vishaka, the first case before the Supreme Court in this regard was Apparel Export Promotion Council v. A.K Chopra. In this case, the Supreme Court supported the removal of a higher official of the Delhi-based Apparel Export Promotion Council who was found guilty of sexually harassing a junior female employee at work. In this decision, the Supreme Court broadened the meaning of sexual harassment by declaring that physical interaction was not required for an act of sexual harassment to be committed.

Furthermore, in its decision in *Medha Kotwal Lele & Ors. V. Union of India & Ors.*, the Supreme Court took cognizance and began monitoring the implementation of the Vishaka Guidelines across the country by directing State Governments to file affidavits emphasising the steps they had taken to implement the Vishaka Guidelines. Not satisfied, it instructed states to put in place adequate measures to guarantee the Vishaka Guidelines' effective implementation. Lastly, the Supreme Court stated that if the Guidelines are not followed, the aggrieved parties may file a complaint with the appropriate High Court.

The complaints committee's report will be considered an enquiry report under those guidelines. In response to this directive, the Central Government (Department of Personnel and Training) revised the Central Civil Services (Classification, Control, and Appeal) Regulations, 1965, R. 14, sub-r. (2) to include the required clause.

AMENDMENT IN IPC POST NIRBHAYA CASE IN 2013

- Section 354A. -Sexual harassment
- Section 354B. Compelling a woman to undress
- Section 354C. Seeing or photographing a lady without her consent (voyeurism).
- Section 354D. Following a lady and contacting or attempting to contact her despite her express request not to be contacted. Surveillance of a lady via the internet or any other type of electronic communication (stalking).

CONCLUSION

Women and child trafficking is a severe problem that impacts millions of people worldwide, with sexual exploitation being one of the most frequent kinds of exploitation. Trafficking is the hiring, transportation, transfer, sheltering, or receiving of people for the purpose of exploiting by threat, use of force, or other types of coercion, fraud, or abuse of authority. Because of their economic, social, and political standing, women & children are particularly at risk of trafficking.

Sexual exploitation is a typical kind of exploitation for trafficked women and children. Victims are frequently compelled to engage in prostitution or other types of sexual exploitation, such as pornography, strip clubs, or forced marriages.

Traffickers employ a range of tactics to entice and abuse women and children. They frequently deceive victims by promising bogus employment, education, or a better quality of life, and then compel them into prostitution or other types of sexual exploitation. Traffickers also employ violence, intimidation, and compulsion to manipulate and control their victims, making escape harder. To tackle this problem, governments, international organisations, and civil society must collaborate to increase awareness about human trafficking and reinforce laws and policies that safeguard women and children. It is also critical to offer victims with support services like as counselling, medical treatment, and legal representation.

Education and economic development are also important in the prevention of human trafficking. Women and children who have access to education and economic possibilities have a lower risk of becoming victims of human trafficking. Moreover, addressing the core causes of trafficking, such as poverty, injustice, and gender-based violence, is critical to ensuring a long-term solution to this problem.

In general, combatting women and child trafficking, especially sexual abuse, necessitates a multidimensional approach that includes prevention, protection, and punishment. Prioritizing the protection of vulnerable populations and promoting a future where all people can live free from exploitation and abuse are critical.

