

## IMMORAL CHILD TRAFFICKING

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### Introduction

Increasing numbers of the minor girl as a rape victim and individual lives and stories of children that continue to haunt me and push me to right this article. Atisha (name changed), a young woman who we supported, has lived and fought through nights of getting raped, is now living a normal life and is full filling her dream of doing art .and Devi (name changed), who was married as a minor, and she was sold by her husband and was forced to give her child for the adoption . Devi now goes to school and dreams of meeting with her child one day.

<sup>1</sup>There are children from different states who majorly falls as the victim like states of West Bengal, Bihar, Jharkhand, Assam, Delhi, Bangalore and Kerala have fallen victims. Children from Nepal, recently, have been rescued from rat-hole coal mines in Meghalaya[3]; even girls from Assam have been found to be married to men in Haryana as there are not enough population of girl child in Haryana state and minor children from Tamil Nadu had been kidnapped and sent to Europe.[4] Girls find themselves in Goa's spas and parlours where they are forced to cater and full fill their customers wish.

National Human Rights Commission (NHRC) formed a committee to look into the issue of "Missing Children" "in order to put an end to this insecurity and indifference with regard to the protection of the children and also to decrease this crime". The Report of the NHRC states that-

"The Nithari exemplified that children are found in very vulnerable situation – found killed and buried working as cheap forced labour in illegal factories and working in very hazardous situation which is dangerous for their life and health even children are made as sex employees they are forced to make porn videos they are found doing immoral trafficking like begging .The reports suggest the vulnerable situations of minor.

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<sup>1</sup> Offences Against Child and Juvenile Offence, Dr. S. K. Chatterjee, pg. no. 181

### LIST OF ABBREVIATIONS

- ✓ & - and
- ✓ Eg - Example
- ✓ Sec - Section
- ✓ SC - Supreme Court
- ✓ V – Versus
- ✓ AIR- All India Reporter
- ✓ SCC- Supreme Court Cases

### NECESSITY OF RESEARCH

The need for research on IMMORAL CHILD TRAFFICKING is that there is misuse of children's for different aspects. Child Trafficking is a very a vast topic which has been explained in my research paper so that the people would understand it .

### LITERATURE REVIEW

In the research , literature have been reviewed by the following –

- 1) Dr. SK Chatterjee's book for understanding the concept of immoral trafficking
- 2) Juvenile Justice ( Care and Protection ) Act ,2015
- 3) Indian Penal Code 1986
- 4) International Laws

### RESEARCH METHODOLOGY

Hard work has been made to undertake the study and research methodology and to attain the goal . The researcher has undertaking the study of primary as well as secondary sources.

Primary sources consist of different laws and acts

Secondary sources refers to the books , magazines , online sources , etc .The researcher due to partial absence of authentic literature sources , the author has not primarily but referred to some online sources that are available for the purpose of research work on the subject , some of the books are referred such as Dr. SK Chatterjee . The research has its orientation towards the governmental portals and the authentic legal websites along with the articles in the blogs of legal experts . The main

topic is immoral child trafficking . The content available online in its full capacity can be regarded as authentic and duly recognized in this research paper work.

### **Concept of Child Trafficking**

According to the definition given by the UNICEF is "Child Trafficking" defined as "any person under 18 who is recruited, transported, transferred, harboured or received for the purpose of exploitation, either within or outside a country." [6]

India also A big source, destination, and transit country for trafficking and also for many purposes such as commercial sexual exploitation. there is a large scale trafficking within the country from Nepal and Bangladesh. But 40% of prostitutes are children, and there is a big growing demand for young girls in the industry and society.

NGOs evaluate that 12,000 - 50,000 women and minor child are trafficked into the nation yearly and regularly from neighbouring states for the sex trade. For amid and Haji an expected 1,000 to 1,500 Indian children are imported illegally out of the nation consistently to Saudi Arabia. Biggest numbers of children are trafficked to Andhra Pradesh, Karnataka, West Bengal and Tamil Nadu. Minor girl trafficking is high in Rajasthan, Assam, Meghalaya, Bihar, Uttar Pradesh, Andhra Pradesh, Karnataka, Tamil Nadu and Maharashtra in Intra state/ district area. Trafficking of minor girl is the second-most pervasive trafficking wrongdoing – surveyed 14 times throughout the most recent decade and expanded 65% in 2014, as per new information given by the National Crime Records Bureau (NCRB).

### **<sup>2</sup>Causes of trafficking**

There are many contributing factors for trade in human beings particularly in women and girl child. The factors of minor trafficking in women and girl child can be described on the basis of: poor socio-economic conditions of a large number of poor families, frequent poverty, almost annual natural disasters like floods, lack of education, skill and also income opportunities for women (and for their family members) in rural areas and urban areas too, No awareness about the activities of traffickers, very low status of girl children, etc. It is majorly due to the extreme poverty.

There are several other factors leading to child trafficking –

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<sup>2</sup> Offences Against Child and Juvenile Offence, Dr. S. K. Chatterjee, pg. no. 188

Employment -Employment among all is one of the biggest reason for the child trafficking as the children mainly belong to very poor families which ultimately results them to do work even the work which are morally illegal.

The rapid practice of female feticide in the northern states of Haryana and Punjab has also internal trafficking. Due to the shortage of women in these states having a low female to male ratio, they have become fertile ground for the operation of traffickers. Traffickers supplies girl from faraway states like Assam and Orissa; trick they use to convey the parents of the girl child by saying that a girl had to be married , only to later push them into prostitution. India is experiencing rapid and fast changes in economic, political and labour trends as an outcome of globalization, continuously increasing demand for cheap labour and heavy population growth in the region encourages migration whether legal or illegal. The movement of women and especially young girls from Bangladesh and Nepal into Indian brothels is common.

At the same time, increasing male migration to urban areas as well as stressful working conditions of the Business Process Outsourcing (BPO) sector workers have also given their equal contribution to a growing demand for commercial sex in the cities. Experiences also reveal that trafficking is closely associated with child marriage. In a traditional village community, there is a stigma attached to single women. Inability of a parent to arrange the marriage of a daughter is a cause of embarrassment and matter of shame. In such a situation, when the traffickers approach the poor families with marriage proposals (sometimes with cash rewards between Rs.1000–5000 on an average) minus dowry, the parents find it hard to refuse the offer. After marriage, the girls are sold and resold, until she reaches her ultimate destination. Apart from child marriage offence, other modes of trafficking are fake marriage, false recruitment, kidnapping and abduction of children, transportation of children with the consent of their guardians, adoption of children, using poor families with jobs and better living condition in cities.

### **Crimes and offences**

- Heads of crimes and offence are -
  - Under section 366 –A IPC which deals with the procurement of minor girls for their protection and welfare.
  - Under section.366B IPC which deals with the importation of girls from

foreign country.

- Under section 373 IPC which deals with buying of minors for prostitution which previously known as buying of girls for prostitution.
  - Under section 372 which deals with selling of minors for prostitution which in previous editions, information was gathered under purchasing of minor girl for prostitution
- Act 1956 which deals with Immoral Traffic (Prevention) .
- Under Section 370 & 370 A IPC which deals with Human trafficking after enactment of the Criminal Law (Amendment) Act 2013, the Bureau has also started collecting data under these sections

### **3 LAWS WHICH ARE MADE TO PROTECT IMMORAL TRAFFICKING**

According to NGO's it is estimated that 12,000-50,000 women and children are trafficked into the country annually from neighboring states for the sex trade. Trafficking of minor girl child is not a new phenomenon. Historically, sale and purchase of human being is directly linked with the slavery and prostitution, treating them as commodities that could be bought and sold. The owner maintained absolute rights over the slaves, who were considered as his private property.

Many Indian minor girls are trafficked everyday to some destination and also they are forced to lead lives of prostitution and slavery.

### **4 Constitution of India:**

Some provisions are also provided in the Indian constitution -

Article 23, of the Indian constitution states that "traffic in human beings and other similar forms of forced labor".

And also Article 24 of the Indian constitution said that "No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment."

<sup>3</sup> <http://www.legalserviceindia.com/legal/article-12-immoral-trafficking-of-minor-girl-child-in-india-laws-to-protect-them.html>

<sup>4</sup> [https://www.india.gov.in/sites/upload\\_files/mpi/files/coi\\_part\\_full.pdf](https://www.india.gov.in/sites/upload_files/mpi/files/coi_part_full.pdf)

Though there is no definite definition of trafficking, it could be said that trafficking necessarily involves movement and transportation, of a person by means of coercion, and continuous exploitation leading to commercialization.

Moreover, the Directive Principles of State Policy articulated in the Constitution are also very significant, under Article 39(e) provides that the health and strength of the workers, men and women, and the tender age of children are not abused and that although citizens are not forced by economic necessity to enter into their age.

### <sup>5</sup>Indian Penal Code

Kidnapping, abduction and buying are the major offences which are dealt under the Indian Penal Code (IPC), 1860 and also selling of minors under section 359-373 of IPC.

Section 363- Deals with Kidnapping for begging: - the section punishes kidnapping or maiming a minor for the purpose of begging shall be punishable with imp.

Section 366-A- deals with Procurement of minor girls: - Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

Section 366-B deals with Importation of girls: - Whoever imports into India from any country outside India or from the State of Jammu and Kashmir any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

Section 369- deals with Kidnapping child for stealing from its person: child under 10 years of age only- Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any movable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

<sup>5</sup> <http://new.nic.in/acts/theindianpenalcode1860.pdf>

Section 372 deals with -Selling of girls for prostitution:- Whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall be liable to fine.

There are several reason for the child trafficking which children's usually face it and they are-

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- By threatening a child or
  - By using force or any kind of coercion on the child or
  - By abduction or
  - By practicing deception and fraud for example selling of child or
  - By abusive power
  - 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, harbored, transferred or received, commits the offence of trafficking.

#### <sup>6</sup>PUNISHMENT FOR THE OFFENCES UNDER CHILD TRAFFICKING

- ✓ For the person who will commit the offence of child trafficking shall be punished with rigorous imprisonment for a term which shall not be less than 7 years, but which may extend to 10 years, and shall also be liable to fine.
- ✓ The offence which includes more than one person more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.
- ✓ For the offence which involves trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.
- ✓ Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than

<sup>6</sup> <http://accountabilityhub.org/provision/indian-penal-code-section-370/>

fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.

a person convicted for the offence on more than one occasions, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

- ✓ if the offence is committed by the public servant or police officer then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

### <sup>7</sup>Immoral Traffic (Prevention) Act of 1986

A pimp faces three months only. The Immoral Traffic (Prevention) Act of 1986 (ITPA), called PITA, an amendment to SITA the Suppression of Immoral Traffic in Women and Girls Act of 1956 (SITA).

- Under Section 3 it deals with Stringent action and punishment for keeping a brothel and also allowing premises to be used as a brothel
- Under section 4 it deals with Living on the earnings of prostitution
- Under Section 5 it deals with Procuring, inducing or taking a person for the sake of prostitution
- Under Section 6 it deals If any person is found with a child in a brothel it shall be presumed, unless the contrary is proved, that the child has committed an offence of detaining a person in premises where the prostitution is carried on. The punishment consisting of imprisonment of either description for a term which shall not be less than the 7 years.
- Under Section 21 it deals with establishment of protective homes by the State Government Neither law prohibits prostitution per se, but both forbid commercialized vice. Aside from lack of enforcement, SITA is problematic in several ways. One of the negative drawbacks which are prescribed penalties discriminates on the basis of sex. Whereas a prostitute, defined under SITA as always a woman, who is arrested for soliciting under SITA could be imprisoned for up to a year.
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<sup>7</sup><https://indiacode.nic.in/bitstream/123456789/1661/1/1956104.pdf>

### **<sup>8</sup>Juvenile Justice (Care and Protection of Children) Act, 2015**

It has been passed by Parliament of India. It mainly and continuously aims to replace the existing Indian juvenile delinquency law, Juvenile Justice (Care and Protection of Children) Act, 2000, so that from the age 16-18 juveniles in conflict with law involved in Heinous Offences, can be tried as adults and punished. The Act came into force from 15 January 2016. The Act was passed on 7 May 2015 by the Lok Sabha amid intense protest was done by the several Members of Parliament. It was passed on 22 December 2015 by the Rajya Sabha. The bill introduced concepts from the Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption, 1993 which were missing in previous act.

### **International Laws**

International laws lay down standards that have been agreed upon by all countries. Ratification of an international law a country agrees to implement the same or convention or covenant. To ensure compatibility and implementation, the standards are set forth in these international conventions are to be reflected in domestic law

There are some important international conventions:

- There are several Conventions on the Rights of the Child, 1989.
- The Optional Protocol to the Convention on the Rights a Child on the Sale of Children, Child Prostitution and Child Pornography Act , 2000.
- The Convention on the Elimination of All forms of Discrimination against Women, (CEDAW) 1979.
- For women and children there is the Protocol to Prevent, Suppress and Punish Trafficking in Persons.
- On 3 December, 1986 there was a Declaration on Social and legal principles relating to the Protection and Welfare of Children, with the special reference to Foster placement and adoption nationally and internationally.
- SAARC Convention on Regional Arrangement for the Promotion of the Child Welfare, 2002.

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<sup>8</sup> Offence Against Child and Juvenile Offence, Dr. S.K. Chatterjee, pg no. 300

### Role of State

- ✓ There should be a compulsory high quality education and also employment opportunities including income generation programme these all facilities must be provided by the local government.
- ✓ Government should produce relevant IEC materials; promote sensitization programmes or teachers in government schools, parents and community workers.
- ✓ ·A subject of child sexual abuse and trafficking must be introduced in the government as well as the private schools.
- ✓ Different nations government should share their child trafficking control programme it will definitely control the trafficking.

### Role of NGOs

- ✓ · The community should aware they should be be sensitized about trafficking the community members should be motivated to keep a watch at the community for irregular movement of child victims to and from the area where there are possible traffickers and hideouts.
- ✓ · NGOs working in the rural areas should be ensured that parents are aware of safe migration practices.

### Role of Media

- ✓ Media attention reaches several hundred thousand viewers and should therefore serve the following important functions:
- ✓ The media should transmit appropriate message to ensure the victims that they will never face anything alone.
- ✓ Media helps the victims and aware them by providing them certain places and institutions.
- ✓ Creating awareness that human trafficking is inappropriate and illegal and has negative consequences.
- ✓ Wide and huge amount of publicity should be given regarding the legal, penal provisions against trafficking and the modus operandi of the traffickers through radio, television ,newspaper etc.

### Awareness and Advocacy

- ✓ Awareness and advocacy is required at the policy level i.e. National Planning Commission, bureaucrats, politicians and the elite of the society. Awareness at the local level, in the community through workshops, songs, drama, poems, meetings, leaflets and posters especially in the rural areas is also required.
- ✓ The role of gender in daily life and training programmes and activities for gender sensitization must be conducted by NGOs. The key to prevent trafficking in children and their exploitation in prostitution is awareness among the children, parents and school teachers.
- ✓ The government must launch media campaigns that promote children's right and elimination of exploitation and other forms of child labour.
- ✓ Police advocacy is an important intervention that has to be fine-tuned

### Report On Trafficking

- With regard to nationality, 94 per cent of the victims were from India, 1.1 per cent from Bangladesh and 2.9 per cent from Nepal. The rest refused to respond. The majority of the respondents, 68.6 per cent, came from rural areas, 21.6 per cent from urban centres and 9.8 per cent from urban slums.
- The <sup>9</sup>socio-religious background of the trafficked victims was also studied. Over three-fourths of the respondents (77 per cent) were Hindus, 18 per cent were Muslims, 3.5 per cent Christians, 0.2 per cent Sikhs and 1.3 per cent belonged to other religious communities. Almost a third of the victims, 32.3 per cent, were from the Scheduled Castes, 5.8 per cent were from the Scheduled Tribes, 21.9 per cent from the Other Backward Classes and 17.4 per cent from other castes. The rest were unable to state their caste. Thus, a large majority of the respondents (60 per cent) belonged to socially deprived sections of society.
- An even larger percentage (70.7) was either illiterate or barely literate. Only 13.6 per cent of the victims had received education up to the primary stage and around 15 per cent beyond the primary stage. A mere 0.4 per cent of the respondents were graduates or above. The study attempted to understand the socio-economic condition of the family before the victim's entry into commercial sexual exploitation.

<sup>9</sup> <http://nhrc.nic.in/documents/reportontrafficking.pdf>

- Only a fourth of the respondents had a monthly family income of Rs. 2,000 and above; 47.5 per cent had an income below this level, and 27.7 per cent were not able to give details. Thus, a vast majority of the respondents came from poor families. 6.3 Marital profile of the

## **CASE LAWS**

### **<sup>10</sup>Vishal Jeet v. Union of India**

It was held by Supreme court that “ malady of prostitution “ is not only a social but also a socio economic problem , and , therefore , the measures to be taken in that regard should be more preventive rather than punitive . The Supreme Court issued directions that all state governments must direct their law enforcing authorities to take appropriate speedy steps against the evil and directed to set up advisory committees with experts from all fields to make suggestions regarding measures for eradicating child prostitution , for care and rehabilitation of rescued girls , for setting up rehabilitative homes , and for a survey of the devadasi system and join traditions , as to prevent second generation prostitution .

Further the Apex court was of the view that , this malady cannot be eradicated either by banishing , branding , scourging or inflicting severe punishment on the helpless victims most of whom are unwilling participants , and involuntary victims of compelled circumstances and who , finding no way to escape , are weeping or wailing throughout . This devastating malady can be suppressed and eradicated only if the law enforcing authorities in that regard take very severe and speedy action against all the erring persons such as pimps, brokers, brothel keepers as well as traffickers. At the same time the court urged the state, all voluntary organizations and public spirited persons to come to aid to these victims, to retrieve them from prostitution and other immoral engagements and to socially reintegrate them .

### **Dhananjay Chatterjee V. State of West Bengal**

Was a case of rape and murder of helpless and defenceless school girl by a security guard. Death sentence imposed by the trial court was subsequently confirmed by the High Court. It was held that the offence was not only inhuman and barbaric, but a totally ruthless crime of a rape followed by cold blooded murder and it was an affront to human dignity .The Supreme Court observed that, shockingly large number of criminals go unpunished there by increasing,

<sup>10</sup><https://indiankanoon.org/doc/653695/>

encouraging the criminals and the ultimate, making justice suffers by weakening the systems credibility. The imposition of appropriate punishment is the manner in which the court responds to the society's cry for justice against the criminal. Justice demands that court should impose punishment befitting the crime so that the court reflects public abhorrent of the crime. The court must not only keep in view the right of the criminal, but also the rights of the victim of the crime and the society at least while considering the imposition of appropriate punishment.

### **RECOMMENDATIONS**

Immoral trafficking of women and girl children is an issue of global dimension which requires urgent and concerted responses on priority basis. Since this issue is complex, more than one measures may be appropriate and any one particular approach may not bring necessary result. The possible measures suggested are:

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- ✓ Political apathy and government commitments to combat trafficking are to be articulated in coherent national policies and strategies with special attention to impact of tourism.
  - ✓ Consensus on a definition of trafficking is required to classify legal frameworks.
  - ✓ Poverty, gender inequality, commercial sexual exploitation and cross border trafficking are to be prevented.
  - ✓ Awareness regarding trafficking is very much important.
  - ✓ Establishment of proper co-ordination between government and NGO's will cater the need to a great extent.
  - ✓ Legislative provisions are to be strengthened and properly implemented.
  - ✓ Law relating pedophilia is inadequate. It is to be strengthened and properly implemented.
  - ✓ Sex tourism should be strictly prohibited.
  - ✓ Cyber pornography should be strictly monitored

### **REFERENCES**

- ✓ OFFENCE AGAINST CHILD AND JUVENILE JUSTICE –Dr. SK CHATTERJEE
- ✓ INDIAN PENAL CODE 1986
- ✓ JUVENILE JUSTICE (CARE AND PROTECTION ) ACT 2015
- ✓ IMMORAL TRAFFICKING (PREVENTION) ACT 1956
- ✓ REPORT ON TRAFFICKING