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GRT

TRAFFICKING OF CHILDREN FOR SEXUAL EXPLOITATION AND EVOLVING LEGAL SAFE GUARD – AN ASSESSMENT

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ABSTRACT

Trafficking of children for the flesh trade has emerged as one of the most profitable trades in the world today. Each year an estimated seven million people, mostly girls, are trafficked into local and international sex industries. The commercial sexual exploitation of children is a very serious violation of their basic rights. Trafficking of children is increasing day by day all over the Asian region. In the Asian sub-continent especially India, Bangladesh, Pakistan and Nepal trafficking of children has increased enormously. A large percentage of trafficking is resorted to for the purpose of prostitution. Children are generally from rural areas or small towns. In India poverty has been the single largest factor for girl being trafficked. The children

are trafficked, recruited and moved within or across national borders without their consent and coerced into work against their will. Sex trafficking is not new. But the term trafficking is of relatively recent usage and currency worldwide, stemming primarily from the initiatives and efforts of international agencies and legislations aimed at its prevention.

Trafficking is also the illicit and clandestine movements of persons across national borders largely from developing countries with the end goal of forcing girl children into sexually or economically oppressive and exploitative solution for profit of recruiters, traffickers and crime syndicates as well as other illegal activities related to trafficking such as forced domestic labour, false marriage, Clandestine employment and false adoption. State is under a duty to protect and develop its

own children. The welfare of a nation depends on the welfare and well being of the children of that nation, Hence, the require special protection and attention of the society as well as the state an obligation towards its women and children to look after them.

KEYWORDS :Child sex trafficking, Sexual abuse, safeguards.

INTRODUCTION

Trafficking in person is an increasing problem that involves both sexual exploitation of its victims. Both men and women may become victims of trafficking. Most of the women and children are trafficked for the purpose of sexual exploitation. Trafficking is also done for the carpet making, brick-kiln, camel jockeys, illegal adoption of children, drug trafficking, forced marriage, begging, forced construction work etc. Indian migrant who migrate willingly every year to the Middle East and Europe for work as domestic servants and low skilled labours may also end up being part of the human trafficking industry. In such cases, workers may have been recruited by way of fraudulent recruitment practices. Some are subjected to conditions of involuntary servitude, including non-payment of wages, restriction on movement, unlawful withholding of passports and physical abuse or sexual abuse.

Child sexual abuse and domestic violence are among the most destructive experience afflicting children. The wide prevalence of such violence takes an enormous toll on the lives of individual victims as well as the larger society through innumerable behavioral, health, psychological and economic consequences.

Violence against children is a serious public health concern with costs at multiple levels of society. Although violence is a threat to everyone children are particularly susceptible to victimization because they often have fewer rights or lack appropriate means of protection. Trafficking of children for the flesh trade has emerged as one of the most profitable trades in the world day. Each year an estimated seven million people, probably women and girls are trafficking into local and International sex industries. The commercial sexual exploitation of children is a very serious violation of their basic human rights.

State is under duty to protect and develop its own children. The welfare of nation depends on the welfare and wellbeing of the children of that nation. Hence, the require special protection and attention of the society as well as the state an obligation towards its women and children to look after them. In India poverty remained as the single largest factor for children being trafficked. The problem of trafficking of children being recruited and moved within or across national borders without their consent and coerced into work against their will. Sex trafficking in not new, but the term trafficking is of relatively recent usage and currency worldwide stemming primarily from the initiatives and efforts of international agencies and legislations aimed at its prevention.

Conceptual understanding and Nature of the problem

A large percentage of trafficking is resorted to for the purpose of prostitution. Children are recruited from rural areas or small towns. Trafficking of children is increasing day by day all over the Asian region. In the Indian sub continent especially India, Bangladesh, Pakistan and Nepal trafficking of has increased enormously.

Few studies shows that men's reasons for buying sex include a desire for sex without commitment or emotional involvement, the perception that they can ask a prostitute to do anything including the acts they would hesitate to request to their regular partner, the belief particularly among men without regular partner, that sex is necessary to their well being a basic need, and the feeling of

power experienced in sexual encounters with prostitutes. Women and girls lined up in the brothels are constantly being humiliated. The Coalition against Trafficking in Women (CATW) has described the expansion of sex trafficking as a reaction against the feminist movement. Trafficking of children for commercial exploitation is one of the fastest developing businesses run by the criminal syndicate throughout the world. It is said that the global trafficking enterprise generates up to US\$7 billion every year nearly seven lakh persons mainly women are trafficked within and across international borders and also nearly two million children are abused and trafficked throughout the world every year.

In India poverty is the single largest factor for children being trafficked. There are nearly 3 lakh children in prostitution today but officially this number is around 11 lakhs. The touts and pimps look for natural calamities like floods, drought or earthquake and reach the place to recruit children. They lure such families with the offer for job opportunities, marriage, adoption etc and those who fall in trap ultimately reach the brothels. Sexual trafficking from one country to another country, that is, across the borders is one type of the problem but within the country trafficking takes place from one province to another and one city to another and also from rural areas to the towns. It is not only phenomenon for under developed or developing countries but also equally applicable to developed countries. Even in countries like USA, a number of children are being trafficking. Child trafficking is an inhumane offence against defenseless and innocent. Millions of children are forcibly trafficked or coerced across borders only to be sold in the sex industry. The trafficking of children is usually by way of kidnapping or abduction, once abducted, threats and acts of violence are used to hold on to the victims. In Thailand for instance brothel managers employ agents to collect photos of young girls as they go to school and the girls are then selected by the managers and upon selection the girls are ordered by them for the agents to kidnap. Majority of them have been forced into prostitution poverty and utter destitution. Rural poverty and pressing socio economic conditions have served to expand the potential supply of child prostitutes, even parents on account of utter destitution have knowingly offered the child into the clutches of sex traffickers, besides economic stress, other causes are kidnapping of minor girls, social customs and tradition.

Some communities particularly in the areas bordering the states of Madhya Pradesh, Gujarat and Rajasthan the parents have willingly pushed the girl child to the profession of prostitution, even brothel – keepers have a number of agents who are on the lookout for such innocent children. Upheaval associated with natural disasters /conflict in parts of the country and the profits to be made. In some cases socio- cultural and religious factors have impact on child trafficking as where religious factors have made use of their position to traffic girls for prostitution; frequently trafficking is accomplished through the deception of girls and their families. Many villages in West Bengal it is reported that traffickers have obtained access to girl by pretending to be grooms without dowry demands. In other cases trafficking has been facilitated by relatives or friends of the victims as well as teachers and placement agencies. Girls who have been exploited are also commonly used to lure girls from sources areas. children are particularly risk for trafficking include orphans/ children in custodial/educational institution away from families, children from broken families, children living in rural poverty, slums, or on streets, children in brothels, children stigmatized by abuse, children from SC ST, children of bonded labourers.

According “United Nations Population Fund” perhaps 4 million children who have been trafficked may suffer from serious physical and mental health problems and also physical abuse can result in serious injuries and lasting health problems and contract life threatening disease such as HIV/AIDS or tuberculosis. Victims of trafficking may also face serious legal consequences, they may be detained or deported for immigration violations that are the result of being trafficked victims may also

face prosecution for other criminal offences that were committed as a direct result of being trafficked. Trafficked labour is demand in a number of sectors, the most common of which is commercial sex work. Brothels, temporary construction /worker camps, highway, urban residential areas, and small closed communities all serve as homes to trafficking. Similarly to globalization's impact on rural, poor states, Delhi and Goa, both of which are wealthy destination locations, have shown that globalization and urbanization have had negative impacts on the prevalence of sex trafficking. From interviews with NGOs, high crime rates and the economic boom are cited as the primary cause of sex trafficking in wealthy areas. It is argued by P.M Nair, one of the most highly respected trafficking experts in India, that the economic boom has increased the demand for sexual services and increased the level of migrant workers, leading to a resultant increase in supply of trafficked victims. In post conflict / disaster period, marginalized communities with low savings, few skills and limited mobility become easy prey for traffickers. In such times of infrastructure devastation crumbling law and order and increasing numbers of vulnerable and destitute populations, these areas become source and transit points for trafficking especially, for example, in 1999, after a severe cyclone in Orissa there was a marked increase in trafficking, especially of children, since basic needs like shelter and food were nonexistent in the affected areas. In Bihar and west Bengal and the Naxalite movements in Jharkhand and Chhattisgarh have all contributed to increase trafficking. In such settings, women and girls suffer disproportionately and this is compounded by lack of access to comprehensive information or legitimate and affordable migration programs, a third of victims commercial sex work were found to be from drought prone areas. Children who are not in school, come from poor families and are employed in low skilled occupations are highly vulnerable to trafficking. These factors are compounded exponentially if the children belong to marginalized groups of society. In some cases, children may not be moving around alone but with their families which makes them vulnerable in certain instance(e.g. a family moves to urban areas where the pressure of survival threatens all families ties and the children end up on the street or in highly exploitative situations). Approximately 70% of urban commercial sex workers migrated from rural areas and almost 57% of them arrived with their parents.

The trafficking of children for sexual exploitation results in a negative impact on the health and well being of victims, which could be long term and ultimately life threatening and also the consequences of psychological, physical and sexual violence associated with trafficking and sexual exploitation include depression suicidal thoughts and attempts and physical injuries such as bruises broken bones, head wounds, stab wounds, mouth and teeth injuries and even death.

The total number of victims is unknown although estimates range in to the millions women and children predominate: in global study up to 49% of the victims were women and 33% were children. On June 20th 2014, John Kerry the U.S secretary of state made his inaugural speech on relating the 2014 trafficking in persons report. In this speech, he has re-iterated the seriousness and resolve of the US government to address and fight this human tragedy that is happening around the world he has stated categorically that the US government will raise this issue with all countries as and when they engage with them for other issue. According to the report there are 20 million persons trafficked for various forms of exploitation worldwide, it is estimated that the global business generated through direct and indirect human trafficking is the region of \$15.5 billion. Sex trafficking which largely impacts girls forced into prostitution is facilitated by similar factors as well as the low female to male child sex ratio in northern India (namely, Uttar Pradesh and Haryana and the large number of migrant labourers in certain regions of India which increases the demand for commercial sex workers and also for trafficked brides.

LEGAL FRAME WORK

Based on 2007 estimates from the Department of Women and Child Development, the number of individuals trafficked specifically for commercial sexual exploitation in India is roughly 2.8 million, so the level of arrests and prosecutions is very low compared to individuals violating the law.

With a backdrop of poor governance and scarce government service, the absence of an effective legal framework interacts with the exclusion of vulnerable groups from basic social and economic service an environment conducive for trafficking.

More than fifty years ago India ratified without reservation the UN Convention for the Suppression of the Traffic in Persons instruct states parties to punish any person who exploits the prostitution of another person even with the persons consent. Article 1 and 2 says states parties to punish any person who procures entice or leads away another person for the purpose of prostitution, a person who manages and finances brothels and a person who knowingly rents out facilities “for the purpose of prostitution of others”. According Article 9 state parties to establish “comprehensive policies, programmes and other measures to prevent and combat human trafficking. Specifically the Protocol provides that such measures “shall as appropriate include cooperation with nongovernmental organization, other relevant organizations and other elements of civil society.” Furthermore State Parties “shall take or strengthen measures including through bilateral or multilateral cooperation to alleviate the factors that make persons especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.” In addition state parties must also adopt measures to discourage the demand that foster all forms of exploitation of persons especially women and children, that leads to trafficking. The parties to the present convention undertake, in connection with immigration and emigration to adopt or maintain such measures as are required to check the traffic in either sex for the purpose of prostitution. To make such regulations as are necessary for the protection of immigrants or emigrants in particular women and children both at the place of arrival and departure and while en route, The suppression of Traffic Convention n does not require that the trafficking has to be across international borders, however the parties are required to monitor immigration and emigration routes in order to halt trafficking for prostitution. Article 34 says state parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.

In India plethora of laws are enacted by Parliament. The Constitution of India the supreme law of the land from which all laws originated guarantees equality and freedom to all citizens by virtue of fundamental rights vested in them. Under Article 23 specifically prohibits human trafficking asserting that all citizens have the right to be protected from exploitation. In India sex trade increasing alarmingly, those sex trades really violates the Indian constitution and other domestic anti trafficking legislation. Article 23(1) is forbids traffic in human beings, beggar (a form of labour) and all other form of forced labour. Article 24 prohibits employment of children below 14 years of age in factories, mines or other hazardous job. These constitutional safeguards have been implemented by way of several central as well as state legislation.

Apart from Article 23 there are other fundamental rights that serve the purpose to restrict the human trafficking as those cardinal among other fundamental rights have approached to its widest interpretation that is known as “right to life” enshrined in Article 21 of the constitution. Apex court on many occasions have deployed on humanitarian approach while interpreting rights under Article 21 and hence the child trafficking matter would be on lime right of inspection as it relates directly to right of survival with other socio –economic rights that are mandated for peaceful existence of any society. In the Kharak Sing case court cleared the life does not mean mere animal existence but a dignified survival with the liberty in all aspects.

The Directive Principles enlisted in Article 39 (e) and (k) declare that state policy should be directed towards protecting childhood and youth “against exploitation and material abandonment.” building upon these, the suppression of immoral Trafficking in Women and Girls Act was enacted in 1956, main goal of this Act is “to inhibit or abolish commercialized vice, namely, trafficking in women and girls for the purpose of prostitution, an organized means of living.” Prior immoral trafficking (prevention) Act several state legislation existed which are not uniform in nature. Hence there was a need for strict legislation for the purpose of prohibition of trafficking.

The Immoral trafficking(prevention)Act provisions provide penalty for immoral trafficking, punish traffickers, punish keeping brothel, and also punish a persons who live of the earnings of a woman and provides welfare measures focused towards rehabilitation of sex workers. Under this act victim has right to take 20,000 as compensation. This amount is not enough to rehabilitate to victim this is one of drawback of legislation and also punishment for offender under this act only 3 years . Such punishment does not deterrent to offenders. Unfortunately this act deals only with trafficking of women and girls for prostitution. It does not cover trafficking of boy for sexual purpose. As the laws stand the only legal provision that can be invoked to combat trafficking of boys is section 377 of the Indian Penal Code which deals with “unnatural offences” and covers sodomy.

There is a noticeable lack of any model guideline for intervention or law enforcement in preventing the occurrence of trafficking in the case of Gaurave Jain v. Union of India the supreme court exercised its extraordinary writ jurisdiction making power under Article 145 and 142 and laid down a comprehensive scheme to recues and rehabilitate victims of sexual exploitation.

The Criminal Law (Amendment) Bill, 2013 passed by both houses of parliament in March 2013. It provides for amendment of Indian Penal Code, Indian Evidence Act and Code of Criminal Procedure on laws related sexual offences. It adds section 370A to IPC which criminalizes human trafficking. The definition provided under the new section is not restricted to prostitution but also includes other forms of trafficking. Stricter punishment has been given under amendment. An offence of trafficking shall punish with rigorous imprisonment for a term of at least 7year which may extend 7 years and also liable for fine. Buying and selling minor for the purposes of prostitution i.e. is grave offences and maximum punishment of 10 years. The same quantum for kidnapping a woman to compel her to marry or is forced to illicit intercourse.

Section 342, 352, 360, 362, 365,368 and 506 of IPC deals with punishment for wrongful confinement punishment for sexual assault or criminal force otherwise than on grave provocation, kidnapping from India. Kidnapping from lawful guardianship, abduction, kidnapping or abducting with intent secretly and wrongfully to confine person wrong fully hiding or keeping in confinement, kidnapping or abducted person and punishment for criminal intimation respectively and can be invoked in cases of trafficking in persons.

The 2013 Amendment provides for increased punishment in case of minor. When minors are a victim the traffickers shall face of rigorous imprisonment of at least 10 years to life imprisonment. If these were more victims than one the punishment shall be rigorous imprisonment which is not less than 14 years and may extend for life.

The Ministry of Home Affairs also setup specialized police units in major Indian cities in 2011 with the sole task of investigating sex trafficking cases and arresting traffickers and brothels owners and managers the police the lack of the resources to investigate and make arrest on every trafficking case for example police in west Bengal have called faster rehabilitation and effective “social welfare and judiciary systems” that can put violations of the Immoral trafficking(prevention)act on trail and ensure they are not “out on bail”. In Mumbai in 2011, 242 sex trafficking case were prosecuted and 125 sex

trafficking perpetrators were convicted in accordance with Immoral trafficking(prevention)act resulting in prison terms of three years. Although these numbers indicates a positive change he overall conviction rate is low, if the Immoral trafficking(prevention)act conviction on rate remain low, it will allow traffickers to perpetuate and sustain the slave trade and the violation of basic human rights.

CONCLUSION

Prevention of trafficking requires several intervention prevention as a strategy to combat trafficking has to focus on areas of sensitization and awareness among the public especially those who are victims of sex trafficking. NGOs working in the rural areas should ensure that parents are aware of safe migration practices. Government at local level and source areas should create compulsory high quality education employment opportunities and income generation programme. The children who have been trafficked and thereafter subjected to commercial sexual exploitation are living embodiments of the social tolerance of the ultimate violation of human rights.

Research studies have confirmed and even experiences of different countries have shown that simply the enactment of special laws will not serve the purpose unless laws are strictly implemented. Failing in this would result in formation of a weak proposition which hamper the cause of justice in its true sense. There is need to understand the nature of that particular law and can implement it in right direction. Role of government is a prime factor in this whole exercise. Many children of neighboring boarder areas who crossed boarder and under coercion, misrepresentation and wrongful influence of agents forced to join sex industries. Hence it is obligation of the government to help them in their rehabilitation and repatriation. Judiciary should function along with nongovernmental organizations, media people, political leaders, social workers and common man to coordinate to eradicate of child sex trafficking. The SAARC convention, 2000 which focused on trafficking for commercial sexual exploitation and also suggest a larger involvement of civil society in taking up preventive measures. There is only need to have strong political willingness for all biasness so that we can implement the convention. This requires the Kantian principles of respect which said human beings are capable of reasoning and therefore should be respected. It is our duty to create a best possible world where all can live in harmony and peace while respecting each other's rights and needs. This situation can be reached by forming a "compossible world" which makes the possibility to live altogether.

The most important issue in prevention is to address the vulnerabilities of children. Economic and social empowerment are the cornerstones for prevention of child sex trafficking. The different policies programmes and projects of the government with respect to the various departments which departments which would be integrated into the larger plan of action by the concerned government department. Prevention of child sex trafficking is only possible only if the community is fully involved. Sex trafficking of child has deep roots in the social ethos of the society and therefore cannot be handled by law alone. The major issues of lack of livelihood options, gender discrimination and deprivation of opportunities have to be kept in mind. Therefore, any preventive strategy should focus on eradication of poverty illiteracy, lack of awareness of rights and livelihood options, as well as on issues of social and economic empowerment.

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