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Child Trafficking: The Antisocial Effect Of The Pandemic

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Abstract

Human trafficking is among the most threatening issues that many nations across the globe confront and the magnitude of trafficking is substantially great. Since 2003, the United Nations Office on Drugs and Crime (UNODC) has been collecting statistics on human trafficking victims. According to UNODC data, human trafficking happens in practically every area of the world. Countries can be the origin, transit or destination for the victims, or even a combination of all. The information gathered only pertains to victims who established contact with the authorities and it does not indicate the true incidence of the crime or the concealed number of victims. According to figures compiled for the 2020 Global Report on Trafficking in Persons, 148 countries investigated and reported around 50,000 human trafficking victims in 2018. The international human rights movement was strengthened when the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR) on 10 December 1948. The Universal Declaration of Human Rights, along with the International Covenant on Civil and Political Rights, 1966 and its two Optional Protocols, and the International Covenant on Economic, Social, and Cultural Rights, 1966 comprise the so-called International Bill of Human Rights. ILO Convention No. 182 (1999) on the Worst Forms of Child Labour (WFCL) classifies trafficking among “forms of slavery or practices similar to slavery” and thereby a WFCL to be eliminated as a matter of urgency, irrespective of the country’s level of development. The convention came into effect in India on June 13, 2017. Human Trafficking is considered as the second largest organised crime in India. It is still a major issue in India, despite the fact that it is prohibited under Article 23 (1) of the Indian Constitution. Immoral Traffic (Prevention) Act, 1956. In accordance with the National Crime Records Bureau (NCRB), roughly 4709 victims from 28 states and 8 union territories were trafficked in 2020. In this research article we would be discussing about child trafficking. The solution to the issue of child trafficking in India and their protection from different forms of exploitation as well as brutal and degrading treatment is education, as well as the implementation and execution of various laws and conventions.

Introduction

“The child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into their maturity, into a fullness of physical and vital energy and the utmost breadth, depth and height of its emotional, intellectual and spiritual being; otherwise, there cannot be a healthy growth of the nation.” - P N Bhagwati, Former CJI.

Children are humanity's greatest gift, and childhood is a crucial and vulnerable stage of human development since it holds the potential for every society's future growth. Children who are raised in an atmosphere that promotes their mental, physical, and social well-being mature into responsible and productive members of society. Every country's future is inextricably linked to the current state of its youngsters.

According to the International Labour Organization (ILO) Child trafficking is about taking children out of their protective environment and preying on their vulnerability for the purpose of exploitation. Although no precise figures exist, the ILO (in 2005) estimated that 980,000 to 1,225,000 children – both boys and girls – are forced in labour situation as a result of trafficking¹.

Human Trafficking

“Human trafficking is a global crime that trades in people and exploits them for profit. People of all genders, ages and backgrounds can become victims of this crime, which occurs in every region of the world. Traffickers use violence, fraudulent employment agencies, and fake promises of education and job opportunities to trick, coerce and deceive their victims. The organized networks or individuals behind this lucrative crime take advantage of people who are vulnerable, desperate or simply seeking a better life. Human trafficking is defined in the [UN Trafficking in Persons Protocol](#)², which supplements the [United Nations Convention against Transnational Organized Crime](#)³, as the recruitment, transport, transfer, harbouring or

¹ ILO 2005

² The [Protocol](#) was adopted by the United Nations in November 2000 as part of the [United Nations Convention against Transnational Organized Crime](#).

³ **The United Nations Convention against Transnational Organized Crime**, adopted by General Assembly resolution 55/25 of 15 November 2000, is the main international instrument in the fight against transnational

receipt of a person by such means as threat or use of force or other forms of coercion, abduction, fraud or deception for the purpose of exploitation.”⁴

Human Trafficking is carried out in various forms. According to the Interpol there are mainly six types of human trafficking –

- a) **Trafficking for Forced Criminal Activities** – In this form of trafficking the criminal networks reap the profits of illicit activities that the victims are forced to carry out. These activities include theft, forced begging, drug cultivation, or selling counterfeit goods. The victims are usually given a target to fulfil and if they fail to reach the desired target then they are punished severely.
- b) **Trafficking in Women for Sexual Exploitation** – This form of trafficking is prevalent in all regions of the world, either as a source, transit or destination country. Women and children from the developing countries and from the vulnerable regions of the developed countries are lured away by promises of decent employment into leaving their homes and travelling to what they consider will be a better life. Victims are provided with false travel documents and an organized system is used to transport them to the destination country, where they are forced into sexual exploitation and they are held in inhumane conditions.
- c) **People Smuggling** – People smuggling is closely related to human trafficking, since many migrants may be forced to work along their voyage. Smugglers may force migrants to labour in terrible conditions in order to pay for their illegal border crossing.
- d) **Child Trafficking** – “Child trafficking is about taking children out of their protective environment and preying on their vulnerability for the purpose of exploitation.”⁵

Vulnerability

Vulnerability has been defined by the United Nations as “a condition resulting from how individuals negatively experience the complex interaction of social, cultural, economic, political and environmental factors that create the context for their communities”⁶. People who are vulnerable and hence easy to exploit are targeted by traffickers. The following are the primary social and personal variables that lead or contribute to persons being vulnerable

organized crime. It opened for signature by Member States at a High-level Political Conference convened for that purpose in Palermo, Italy, on 12-15 December 2000 and entered into force on 29 September 2003.

⁴ United Nations Office on Drugs and Crime

⁵ International Labour Organization

⁶ UNODC & UN. GIFT (2008), An Introduction to Human Trafficking: Vulnerability, Impact and Action, Background paper, p.8

- a) **Poverty** – Poverty breeds hopelessness. Traffickers specifically target poor and marginalized. Traffickers deliberately target poor and underprivileged groups, offering vulnerable people false opportunity to improve their situation. These individuals are more prone to take on higher risks in order to provide for both themselves and their families. Indigenous peoples are frequently marginalised in many nations, making them vulnerable to recruitment by human traffickers.
- b) **Gender Inequality** - Gender inequality refers to the gap in opportunity between men and women depending on gender. Women are often regarded as inferior to males in many societies. They are rewarded less for equal labour, have less rights, less healthcare access, education, and property, and are supposed to be subordinate to males, making them prone to trafficking.
- c) **Addictions** - To maintain control over the trafficked victim, traffickers employ drug dependency and addiction. Some drug traffickers offer narcotics to vulnerable people on purpose in order to weaken their resistance and push them into indentured servitude or prostitution. When a trafficked individual develops addiction to a specific substance, the trafficker exploits that vulnerability to keep them trapped in the cycle of abuse.

Magnitude of Child Trafficking during the Pandemic

Among the consequences of COVID-19 in our society, the most vulnerable individuals, particularly children, are at risk of being victims of human trafficking, abuse, and exploitation.

On March 24, 2020, the government-imposed lockdown for India's 1.3 billion people. According to the Centre for Monitoring Indian Economy, nearly 122 million individuals in India lost their employment as of 12th May, 2020. Around 75% of them were small business owners and day labourers. When families are financially insecure, children are more vulnerable. Due to the novel coronavirus (COVID-19) illness, over 400 million individuals in India's informal sector are at risk of sinking further into poverty. Economic hardship has rendered girls and young women from marginalised groups more susceptible, particularly children from rural areas in impoverished states such as Jharkhand and Bihar.

During lockdown in India, over the course of 11 days, 92,000 cases of child abuse in the family and in the communities were reported to government helpline. According to data compiled by Bachpan Bachao Andolan (BBA), a non-profit organisation founded by Nobel laureate Kailash Satyarthi, about 9,000 children were saved from being trafficked for labour between April 2020 and June 2021, when the Covid-19 epidemic devastated the country. Uttar Pradesh had the most children rescued (3,183), followed by Telangana (2,805), Andhra Pradesh (593), Rajasthan (430), and Gujarat (333) ⁷.

Child rights organizations, as well as the Union Home Ministry, had warned of a rise in child trafficking once the country emerged from its nationwide lockdown in the summer of 2020. The Bachpan Bachao Andolan then stated that there would be an increased demand for child labour since factory owners would attempt to compensate their financial losses by hiring inexpensive labour.

According to a quick analysis by the non-profit Child Rights and You (CRY), the 2021 National Crime Records Bureau (NCRB) data found 149,404 offences against children. In India, there were 17 crimes against children committed per hour, for a total of 409 offences every day. In comparison to 2020, there has been an alarming increase in crimes against children. According to NCRB data, 128,531 instances were reported in 2020. In 2021, the number saw a 16.2 per cent increase ⁸.

Child rights organisations have reported a significant increase in the number of children who have gone missing in the previous two years as a result of the societal impact of the Covid-19 epidemic. According to the National Crime Records Bureau (NCRB), 59,262 children went missing in India in 2020. With 48,972 children still unaccounted for from previous years, the total number of missing children has risen to 1,08,234. Even the four-month Covid-19 lockdown in 2020 could not prevent children from going missing, with 59,262 children reported missing. According to the NCRB data, the proportion of missing female children has risen from over 70% in 2018 to 71% in 2019 and 77% in 2020. ⁹

⁷ Published in Hindustan Times E-paper edition on 26th July, 2021 by Deeksha Bhardwaj

⁸ Published in News 18 E-paper edition on 2nd October, 2021

⁹ Published in Outlook India on 28th May, 2022

Child Trafficking and The Legal Scenario

International Conventions

International conventions have made an effort to establish a universal legal system to address child labour. The UN Convention on the Rights of the Child (CRC) (1989)¹⁰, which addresses both child labour and the right to education, as well as two ILO conventions the Minimum Age Convention (No. 138, 1973)¹¹ and the Worst Forms of Child Labour Convention (No. 182, 1999)¹²—are the main international legal instruments for addressing this. Although the UN's Universal Declaration of Human Rights of 1948 and the International Covenant on Economic, Social, and Cultural Rights both include the right to education, the CRC and ILO are the two most important international documents that deal with children's rights.

UN Convention on Transnational Organised Crime (UNCTOC)

In May 2011 India signed the United Nations Convention on Transnational Organized Crime (UNCTOC), which includes a Protocol on the Prevention, Suppression, and Punishment of Human Trafficking, notably of Women and Children. Various efforts have been made to implement the convention, and as per Protocol, The Criminal Law Amendment Act, 2013, has been implemented, which expressly defines human trafficking. The Criminal Law Amendment Act, 2013 was enacted in response to the Nirbhaya case, in which a female student was gang-raped in December 2012. Several provisions of the Indian Penal Code, Indian Evidence Act, and Criminal Procedure Code were changed by this Act.

¹⁰ A landmark promise to the world's children was made by world leaders in 1989 against the backdrop of a shifting global order. Through the adoption of the United Nations Convention on the Rights of the Child, they made a commitment to every child to uphold and preserve their rights.

¹¹ The age at which children can legally be employed or engage in other forms of employment is one of the best ways to ensure that they do not begin working too early. The purpose of ILO Convention No. 138 on the minimum age is to effectively abolish child labour by mandating nations to set a minimum age for entering the workforce and to develop national strategies to achieve this goal.

¹² According to Convention No. 182, governments must immediately take action to end the worst types of child labour while maintaining their commitment to the long-term objective of effectively preventing and reducing child labour.

SAARC Convention

The SAARC Convention on Preventing and Combating Trafficking of Women and Children for Prostitution has been ratified by India. To carry out the SAARC Convention, a Regional Task Force was formed. Since then, the Regional Task Force has met five times.

Bilateral Mechanism

A Task Force of India and Bangladesh was formed to deal with cross-border trafficking and to handle different issues connected to trafficking prevention, victim identification and repatriation, and to make the procedure faster and more victim-friendly between India and Bangladesh. There have been five Task Force meetings between India and Bangladesh so far. The fifth summit took place in Dhaka, Bangladesh, on August 17 and 18, 2015.

UN Convention on the Rights of the Child (CRC)

The CRC is a human rights agreement that fully outlines children's rights. Unless specifically stated in national law, a child is defined under the CRC as anybody who is younger than the age of 18. The Convention establishes in international law that States and Parties must make sure that all children - without any form of discrimination - receive special protection measures and assistance, have access to services like education and health care, can fully develop their personalities, abilities, and talents, grow up in a home filled with happiness, love, and understanding, and are informed about and take part in achieving their rights in an environment that is free from fear and violence.

ILO Minimum Age Convention (No. 138, 1973)

The ILO Minimum Age Convention No. 138 defines 15 as the minimum age for employment, but 14 may be permitted in particular circumstances for a limited time. Underage employment is prohibited because it puts young people's health, safety, or morality at risk. However, minors between the age of 13 and 15 are permitted to work short hours that don't interfere with their studies or their health.

ILO Worst Forms of Child Labour Convention (No. 182, 1999)

The Worst Forms of Child Labour Convention No. 182 of the International Labour Organization (ILO) mandates that nations that ratify it, take immediate action to outlaw and eradicate the worst types of child labour, which include all forms of slavery, commercial sexual exploitation of children, and any work that is by its very nature detrimental to children's health, safety, or morals.

Child Trafficking Prevention Laws in India

Trafficking in Human Beings or Persons is prohibited under the Constitution of India under Article 23 (1). Apart from specific Sections in the IPC, such as Sections 372 and 373, there are other specific legislations enacted relating to trafficking in women and children, such as the Prohibition of Child Marriage Act, 2006, Bonded Labour System (Abolition) Act, 1976, Child Labour (Prohibition and Regulation) Act, 1986, The Immoral Traffic (Prevention) Act, 1956 (ITPA), Criminal Law (Amendment) Act (2013), Protection of Children from Sexual Offence (POCSO) Act (2012), The Factories Act (1948), The Mines Act (1952), The Juvenile Justice (Care and Protection) of Children Act (2000), The Right of Children to Free and Compulsory Education Act (2009), The Apprentices Act (1961), The Plantations Labour Act (1951) and Transplantation of Human Organs Act, 1994. State Governments have also enacted specific legislations to deal with the issue. (e.g., The Punjab Prevention of Human Smuggling Act, 2012)

The Constitution of India, 1950 under Article 21(A) mandates free and compulsory education for all children in the age group 6–14 years. Article 24 also specifically prohibits the employment of children below the age of 14 years in dangerous factories which may cause them physical as well as long-term mental harm. Every person, including the parent or guardian of children, has a fundamental duty under Article 51 of the Constitution – a part of the Directive Principles of State Policy – to provide opportunities for education for his or her child between the ages of 6–14 years.

The Government organized the first committee (named the Gurupadaswamy Committee) in 1979 to explore the issue of child labour and provide solutions. Based on the committee's recommendations, the Child Labour Prohibition and Regulation Act was passed in 1986.

In 2016, there was a new amendment known as the Child Labour (Prohibition and Regulation) Amendment Act, which for the first time established the notion of adolescent labour for minors aged 14 to 18 years. The purpose of this new Act was to address the shortcomings of the previous Act of 1986.

Role of NGOs in combating child trafficking

In India, thousands of youngster's labour in industries such as beedi-rolling, brick kilns, carpet weaving, commercial sexual exploitation, construction, fireworks and matches manufacturers, hotels, hybrid cottonseed manufacturing, leather, mining, quarries, silk, synthetic diamonds, and so on. This also leads to child trafficking, which receives tacit legitimacy when demand exists in the retail, hotel, and menial labour sectors.

NGOs have launched complex campaigns such as 'action/2015' and 'Every Last Child' to raise awareness of child rights in India. The message of hope was transmitted by children in the action/2015 campaign, with over 4 lakhs sending postcards and 16 lakhs acting online to press the government for a better India. These organizations work directly with disadvantaged populations, emphasizing the necessity of keeping children out of any sort of labour.

Along with a long-term dialogue with vulnerable communities, NGOs have reached out to state and national governments to address child trafficking, including collaboration with police departments in states with high rates of child trafficking, such as Punjab, Delhi, Bihar, J&K, Jharkhand, West Bengal, and Assam.

Disruptions in schooling and a lack of parental care create an atmosphere in which child trafficking and subsequent enrolment in labour become common, implying that NGO intervention is essential. Children from India's urban poor who are deprived of an education are frequently caught in drug misuse or become victims of abuse and exploitation.

Judicial Response to child trafficking

The judiciary has played a critical role in safeguarding the constitution, as well as in enforcing child rights. There have been numerous significant examples in which the judiciary has taken a proactive role in combating child trafficking and forced labour. Some of the

Bandhua Mukti Morcha v. Union of India & Ors.¹³

Facts: This public interest litigation (PIL) was filed directly before the Supreme Court of India under Article 32 of the Indian Constitution, petitioning the Court to require the State of Uttar Pradesh (UP) to take efforts to stop child labour. Following that, a Court-appointed commission highlighted the magnitude of child exploitation in UP's carpet business, discovering that many children were abducted from Bihar and that the sector predominantly employed young children under the age of 14, many of whom were subjected to physical abuse.

Judgement: The Court addressed the significance of maintaining children's right to education, health, and development in guaranteeing India's progress as a democracy in its decision. While acknowledging that child labour could not be prohibited immediately owing to economic necessity, the Court determined that realistic efforts might be implemented to safeguard and promote the rights of children in the poverty-stricken and vulnerable populations of Indian society.

The Court cited various fundamental rights and directive principles of the Indian Constitution to support its conclusion, including, Article 21 (the right to life and personal liberty), Article 24 (prohibits employment of children younger than 14 in factories, mines, or other hazardous industries), Article 39 (e) (prohibits forcing citizens into vocations unsuited for their age or strength), Article 39(f) (describes the State's duties to protect children from exploitation and to ensure children the opportunities and facilities to develop in a healthy manner), and Article 45 (mandates the State to provide free compulsory education for all children below 14 years).

Conclusion: This lawsuit was effective in raising awareness about the issue of child labour and in establishing it firmly on the government's agenda. Law and politics are moving toward the official elimination of child labour, and many measures, particularly in the field of education, are being attempted to eradicate child labour. One result has been a reduction in the use of child labour in the carpet business.

¹³ Bandhua Mukti Morcha v. Union of India, (1997) 10 SCC 549

Gaurav Jain v. Union of India ¹⁴

Facts: The Petitioner, a lawyer, filed a Public Interest Litigation (PIL) at the Supreme Court of India in this case. He had filed the petition after reading an article “A Red-Light Trap: Society gives no chance to prostitutes’ offspring” published on July 11, 1988, in a magazine named ‘India Today’. He had prayed in the petition for the issuance of an appropriate writ directing the establishment of distinct educational facilities for the children of prostitutes up to the age of sixteen in order to keep them from becoming involved in the depraved and unethical way of life.

Judgement: After hearing all of the State Governments and Union Territories, who were then represented by their respective standing counsel, the Court concluded that "segregating children of prostitutes by locating separate schools and providing separate hostels" would be detrimental to the children and society at large. According to the Court, kids "should be separated from their mothers and permitted to socialize with others and become a member of society."

Accepting the Bar's advice and dismissing the petitioner's modest request, the Court ruled that "children of prostitutes should be permitted to escape inferno and the terrible surroundings of prostitute houses." This was felt most strongly in the case of young girls, whose bodies and minds are more prone to be mistreated as they get older for being welcomed into their moms' profession.

The Court rejected the request for separate hostels for children of prostitutes, it did believe that "accommodation in hostels and other reformatory homes should be adequately available to help segregate these children from their mothers living in prostitute homes as soon as they are identified."

Conclusion: Rather than dismissing the writ petition with a set of directions, the Court constituted a committee and directed it to provide a report with suggestions for appropriate action. It was a progressive move that sowed the seeds of a better, more liberal society that

¹⁴ Gaurav Jain v. Union of India, (1997) 8 SCC 114

M.C. Mehta v. State of Tamil Nadu ¹⁵

Facts: M.C. Mehta was worried about the high percentage of child labour in the match factories of Sivakasi in Tamil Nadu's Kamaraj District. He said that such work was dangerous and unlawful. He filed a writ petition under Article 32 of the Constitution after feeling offended. The Respondent Government did not dispute the reality of child labour, but instead made recommendations to address the issue.

Judgement: In 1990, the Supreme Court issued an order prohibiting child labour in the manufacture of matchsticks and fireworks. However, shortly after this directive, a disaster happened in the Sivakasi Match factories, killing 39 persons. After this was published, the Court took Suo moto cognizance of the incident. The Court appointed a committee to investigate the matter and make suggestions, such as payment of compensation.

On the issue of child labour, the Court held that this malady was not prevalent in Sivakasi alone. The Court concluded that in order to develop a workable solution that would free the nation from this difficulty, this matter needed to be addressed at the national level. According to the Court, Articles 24, 39(e) and 9(f), 41, and 47 require the State to outlaw child labour while promoting the child's healthy growth. The Supreme Court held that India has ratified the UN Convention on the Rights of the Child as well.

The Government of India is mandated under Article 32 to implement governmental, administrative, social, and educational measures to safeguard children from harmful exploitation and to promote their healthy development. The Court determined that a number of domestic laws, including the Child Labour (Prohibition and Regulation) Act, 1986, protect minors from exploitation. The Court did take into account the reality that poverty forces a family to force their child into risky job. The Court determined that in order to guarantee a child's healthy growth, it was essential to carry out the legislative aim underlying the Act. The Court ordered that anybody who violated the Act's provisions would have to pay a fine of Rs. 20,000 to the relevant authority. This amount would be placed in a Child Labour

¹⁵ M.C. Mehta v. State of T.N., (1991) 1 SCC 283

Rehabilitation and Welfare Fund. The Fund's earnings would be utilized to benefit the child concerned.

Conclusion: The Court determined that the Respondent Government cannot guarantee a standard program for the employment of an adult in place of a child. However, the Court ruled that the government might deposit an amount of Rs 5,000 to the Fund in circumstances where alternative work was not accessible for the concerned adult. In this situation, the child would be spared the threat of dangerous employment since the family would obtain an extra source of revenue, and in the event of non-hazardous occupations, the child's working hours would be no more than 6 hours per day, with two hours of instruction. The cost of education was to be borne by the employer.

Suggestions and Conclusions

The abolition of child trafficking is a crucial step towards the development of a free and equitable society, but it will be achievable only with the cooperation of all segments of society and law enforcement institutions. The role of corporate industries in allowing the exploitation of underage laborers should be investigated further. Responsible global population growth and child education are critical components of this process. Furthermore, the current regulations pertaining to child labour and child trafficking, which were summarized and detailed above, should be properly implemented. Governments and their monitoring agencies must take an active role in this process.

Furthermore, current legislation must be enforced, and offenses must be punished with appropriate fines and penalties. Police and government agencies must thoroughly investigate such incidents, prosecutors must pursue maximum fines, and courts must support these attempts. Only by seeing these situations dealt seriously in legal settings can the point be conveyed that child labour and child trafficking is not tolerated by society.

The COVID-19 epidemic has had a huge negative economic and employment impact that has had, and continues to have, a considerable impact on people's lives and livelihoods. Unfortunately, disadvantaged families and their children are generally the first to suffer during economic downturns, which will certainly result in many more vulnerable youngsters being forced into child labour, physical and sexual exploitation conditions. Already,

newspaper articles are surfacing that show an increase in the number of children in India being taken from their homes and trafficked for illegal labour and forced marriages as a result of the nationwide lockdown that coincided with the return of migrant workers and their families to their villages.

The COVID-19 lockdown showed inadequacies in India's child protection programs, highlighting the urgent need for a cohesive, proactive strategy. Policies must be put in place expressly to safeguard children from the economic and other consequences of pandemics like COVID-19.

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