

A CRITICAL EXAMINATION OF ELEMENTS OF THE CHILD TRAFFICKING

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Accepted: 03.07.2022

Published: 01.08.2022

Keywords: Exploitation, Trafficked, Detrimental, Hazardous.

Abstract

In India, a large number of children are trafficked not only for the sex trade but also for other forms of non-sex-based exploitation that includes servitude of different types, viz. Domestic labour, industrial labour, agricultural labour, begging, organ trade, camel jockeying, false marriage, etc. In this connection, it is necessary to bear in mind that under the ILO Convention 138, the term Child Labour generally refers to any economic activity performed by persons under the age of 14. However, not all work performed by children is detrimental or exploitative. Child labour of concern is generally that which prevents effective school attendance or is performed under conditions hazardous to the physical and mental health of the child.

Paper Identification



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Intro Child trafficking is a crime which involves movement of children so as to exploit them. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000 defined child trafficking as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, abduction, fraud, deception, of abuse of power, giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation; exploitation shall include, at a minimum, prostitution, other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. Child trafficking in India has become a matter of serious concern. In the last decade the magnitude of trafficking in India has significantly increased. It is difficult to obtain comprehensive data on the extent of human trafficking in India. India is a source, destination and transit country for trafficking of persons, including young girls. Ninety percent of trafficking in the country is estimated to be internal, with victims of

trafficking mostly being used for forced labour. The root causes, processes and consequences of trafficking are complex and it is subject to considerable debate. However, given their vulnerable nature women and children are more prone to the evil of trafficking. There are various reasons behind this vulnerability of children to unwanted situation including the failure on the part of the family to protect them against any danger.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (informally known as the Palermo Protocol) is the first legal instrument to provide an internationally agreed definition of trafficking in human beings and child trafficking. The Palermo Protocol was adopted in 2000 and entered into force in 2003. With regard to child trafficking, it is clear that no violence, deception or coercion is required for a person under 18 to be considered a victim of trafficking; it is trafficking that he or she has been recruited and moved for the purpose of exploitation.

The Palermo Protocol is clear that it is not necessary for a child to have been subjected to abusive means of control, e.g., coerced or deceived, in the course of being recruited for the case to constitute trafficking. It is sufficient that a child under age 18 has been recruited and moved elsewhere to be exploited to be regarded as a victim of trafficking. In addition, if a child's recruitment or transportation – regardless of end intention – involves any of the means used to traffic adults, e.g., threats, violence, abduction or deception, the case is also considered trafficking.

Although the terms “exploitation of the prostitution of others” and “other forms of sexual exploitation” are not specifically defined in the Palermo Protocol, the term “exploitation of the prostitution of others” is defined elsewhere and includes cases in which a child

accepts money or any other consideration in return for acts of sex and passes this on to another person who thereby exploits the child's prostitution. “Other forms of sexual exploitation” are not the subject of another international legal instrument. This phrase may be interpreted as referring to pornography and a range of other forms of abuse such as forced marriage.

The Palermo Protocol definition of trafficking makes a clear delineation between „exploitation“ in the context of trafficking and other forms of exploitation such as child labour or economic activities involving children. Exploitation is defined in terms of sexual exploitation and forms of economic exploitation associated with coercion and servitude, as well as the removal of a child's organs for financial gain.

The use of the term exploitation means that the individuals who profit from a child's exploitation are sometimes referred to as exploiters. In cases of commercial sexual exploitation, these individuals are referred to as pimps. In other cases, they may be employers and are sometimes referred to as controllers because they control a child while she or he is earning for them. Sometimes these same individuals were responsible for a child's initial recruitment or movement. In most cases, the child has been moved from the trafficker to an exploiter.

The definition of child trafficking in the Palermo Protocol is complex and can be difficult to apply in practice. It may be challenging to differentiate between a child victim of trafficking and a child who has experienced other forms of exploitation or abuse. This is especially the case when exploitation and abuse take place in the context of movement or migration and when the available information on a child's situation and background is incomplete. In the absence of a uniform system for identifying children who are survivors of various forms of exploitation and abuse, trafficked children are often misidentified. They may be identified as migrant children,

immigrants with irregular status, victims of sexual exploitation and abuse, juvenile delinquents or children living on the street. At the same time, not all children identified as having been trafficked have actually had experiences that fall under the international definition of child trafficking.

Therefore, the way in which cases are identified and recorded in national statistics may not reflect the full scope of child trafficking.

Even children may be hesitant to be identified as trafficking victims. They may fear threats from traffickers against themselves or their family members, social stigma or legal consequences. Children may have concerns that once identified as having been trafficked, they will not be able to make money, pay off their debts or live up to the expectations their families have of them.

All those who contribute to the movement of the child and know that what they are doing is likely to lead to the exploitation of the child are traffickers. In this way, recruiters, intermediaries, document providers, corrupt officials, employers, exploiters and transporters are traffickers.

Elements of Child Trafficking

There are some terms that need a little further clarity in the context of children:

Sale of Children

It is difficult to have a definition of “sale of children” since children are not, and should not be, legally and/or morally, the objects of trade or commerce. The reality of such sales, however, proves the need for a definition. The traditional concept of sale is that it pertains only to property - real, personal or incorporeal - and that the consideration is always price in money. In order to gain a clearer perception of the meaning of “sale” in its commercial application, it may be useful to take a look at some definitions of “sale” in general. Black’s Law

Dictionary defines it as “a contract between two parties, called, respectively, the seller (or vendor) and the „buyer“ (or purchaser), by which the former, in consideration of the payment or promise of payment of a certain price in money, transfers to the latter the title and the possession of property”.

Recruitment

The process of recruitment of children is always by adults with the knowledge and support of at least certain members of the community and sometimes even the parents or other family members. Abuse of authority also plays a vital role when anyone who exercises any form of authority over a child or involved in recruitment resulting in trafficking.

Children are generally recruited into (this is not an exclusive list - just exemplary):

- Prostitution
- Industrial/ factory based labour
- Bonded labour
- Domestic labour
- Agricultural labour
- Construction work
- Circus
- Dance troupes
- Liquor shops
- Camel jockeys
- Insurgent groups
- Or any other employment, which may be legal or illegal

Often, recruitment is done through:

- Personal contacts
- Agencies
- Advertisements/Internet
- Kidnapping/threats or violence or other forms of coercion such as debt bondage, or with consent through

deception, when good job opportunities are promised or implied

Transportation

Transporting a child from one place to another would result in trafficking when it is done by:

- Using force as in the case of kidnapping or
- When the travel is under threat or
- When the travel is done with consent taken deceptively
- Money paid to different levels

Transfer

Sometimes, children are transferred from one place to another, sold several times to middlemen or agents before they reach the final destination. Generally, transfer is done secretly by using force or coercion and without informing the child about it.

Harbouring

In the context of trafficking, harbouring implies confinement.

Abuse of a position of vulnerability

It has been observed that often the victims/trafficked children are pushed into difficult situations by someone whom they trust or someone close to them or someone whom they cannot refuse to. In the case of trafficking, generally, these people are either parents or community leaders or some close friend.

Procurement

In the case of child trafficking, procurement means acquiring a child for the purpose of exploitation either through:

- Sale and purchase
- By kidnapping
- By use of threat, force, coercion
- By deception or fraud

Consideration

It is the benefit received (in cash or in kind) in exchange of the child. A case of trafficking covers a chain of events from the source areas to their destinations. In this chain, there may also be several halts before the trafficked child reaches the final destination. These points of halts are known as the transit areas.

Several kinds of crimes may be committed against a child in each of these areas. For example, the buying or selling or kidnapping may happen in the source area. In transit areas, the child may be kept in wrongful confinement and subjected to sexual as well as other forms of abuse and violence or fraud and deception. In the destination areas too many transactions may take place such as final selling, forced labour or prostitution.

REVIEW OF LITERATURE:-

(*Subiksha et al., 2018*) studied “A STUDY ON CHILD TRAFFICKING IN INDIA” and found that child trafficking is generally defined as the act of harbouring, transferring and receiving of the child who is below 18 years of age who are abducted and taken from homes without their consent and sold for money in the illegal market. The nature of the crime is that it is difficult to track there is existence of such child trafficking since there is no proper enforcement of laws. The reasons for child exploitation maybe due to poverty, lack of proper safety to children in remote areas as well as in urban cities. Generally children are trafficked for begging, poverty or debt to be paid by their parents, relatives or guardians. In some cases the children are drugged and they are prone to sexual exploitation voluntarily. Such traffickers are difficult to trace they are also called as silent crime makers this is the largest crime in the world. Types of child labour such as involuntary domestic servitude, forced child labour, illegal activities, child soldiers, child exploitation for commercial sex, child prostitution, the

rate of child trafficking is higher in Nepal. There must be interference of the government and intergovernmental organization and committee must be formed and strict enactments to be made to protect children and pass stringent laws to decrease the rate of this crime. The offenders involved in such trafficking can involve in illicit trafficking, that includes aggravated form such as sexual exploitation, slavery, slavery for commercial sex. The exploration of standardization of judiciary may represent a way out to response to ecology. The protection of such children and the enactment of laws have been done at international level.

(*Malvika et al., 2021*) highlighted the article “UNDERSTANDING CHILD TRAFFICKING AND COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN WEST BENGAL, INDIA” and the study found that the relationships children share within the ecosystem impact their life and safety within the village. This varies based on the nature of the relationship that they share with the stakeholders, the influence that these stakeholders are able to exert on the child’s life and the level of trust that children have with them. Additionally, these stakeholders influence CT/CSEC-related vulnerabilities based on their own knowledge, attitudes and practices. The study found that fathers have the most significant influence on vulnerabilities such as child marriage, child labour and school drop outs. Fathers share an authoritative relationship with the children and are often the principal decision maker in the child’s life. However, in spite of having such strong influence, fathers are hesitant to talk about CT/CSEC. They have intent to ensure child safety and have high influence, but their risk perceptions remain low. Mothers, on the other hand, have high intent to secure child safety and are more open to talking about CT, CSEC and related vulnerabilities; but they are limited by their lack of agency and relatively lower levels of influence. Among the community leaders, Accredited Social Health

Activist (ASHA) workers and teachers have varying types of relationships with the children, wherein they are found to be facilitative in certain villages and disengaged in others. Panchayat members and police officers are often disengaged with low intent in spite of high influence.

(*Iyer, 2016*) investigated “WOMEN TRAFFICKING IN INDIA - A CRITICAL ANALYSIS” and discussed that women are one of the major groups considered most vulnerable to human trafficking. For purposes of sexual or commercial exploitation, women and girls are kidnapped, sold, and coerced by slavers in nearly every country in the world. Though many human rights and governmental organizations agree that trafficking in women is a serious violation of human rights that needs to be fought, the complex and widespread operations of human trafficking make prosecution and punishment of traffickers nearly impossible in many cases. Trafficking in women is an ancient enterprise that dates back nearly to the beginnings of civilizations. Female slaves were often highly valued in the ancient nations for use as prostitutes, concubines, or to breed more slaves. One of the most common reasons for trafficking in women today is to fuel the prostitution trade. Traffickers often recruit or buy women from destitute areas, promising to smuggle them to a new country and find them work as domestic servants. In truth, the women are often raped and abused by their recruiters, and then sent to brothels or underground prostitution rings where they are sometimes literally held under lock and key. Many are told that they will have to work in the sex industry until the debt for their transport has been paid off, which may effectively be for the rest of their lives. Health officials insist that trafficking in women causes significant health risks to the general public, especially in terms of sexually transmitted diseases. Women sold into prostitution are often discouraged or forbidden from using contraceptives such as condoms, and thus become high-risk candidates for the spread of diseases.

Since these women are usually tightly controlled, they also have limited access to any type of health care, and are thus far more likely to suffer from illnesses of all kinds.

(*Mohamed & Abdelaziz, 2013*) in their article “WITHER CHILDHOOD CHILD TRAFFICKING IN INDIA” the study summarized that human trafficking is based on the objectification of a human life and the treatment of that life as a commodity to be traded in the economic market. In general terms, trafficking refers to an illicit trade in goods. Human trafficking is the illegal sale and purchase of human beings who are often used for sexual exploitation, labor exploitation, and organ harvesting. It is a contemporary form of the slave trade, and, like the slave trade, human trafficking is marked and defined by deception, coercion, and exploitation. Trafficking in humans is defined by Article 3 of the United Nations’ Protocol Against Trafficking in Persons, Especially Women and Children “The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or the use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.” Article 3 continues, “Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs”.

(*Sen & IPS, 2006*) analyzed the article “TRAFFICKING IN WOMEN AND CHILDREN IN INDIA” and described that trading in human beings and their exploitation in varied forms by traffickers in human beings is one of the most despicable forms of violation of human rights. Trafficking in its widest sense includes not just exploitation of prostitution of others or forms of sexual exploitation, it also includes

forced labour or services, slavery or practices similar to slavery or trade in human beings for removal of organs. Trafficking clearly violates the fundamental right to a life with dignity. It also violates right to health and health care, right to liberty and security of person, right to freedom from torture, violence, cruelty or degrading treatment. It violates for children who have been trafficked, or victims of child marriages their right to education, it violates the right to employment and the right of self determination. Unfortunately, there is little awareness of the ramifications of trafficking as a transnational organised crime. The income generated by trafficking is comparable to the money generated through trafficking in arms and drugs. There is, in addition, a lack of adequate laws which should recognize that the trafficked person is a victim and not a criminal. Laws do not adequately target traffickers, pimps, procurers, brothel keepers and the like; or provide adequate punishments. The laws do not address clients. It is also unfortunate that the infrastructure for rescue and rehabilitation is grossly inadequate. Both the law as well as administrative policies has not addressed these issues adequately and with imagination. As a result, many rescued victims are re-trafficked.

(*Bhadouriya, 2019*) examined the paper “HUMAN TRAFFICKING, ITS ISSUES AND CHALLENGES IN INDIA: A STUDY FROM HUMAN RIGHTS PERSPECTIVE” and explained that human trafficking differs from the smuggling of the peoples, which involves the person who voluntarily requests or hires other persons to transport all of them secretly across the international border. It is usually practiced because the smuggled persons are barred from entering into the country through the legal channels. Thus after the smuggled person enters into the country and arrives to his ultimate destination, the person is free to find his own way. Though it may be illegal, but there is no deception or coercion involved in it. Human trafficking requires travelling while smuggling does not requires

it. The victims of human trafficking are held against their own will through the act of coercion and exploitation. They are forced to work for others or provide the services to the traffickers. The works or services includes anything from bonded and forced labour to commercial sexual exploitation. There is an arrangement for them to work under a work contract but with low or no wages or on some of the terms which are highly exploitative in nature for the victims.

Importance of the Study:-

Children need particular attention, protection, and help due to their status as the most vulnerable members of society. Various areas of child care and support are the subject of this enquiry. United Nations-recognized principles and ethical foundations that recognize the inherent dignity and unalienable rights inherent in all members of the human family are the basis for child protection. To this end, the study argues that all children's rights should be protected, regardless of their parents' or guardians' or siblings' or other family members' race, nationality, colour, gender identity, language, religion, political or ideological beliefs, or social origin, and regardless of whether they are rich or poor or have any other special needs. According to the authors of the study, children who live in really challenging conditions across the globe should be given more safety and care. As a result, it promotes policies aimed at protecting children while also fostering their holistic growth in accordance with the traditions and cultural values of a diverse population. In this study, researchers will examine how different child policies affect social progress and how successful these policies are. Additionally, it will demonstrate the efficacy of these measures.

CONCLUSION:

There are studies and strong evidences which establish that there are huge numbers of child labourers who are working in garment factories and other sectors across India. The children are easily

lured away by the traffickers and brought to the destination point. All this is done by a complete network of placement agencies which supply these girls and children as domestic helps and garment factories. Also, children are trafficked as there is enormous demand for them. There are also instances of trafficking which goes with the practice of adoption and surrogacy. As the web of human trafficking traps any children, they pass on from one place to another place which is tantamount to re-victimization of the child again and again. Child trafficking continues to be divided between ministries and departments. There is a lack of coordinated effort by the stakeholders. The point is that all the institutions concerned focuses majorly on post-harm situation that is when children is already trafficked or harmed. There must be aims towards prevention.

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