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# **PLANTING SEEDS OF HOPE: CULTIVATING A FUTURE WHERE CHILDREN CAN BLOSSOM, FREE FROM TRAFFICKING**

AUTHORED BY - VEDHIKA GUPTA

## **ABSTRACT**

In this paper the researchers have tried to explain the meaning and scope of the term Child Trafficking, the term is exclusively dealt along with the related provision of different legislation in India as well in various International Frameworks which address the issue of Child Trafficking along with the penalties imposed. Since the nature of the crime is quite difficult to track due to insufficient laws, they have tried to a brief insight about the crime.

## **INTRODUCTION**

Human trafficking has been classified as the third largest crime done for the sake of earning profits in the world. As per different reports, the victims are subjected to false and frivolous promises and put into the work of bondage labour and prostitution for the purpose of commercial gains. Child Trafficking is one such way to exploit young girls and boys for the sake of money due to which they are being forced for bonded labour and sexual exploitation and are transferred from one part of the country to another or from one territory to another. It can also be proven on the basis of percentage, that out of every five trafficked children three are girls below the age of eighteen. The UNODC's world report found that almost fifty thousand child trafficking cases were detected out of which only 148 cases were registered with the authority. Almost about 27% children in the world were found to be the victim of child trafficking in just one year<sup>1</sup>. And surprisingly, it is the family member of the child who is involved in trapping them and later on victimising themselves. If not, a member of the family then some acquaintances who in lieu of their fake promises to the innocent parents of the child, hoping to give them a better privileged life which they can't afford due to poverty send them to different cities and sometimes to another country for earning money. Reportedly, it is observed that on most of the dhaba's, restaurants or

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<sup>1</sup> Roy S, Chaman C. Human rights and trafficking in women and children in India. *J His Arch & Anthropol Sci.* 2017;1(5):162-170. DOI: [10.15406/jhaas.2017.01.00027](https://doi.org/10.15406/jhaas.2017.01.00027)

chai tapiri's and many others such places of small scale business, children are seen working for long hours without having their meals and proper shelters for them. The writer has also seen a lot of interviews where such children have been asked to work for fourteen- fifteen hours for the sake on one time meals. How inhuman treatment is this, to know what is happening but having no option rather to be a part of it. The reality is harsh to digest but yes in a lot of surveys it has been observed that these trafficked children are put into slavery, without any basic necessities like food, shelter and clothing.

In a survey undertaken by the State Government it was observed that these trafficking gangs and organisations have made a chain and are use it to bring children from different part of the world for the purposes of bondage labour, slavery or otherwise, these organisations purposely break body parts and force them to beg for money. This is something which is not acceptable as these young ones are getting injured and hurt, such inhumane and heartless people shall be caught and punished. In fact these gangs sometimes attempt to kill these infants when they try escape from the trap. The most susceptible one are either refugees or migrants who are forged and were given hopes to provide better education, job opportunity or lifestyle and are then being exploited. At present almost every country of the world is sufferer of children trafficking due to which future of the world is in danger.

In the modern times where beurocrate and white collar job personnel are trying and putting their heart and soul to protect the rights of human, nothing has changed. Young children are still being use for commercial purposes and are being objectified. This is a very common practice which has been evolved in modern times, to exploit children for some financial gain. All these trackers who are experts and being trained in exploiting children are following the same pattern to abuse them. They influence infants by giving them some attractive gifts or food items. Once they succeed in convincing them, they take them along with them and exploit and abuse them for different purposes. Trafficking of infant and especially young girls is something which is known to us because they have been sold either to some sex workers in the country/ outside the country and nowadays such case are reported frequently. The crime has increased due to lack of comprehensive legislation and also due to lack of education and Illiteracy the crime is increasing day by day.

## DEFINITION

The term Child Trafficking can be defined as “an act of transportation, transfer or harbouring and receipt of people through the means of threat, force, coercion, fraud or use of power and money for the purpose of exploitation including forced labour, slavery and sexual abuse”<sup>2</sup>. Trafficking is a heinous offence that violates autonomy and integrity of women and children rights. Children are trafficked for organ trade, bonded labour, domestic work, sex tourism, pornography, smuggling and various other illegal works. Almost every country is affected by trafficking whether developed, under developed or developing.

## INTERNATIONAL LEGAL FRAME WORK:

On the international scale there are and have been various attempts to combat trafficking and various conventions address the same as a serious problem in the present time. Some of such conventions are mentioned below:

1. In “**Palermo Protocol**, which is a supplement protocol to the UN Convention against the transnational organized crimes (2000)”, in its Article 5 it states it that is mandatory for all the states to criminalize trafficking, attempt to trafficking and any other such practices or organization with respect to trafficking scheme.
2. “**The Slavery Convention (1926)**”, the convention defines the term trafficking as a practice similar to slavery which also includes debt bondage and institution and organizations that discriminate women in context of marriage.
3. “**The Convention on the rights of the child (1989) and The Optional Protocol on the Sale of Children, Child pornography and prostitution (2000)**”, prohibits child trafficking for any of such purposes including forced labour and child exploitation. As per Article 39, specifically put forth the point that state must take all the necessary measures to promote the rehabilitation of the child victims of any of the form abuse or exploitation. In its Article 28 it also talks about the Right of every child to get educated, in continuation of it also mentions about the facilities to be provided for the treatment of the child in the process of rehabilitation of his psychology and physical illness under Article 24.

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<sup>2</sup> The Immoral Traffic Prevention Act, 1956

4. Article 7 of “**International Convention for the Suppression of Human Trafficking**” clearly shows its desire to make laws for preventing Child and Women Trafficking in respect of immigration<sup>3</sup>.
5. “**The Universal Declaration of Human Right, 1948**” which takes and basic human right is also taking about child trafficking as one of the massive violation of human right.
6. “**The Convention on Civil and Political Rights, 1966**” which include the issue of slavery as well as trafficking and also takes about its preventive measures.
7. “**The Convention on the Elimination of all, forms of Discrimination against Women**” is also one of the common conventions which Call upon countries to take legislative measure by making laws for preventing child trafficking.
8. “**The Declaration on the Elimination of Violation against women, 1993**” which most probably includes, trafficking of women for sexual exploitation is violation of right against women.
9. “**The Hague Convention**” on Protection of Children and Co-operation in-Respect of Inter-country Adoption, 1993 it mostly deals on child trafficking and child laundering. This convention is one of the important conventions because this convention was the first which allowed inter-country adoption, which was slowly mutualized for child trafficking.
10. “**Worst Forms of Child labour Conventions, 1999**” which was adopted by Indian Labour Organization to decriminalize the child labour and slavery below the age of 18. That means no one can force or allow a child who is below the age of 18 to work anywhere. It is either a restaurant, industry or someone home.

## INDIAN LEGAL FRAMEWORK

Various efforts have been made by the Parliament of India to put an end to the crime of Human Trafficking. However, there are certain legislations which are indirectly related to the Human Trafficking of Children but are more relevant.

- **The Constitution of India<sup>4</sup>**

The Indian constitution mentions about human trafficking under Article 23 which state that “trafficking in humans and Forced Labour is prohibited and is punishable”. It also “prohibits

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<sup>3</sup> Council of Europe, 17 January,2010

<sup>4</sup> The Constitution of India, art. 23 & 24.

child below the age of fourteen to work in any of the hazardous factories or mines” under Article 24.

- **Indian Penal Code of 1860<sup>5</sup>**

The IPC contains various provisions relating to the prevention and prohibition of human trafficking in children and imposes a penalty upon the commission of such crime. “**The Criminal Law (Amendment) Act, 2013**” substituted Section 370 which legislates the definition of the offence of trafficking. It provides that

*“Whoever, for the purpose of exploitation (a) recruits, (b) transports, (c) harbours, (d) transfers or (e) receives, a person or persons, by – first- using threat, or secondly- using force, or any other form of coercion, or Thirdly, - by abduction, or fourthly- by practicing fraud, or deception or fifthly - by abuse of power, or sixthly- by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, received, commits the offence of trafficking.”*

*“Such a person shall be punished with rigorous imprisonment of not less than seven years but it may extend to ten years and he shall also be liable for fine. However, if the person is engaged in the trafficking of more than one minor in such a case, he shall be punished with a minimum of fourteen years of imprisonment which may be extended to life imprisonment and fine.”*

Section 366 of the IPC stipulates that if any person induces a woman to go to some place with the “intent that she can be forced or seduced to illicit intercourse such person shall be punished with the imprisonment of up to ten years and fine.”

Section 372 of the IPC, prohibits selling of the minor for the purposes of prostitution and Section 373 stipulates punishment for the same. “Importation of a girl below twenty-one years of age is an offence under Section 371 which is punishable with life imprisonment of ten years imprisonment.”

- **The Protection of Children from Sexual Offences Act, 2012<sup>6</sup>:**

The act was enacted in 2012, it is the first special legislation enacted with intent to protect children from sexual offences and abuse. Sexual offences are covered under IPC earlier as

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<sup>5</sup> The Indian Penal Code, 1860

<sup>6</sup> The Protection Of Children From Sexual Offences Act, 2012

well but the act did not provide the distinction between sexual offence against an adult and a minor child. The act legislates that offenders shall be punished severely on the basis of the gravity of the offence committed.

The act specifically defines child under its definition clause and tends to protect children below eighteen years of age<sup>7</sup>.

- **The Juvenile Justice (care and protection of children) Act, 2000<sup>8</sup>:**

This special legislation was enacted with the aim to protect the interest of the juveniles and to provide measure for the rehabilitation of child victims.

- **Immoral Traffic Prevention Act, 1956<sup>9</sup>:**

This Act is a special legislation enacted with an intent to deals with trafficking and provides for punishment. Sections 3 of the act stipulate “punishment for imprisonment for not less than one year and more than three years with fine of rupees two thousand for keeping brothel.”

“The act specifically provides punishment for detention of a person in the premises where prostitution is being carried out, i.e. imprisonment for not less than seven years which may extend to ten year or more.” (The Immoral Traffic Prevention Act, 1956)

- **The Trafficking Person ( Prevention, Protection and Rehabilitation) bill, 2018<sup>10</sup>:**

The main objective of the bill was to prevent human trafficking and to rehabilitate the victims of trafficking, along with the provision of punishment for commission of such crimes. The bill got passed in Lok Sabha on 26 July 2018, but not in Rajya Sabha and eventually was lapsed.

## LANDMARK JUDGMENTS

### 1. **Bhandua Mukti Morcha v. UOI 1984 3 SCC 161<sup>11</sup>**

This case was filed before the Supreme Court through public interest litigation under Article 32 of the Indian Constitution requesting the Hon’ble court to assist the State of Uttar Pradesh in

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<sup>8</sup> The Juvenile Justice Act, 2000

<sup>9</sup> The Immoral Traffic Prevention Act, 1956

<sup>10</sup> The Trafficking Person Bill, 2018

<sup>11</sup> Bhandua Mukti Morcha v. UOI 1984 3 SCC 161

finding the ways to end the tyke work within the state. The court constituted an advisory group which reported that a huge number of children are being misused and are found to be trafficked from the neighbouring states to work at industries.

The Court while examining the rights of children it was found that this problem can't be curb out instantly but a realistic approach needs to be applied in order to secure and advance the privileges of the children. The reasoning of the Court was backed with major rights enumerated in the Indian Constitution such Article 21(the right to life and liberty), Article 24 (which includes prohibition of work of children below the age of 14 years in any plant, mine or hazardous place) , Article 39 (e) ( which restricts an individual to work in an unsuited job as per their age) Article 39 (f) and Article 45. The Court also mentioned about India's commitment to UDHR (Universal Declaration of Human Rights) and Convention on the Rights of the children, to give cost free training to those children who work in the production lines and other businesses to secure them from being monetary misused. Further the Court directed the state, the vigilance committee and the district magistrate to take the assistance of certain non political organizations working for such purposes in order to implement the laws and ensuring that the true meaning of the law has been conveyed. The Central and State Government to take necessary steps for the purpose of providing minimum wage rate.

## **2. Laxmi Kant Pandey v. UOI 1984 2 SCC 244<sup>12</sup>**

This petition was filed by the petitioner Laxmi Kant who happened to be an attorney before the Hon'ble Supreme Court alleging the malpractice on the part of the organizations and private agencies working for adoption facilities, facilitating Indian children to foreign parents. There were instances where the children have been neglected by foreign parents and because of which they have to face a lot of exploitations. The Hon'ble Court treated the said petition as PIL (Public Interest Litigation).

Addressing the lacunae in the legislation the Court, in consultation with various organizations and welfare institutions the Court laid down a comprehensive, normative and procedural safeguard concerning the root problem of inter country adoption. These safeguards will regulate the process of giving children for adoption to foreign parents and protecting them from abuse, ill-treatment or exploitation along with safeguarding their rights to health and decent life style and

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<sup>12</sup> Laxmi Kant Pandey v. UOI 1984 2 SCC 244

family.

While formulating these standard safeguards the court referred to various laws and policies relating the children welfare and also looked into the principles laid in the U.N. Declaration on the Rights of the Child (1959). The safeguard included certain strict requirements such as:

- a) Foreign parents who wish to adopt must be sponsored by a proper licensed agency in their own country.
- b) That no application for adoption should be entertained directly through the agencies in India.
- c) That all the agencies in India working on such inter country adoptions must be licensed by the government and they have to meet certain stipulated criteria to undertake such activity.
- d) It will be the responsibility of the agencies and organizations established, to ensure the safety and well being of the child victims and to make sure that such inter country adoption is approved and registered by the local courts and authorities taking care of such adoption in such other country.

### **3. Prerna v. state of Maharashtra 2003 (2) Mah.L.J 105<sup>13</sup>:**

In this case the Hon'ble High Court has laid down the guidelines to make sure that the child rescued from the clutches of human trafficking are being rescued with utmost care and caution, few of such guidelines are entrusted here:

- a) "That if the child rescued under the Immoral Traffic Act, 1956 is presented before the Magistrate, his age should be ascertained at the very first instance and if found below the age of eighteen years then the case shall immediately be transferred to Juvenile Court or to the Child Welfare Committee.
- b) In case the child has been rescued from a brothel and is found soliciting in public under the Immoral Trafficking Act, 1956, he should be released once the inquiry by probation officer is done.
- c) In cases where the parents or guardians of the child are unfit to take care of the rescued child the procedure under the Juvenile Act shall prevail to rehabilitate such child."

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<sup>13</sup> Prerna v. State of Maharashtra 2003 (2) Mah.L.J 105

#### 4. Vishal Jeet v. Union of India, (1990) 3 SCC 318<sup>14</sup>:

In this case a Public Interest Litigation was brought on the instance of few advocates praying for issuance of certain guidelines and direction in relation to forced prostitution and women and children trafficking. The petition also addresses the issue of poor parents selling their children to earn money in order to combat poverty.

The Apex Court took cognizance of the matter and said that this matter is of great importance and need immediate action, a comprehensive analysis was done and it was concluded that this matter is not only a social issue rather it is a socio economic issue and hence immediate measures should be taken to prevent it. Considering all the aspects, the Court has issued certain directions to the State Government and Union Territory such as:

- a) Immediate concerned law authority should take speedy actions under any of the existing laws and statutes to eradicate this problem.
- b) Take necessary steps to provide appropriate and rehabilitative homes to the victims.
- c) Most importantly to set up an Advisory Committee consisting governmental officials, criminologist, sociologist, members of the social organization working for women and children welfare to give their suggestions on the matter at hand and also measures for care, protection and rehabilitation of victims.

### RECOMMENDATIONS

There are various collective reasons which promote such inhumane crimes in India and one of them is lack of awareness amongst the people which the traffickers use as an opportunity for committing such crime without iota of fear. To put a complete stop on such attempts, a law should be enacted which exclusively deals with human trafficking of children. Further, efforts should be intensified to educate people and spread awareness so as to enable victims, their family members to come forward, identify these criminals and their organizations and report them to the competent authority. And this can be done by State by means of publication at various platforms such as newspaper, websites of ministries, magazines and other such forums. The State should publish reports on the conviction and sentences passed against such criminals from time to time which may be proven of help in two ways, firstly, it will generate a sense of threat in the minds of such offenders and secondly it will spread awareness. Moreover, an independent survey should be

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<sup>14</sup> Vishal Jeet v. Union of India (1990) 3 SCC 318

carried out to identify the total number of gangs and organizations involved in committing such crimes across the country and accordingly punish them.

## **CONCLUSION**

Since trafficking is delicate and sensitive issue it needs to be tackled with utmost care along with a comprehensive plan. But even after several attempts of the Indian government and Judiciary for that matter, there is no comprehensive law which single handedly deals with the problem of human trafficking across the country. The sole reason for increase in such crime is that there is no legislation that exclusively deals with human trafficking of children and dearth of awareness amongst people which eventually gives such traffickers a chance to commit these crimes more often without any fear of being caught. There is a need for more strict laws in the country to address the issue.

