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CHILD TRAFFICKING- A SEMINAL DISCOURSE FROM HUMAN RIGHTS: TOWARDS *JUS NOVUM*

AUTHORED BY - R. DIVYA

Abstract

Youngsters are the future resources of the country. They should be permitted to partake in their essential opportunities in the youth days, since adolescence comes just a single time in the course of their life. Tragically, they are dealt and taken advantage of in such countless ways as they are exceptionally defenseless. Kid dealing hampers development of the kid, his wellbeing, physical and mental prosperity. Youngster bloom and appropriate blossoming is left when they are utilized in dangerous industry. It is here in the arrangement stage well-rounded schooling to assimilate the upsides of equivalent citizenship and guzzling the virtues without double-dealing is required. Because of destitution, ignorance and poverty they are dependent upon youngster work, prostitution, dealing, sexual maltreatment, erotic entertainment. Therefore, they are denied of their young life privileges like instruction, wellbeing, sustenance, protection and character improvement. What might be said about the freedoms of the youngsters conceived out of assault, prostitution? Deserted, penniless, road youngsters, kids working in bazaar and youngsters in compassionate crises and kids with handicap add to the commitments of weakness. A young lady kid is more powerless for foeticide, child murder, and deal or kid marriage. Because of sicknesses, hunger, starvation, destitution, lack of healthy sustenance, unfortunate disinfection the kid death rate is high in the country. Where does the issue lie? Who is liable for the pitiable situation? And the privileges of substitute kids, exile youngsters and kids in the furnished struggle? Is the Constitution of India a quiet observer? A plenty of regulations viz., the Right of Kids to Free and Obligatory Instruction Act, 2009, Insurance of Youngsters from Sexual Maltreatment Act, 2012, the Adolescent Equity Act, 2000 and such ended up being non-starters and non implementable because of different reasons. The legal reaction for the delivery and restoration of kids from youngster work and development of kid right statute through PIL/SAL is critical and go quite far in uniting adolescent equity. Notwithstanding, the bearings of the legal executive in such manner are disregarded. The specialist in the paper resolves the above issues and difficulties looked by the guiltless kids and unsettled ideas for

development of their parcel toward the end.

Introduction

In an enlightened society, the significance of the youngster government assistance can't be over underscored in light of the fact that the government assistance of the whole local area, its development relies upon the prosperity and wellbeing of its kids. Kids need extraordinary security due to their youthful age, physical make-up, mental adolescence and inadequacy to care for themselves. Article 15(3) of the Indian Constitution is enabled to make unique arrangements for the assurance of kids. There is a developing acknowledgment that youngsters should be raised in an air of adoration and fondness and under delicate consideration and consideration. They are incredible commitments of tomorrow, the beginning of mankind and buds of social turn of events. A general public that is really focusing on youngster shows the indications of improvement and development. Youngsters are a human asset, significant yet sadly defenseless. Youngster dealing stayed as a social danger dehumanizing the kid.

Both worldwide and public instruments forcefully condemn in an unequivocal terms youngster dealing. To satisfy its worldwide responsibility, the Commissions for Security of Kid Freedoms Act, 2005 was passed in India. To guarantee security of the privileges of youngsters, the Public authority has taken on the Public Contract for Kids, 2003. Considering different shows and suggestions of the UN and the ILO embraced by India, it attempts to adhere to the guidelines set by such show. Correspondingly under the Indian Corrective Code, dealing of minor is prohibited. Taking advantage of such dealt people, selling and purchasing of minors with the end goal of prostitution is denied under Segments 370 A, 372, 373 separately. Further, whoever routinely imports, trades, eliminates, purchases, sells, deals or arrangements in slaves is cognizable, non-bailable and non-compoundable offense illegal under segment 371 of IPC.

Youngsters' on the right track to instruction isn't just a basic liberty however it is instrumental for acknowledging other common freedoms. Instruction is helpful for character advancement. It helps kids in getting ready valuable residents of the country. Tragically, youngster work has turned into a hindrance of street to training. Before all else, schooling for kids upto 14 years old was a mandate rule of state strategy. From that point, it was made a major right.

Thusly, to understand the fantasy of free and obligatory training for all, the Right of Kids to Free and Mandatory Instruction Act, 2009 was passed. Things have not superior even a while later due to non-execution of the Demonstration in its letter and soul. The primary thought of precluding youngster dealing is to empower the kid to get schooling.

Child Trafficking and Its manifestations – Judicial Response

The judiciary with its innovative and inspiring judgments has been a bedrock of social justice. The concept of social justice would remain a myth, if protection could not be afforded to children. It is submitted that the judiciary took up cudgels against the exploitation of children and started giving protection to children in consonance with national and international commitments. Though child labour and trafficking is prohibited by the Constitution¹, children are still employed in hazardous² industry. Tobacco manufacturing has indeed health hazards. Manufacturing process of matches and fireworks is hazardous giving rise to fatal accidents. Similarly, prevalence of child labour in carpet weaving industry.³ In *People's Union for Democratic Rights v. UOI*⁴, the Supreme Court held that the construction work is hazardous employment. Following the constitutional dictates, the Supreme Court once again in *Labourers, Salal Hydro Projects v. State of J.K*⁵, observed that construction work is a hazardous employment attracting Article 24 of Indian Constitution. The Supreme Court in *Sheela Barse v. UOI*⁶, has declared that a child is national asset. A child cannot be treated as an inanimate object. A child cannot be treated like a property.

Children of the tender age cannot be subjected to abuse and they should be given opportunities and facilities to develop in a healthy manner. As there was rise in crime and growing menace of sexual abuse of child, the Supreme Court in *Sakshi v. UOI*⁷, requested the Law Commission to suggest measures. Despite law,⁸ protecting children from sexual abuse, they are subjected to sexual assault, pornography and all other kind of sexual abuses.

¹ Article 24 of the Indian Constitution

² *M.C.Mehta v. State of T.N, AIR 1997 SC 699*

³ *Bandhu Mukthi Morcha v. UOI (1997) 10 SCC 549*

⁴ (1982) 3 SCC 235

⁵ (1983) 2 SCC 181

⁶ AIR 1986 Sc 1873

⁷ 1999 (6) SCC 591

⁸ Protection of Children from Sexual Abuse Act, 2012

Incestuous behaviour with the children is child abuse⁹. Similarly, Juvenile Justice(Care and Protection) Act, 2000 was enacted for rationalizing the system of dealing with socially deviant children in keeping with the spirit of social justice and humanitarian law. The Act was passed promising to usher in a new era of juvenile justice. However, the desired goals are not achieved. The Juvenile offenders are taking advantage of the liberal provisions of the Act and loopholes. The object of the JJ Act is to bring the neglected juvenile into the main stream of national life. Further, the laudable purpose of the Act is not to punish and treat them as criminals but to rehabilitate them. Otherwise, they will be thrown into the vile of prostitution or for trafficking which would be deleterious to the child's development.¹⁰

It is most unfortunate that the innocent children quite often fall to the prey of traffickers. Forced labour often has a relationship with trafficking, although they do not have to occur together. Many of the threats to child well-being fall under the umbrella of child labour.¹¹ Children working on the streets are among the most visible of child labours. The worst form of child labour is the use of the children in sexually related activities. In order to gain complete control of the child, traffickers often destroy physical and mental health of the children through persistent physical and emotional abuse. Victims experience severe trauma on a daily basis that devastates the healthy development of self-concept, self-worth, biological integrity and cognitive functioning. Children who grow up in constant environments of exploitation frequently exhibit anti-social behaviour, over-sexualised behaviour, self-harm, aggression, distrust of adults, dissociative disorders, substance, abuse, complex trauma and attention deficit disorders.¹² Traffickers in children may take advantage of the parent's extreme poverty. Parents may sell children to traffickers in order to pay off or gain income or they may be deceived concerning the prospects of training and a better life for their children. They may sell their children into labour, sex trafficking or illegal adoptions.¹³

Right to family life is one of the prominent human rights of the child as the child grows in its fold of intimacy and love. Adoption is an act of uprooting a child from the atmosphere of his or her natural family and transplanting him or her in adoptive family to facilitate continuation of the lineage of the latter. Traditional purpose of these artificial arrangements both in Hindu

⁹ See *M.H.Kakkad v. Naval Dubey*, 1992 AIR SCW 1480

¹⁰ Dr.Awasthi & Kataria, *Law relating to Protection of Human Rights*, (2005).

¹¹ See Susan C.Mapp, *Human Rights and Social Justice in a Global Perspective* (2008).

¹² Rafferty, "The Impact of Trafficking on Children: Psychological and Social Policy Perspectives", *Child Development Perspectives*" (2008)

¹³ See Art. 34 of the UN Convention on the Rights of the Child, 1989

law and Roman law was to vest a child to a child less family or person. However, the adoption process legal or illegal, when abused can sometimes result in cases of trafficking of babies and pregnant women from developing countries to the west. In modern times, adoption serving as an instrument to help the orphans, destitute and abandoned children remains a big question mark. Among various forms that are employed by the traffickers, to abduct children especially girl child, and to induce them into promiscuous activities, foreign adoptions is one of the important forms that has been chosen by the people with vested interests in the garb of providing foster parents to socially neglected children. Millions of Indian children were lured through illegal means in the name of foreign adoptions, in the absence of a specific law misusing the provisions of Guardians and Wards Act, 1890. In reality, those children are converted as beggars, goondas or into the profession of flesh trade.

In *Lakshmi Kant Pandey v. UOI*¹⁴, the Court acting on a PIL dealt with the malpractices indulged in by social organisations and voluntary agencies engaged in the work of offering Indian children in adoption to foreign parents. Justice Bhagawati laid down principles and norms which should be followed in determining whether a child should be allowed to be adopted by foreign parents. The problem of inter-country adoption associated with various types of abuses has raised serious issues about adequacy of law and of its social justice components.¹⁵ There is more child-trafficking in the name of inter-country adoptions. Similarly, the Supreme Court in *Vishal Jeet* case¹⁶ in a response to a PIL directed the State governments and Union territories to take appropriate action to eradicate trafficking in children which often leads to prostitution.

In *Kisher v. Orissa*¹⁷, a PIL highlighted the sale of children in Kalahandi district of Orissa on account of extreme poverty. The Supreme Court took measures to improve the conditions and also to prevent the trafficking in children. The sexual exploitation of blind girl student in a school at Berhampur, Orissa was brought to the notice of the Supreme Court through a PIL.¹⁸ The Court also took cognisance of the problems of the children born to prostitutes and

¹⁴ AIR 1997 SC 3021

¹⁵ *Lakshmi Kant Pandey v. UOI*, AIR 1984 SC 469, involved allegation that Indian children of tender age were under the guise of adoption exposed to the long horrendous as journey to distant foreign countries at great risk to their lives and in the course of time becoming beggars or prostitutes.

¹⁶ *Vishal Jeet v. UOI*, (1990) 2 SCR 861

¹⁷ AIR1989SC 677

¹⁸ *Praful Kumar Sinha v. State of Orissa* AIR 1989 SC 1783

constituted a committee with lawyers and social activists to look into the matters in *Gaurav Jain*¹⁹.

Circus is one of the ancient forms of indigenous entertainment in the world, with humans having a major role to play. However, the activities that are undertaken in these circuses deprive the artists, especially children, of their basic fundamental rights. Most of them are trafficked from some poverty stricken areas of Nepal as well as from backward districts of India. *Bachpan Bachao Andolan*²⁰ an International NGO has been able to liberate thousands of children with the help of the judiciary and the executive as well as through persuasion, social mobilisation and education. The petition in *Bachpan Bachao Andolan* was filed in public interest under Article 32 of the Constitution in the wake of serious violations and abuse of children who are forcefully detained in circuses, in many instances, without any access to their families under extreme inhuman conditions. There are also instances of sexual abuse on a daily basis, physical abuse as well as emotional abuse. The children are deprived of basic human needs of food, water and were trafficked into performing in circuses. The petitioner is engaged in a social movement for the emancipation of children in exploitative labour, bondage and servitude. The situation of children in circuses is in no different than animals.

The plight of the children (child soldiers, refugee children and the displaced children) in complex humanitarian emergency is unimaginable. Infact, those children are trafficked in a variety of ways. There are many national and international instruments dealing with the rights of the child soldiers,²¹ displaced children²² and refugee children.²³ However, these instruments, declarations and U.N. General Assembly resolutions, Secretary General, ECOSOC and other regional organisations could not arrest the violations of the rights of the

¹⁹ *Gaurav Jain v. Union of India*, AIR 1990 SC 292

²⁰ (2011) 5 SCC 1.

²¹ Article 4(3) of the Second Additional Protocol to Geneva Convention, 1977 on 'Protection of Victims of Non-International Armed Conflict provides that children below fifteen year shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities. Article 38 of the Convention on the Rights of the Child, 1989 and Article 1 of the Optional Protocol to the Convention on the Rights of the Child, 1989 on the involvement of Children in Armed Conflict, 2000 also forbid recruitment of children in to the army.

²² Article 14 and 24 of Geneva Convention relative to the protection of civilian persons in Time of War, 1949 deal with protection of displaced children.

²³ Article 77 of the First Additional Protocol to Geneva Convention, 1977

child during humanitarian emergencies.²⁴ If a child whether a boy or girl is recruited as a soldier; it has a devastating effect on his development. He has a little opportunity for education and skill acquisition. Girls face particular threats including that of abduction, abuse and rape.²⁵ The decision of the Indian Supreme Court in *Nandhini Sundar*²⁶ would serve as a guideline to both state and non-state actors. Similarly, displaced children are vulnerable and face threats to life, liberty and trauma. Such impacts have long term effects on child's outlook on life. The condition of refugee children is worse. The UNHCR issued guidelines on the protection of Refugee Children in 1998.

Torture of the girl child²⁷ is the very negation of the human dignity and cuts at the root of the culture of human rights. It is in a way trafficking of the girl child. Torture of girl child takes place in so many ways i.e torture by the state, during armed conflict, within family and within the community. Like in custodial torture²⁸, in the armed conflict children are especially defenceless against further acts of sexual violence in return for food, shelter, passage, rations and papers²⁹. A girl child faces intimate violence within the family. Incest³⁰, child sexual abuse is forbidden under protection of the Children from Sexual Abuse Act, 2012. Honour killings³¹ and female genital surgery are the tortious acts committed within community. Torture is dehumanising, intimidating and frightening for the girl child. It is to extinguish the individuality and identity of the person³². Torture of the girl child is an international phenomenon and has been the concern of the international community. It is a universal and a global challenge. The private sanctuary of the family has become a violent prison and the State has failed in its responsibility to provide relief.

²⁴ For details, See V.Vijayakumar, "Children in Humanitarian Emergencies and the Guest for Humanitarian Response: A Study", 54 JILI, (2012) 160 – 195.

²⁵ A number of studies indicate a large number of recruitment of child soldiers either by the State or non-state actors.

²⁶ *Nandhini Sundar v. State of Chattisgarh*, (2011) 13 SCC 46, wherein the Supreme Court said that the State of Chattigarh promoting activists group called "*Salwa Judum*" to counter insurgency is involved in widespread violation of human rights as unconstitutional.

²⁷ UN Convention against torture and other Cruel Inhuman or degrading treatment or punishment, 1987; UDHR, 1948, ICCPR, 1966 and the UN Convention on the Rights of the Child (CRC), 1989 stootly Publication.

²⁸ See *Munna v. State of U.P*, AIR 1982 SC 806; *Tukaram v. State of Maharastra*

²⁹ Rights of the Child; "Children in Emergency situation" – Report of the National Consultation, Nov-21-23, 110(1994)

³⁰ *Ram Kumar v. State of M.P*, 2003 Cr.L.J.NOC 18 (M.P); *Siriyar v. State of MP* (2008) 8 SCC 72

³¹ *Surjit Kumar v. State of U.P*, 2002, (45) SCC at 80

³² See for a critical analysis, See Usha Razdan, "Torture of the Girl Child: State Sponsored Repression," 43-66, 54 JILI, (2012)

Child marriage³³ is in a way amounting to child trafficking. It impacts girl's reproductive and sexual rights as well as health risks associated with it like early pregnancy-related deaths. In *Forum for Fact Finding Documentation and Advocacy v. Union of India*³⁴, a public interest litigation was filed against the union of India and various States seeking strict implementation of the Child Marriage Restraint Act, 1929. It is described in the petition that child marriage is merely a camouflage for servitude and sexual abuse of the girl child violating Arts. 21³⁵, 23³⁶ and 39³⁷ of the Constitution. It was argued before the Court that unnatural offences³⁸ forbidden under the IPC are also implicit in the practice of child marriage. The Prevention of Child Marriage Act, 2005, it is submitted that, is sequel to the *FFDA case*. *FFDA* case thus demonstrates how litigation can be used to move an issue to the fore, inspire the legislature to take action in this direction. In 2006, the Supreme Court in *Smt. Sima v. Ashwani Kumar*³⁹, the marriage registration was made compulsory as it helps in preventing of child marriages. The instant decision was a very positive step for the protection of reproductive rights of young adolescents, especially in the light of Indian Government's declaration to CEDAW commitments.

It is no longer a secret that thousands of children go 'missing' every year and that Delhi has an extraordinary high incidence of missing children. National Crime Records Bureau data registers that a child goes missing every eight minutes. About 40% of these children remain missing forever. The maximum number of children reported missing was from areas where people from economically weaker section reside. They ran away from home as they were pushed to the edge of extreme poverty or violence at home. A sizable number of those who go missing are trafficked for prostitution, slavery and beggary. There is a connection between missing children and organ trade⁴⁰. The tale of the *Nithari* murders⁴¹ is one of the unimaginable horrors. The number of children largely belonged to migrant worker's families. The remains of the children were stashed in the drains running in front of and behind a house

³³ The UNICEF Report, 2001 has described the negative consequences that child marriage has on girls.

³⁴ case filed before the Supreme Court of India in April, 2003

³⁵ Article 21 of the Indian Constitution guarantees right to life and personal liberty.

³⁶ Article 23 of the Indian Constitution prohibits human trafficking and other forms of forced labour.

³⁷ Art. 39 of the Indian Constitution directs the State to protect children against exploitation and to provide them with opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity.

³⁸ Sec. 377 of the IPC deals with unnatural offences.

³⁹ AIR 2006 SC 1158

⁴⁰ Usha Ramanathan, "Organ Trade, Missing Piece in Nithari Puzzle?", THE HINDU dated on October, 29, 2014 p.11

⁴¹ *Moninder Singh Pandher v. State of U.P.*, CRIMINAL (CAPITAL) APPEAL NO. 1475 OF 2009.

in the neighbourhood where they lived.

Concluding Remarks

From the afore said discussion, it is concluded that in spite of national and international statutory framework to end exploitation of children and promotion of child rights, the condition of the child has not improved particularly the poor, economically backward and other weaker sections of the society. Despite NGOs, voluntary organizations and child right activists contributing to the release and rehabilitation children from bondage, servitude and advocating to the child rights and for their wellbeing, their situation in the country is not improved. Due to vulnerability and poverty child trafficking is taking place in the society in a variety of ways and forms. Child labour is only a tip of the ice berg. Child trafficking is a gross violation of human rights. Hence, enacting a comprehensive legislation separately on child trafficking covering all facets and forms is the need of the hour.