

PROTECTION OF CHILD RIGHTS TOPIC: CHILD ABUSE AND CHILD TRAFFICKING

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INTRODUCTION:

If we have to define child abuse it can be defined as an abuse when a guardian or the parents of the child because of their action or cause of action, causes injury, death, emotional harms or any serious risk to a child which can cause him harm. The child abuse has many forms like harassment, rape. Child trafficking is a cruel reality of today's world. Children are being sold for labor work , adoption, and organ harvesting. The problem of child abuse and child trafficking is prevailing in India . The research paper also analyzes the laws and interventions that provide protection and assistance to trafficked children.

Concept of Child Rights:

According to the United Nations Convention on the rights of the children that India in 1992 - all children are born with fundamental rights. Under this convention certain rights are included like,civil rights, economic rights and social rights. Civil rights include name and a nationality,protection from torture. Economic rights include the right to get benefit from social security, the right to a standard of living. Social rights includes the right highest attainable standard of health services,the right to social care for handicapped children.

Child Abuse and child right violation:

After seeing the above rights of child it seems that child welfare has been given importance to both nationally and internationally. In 2007, the Ministry of Women And Child Development(MWCD) released a report on child abuse. The report came out as those 150 million girls and 73 million boys fewer than 18 were being forced to sexual intercourse or other forms of sexual violence. According to (national crime records bureau data)children just disappear overnight in some parts of India, as many as 1 every 8 minutes the sordid horror of

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child trafficking is very apparent. As the poor vastly out-number the non poor a large majority of these births are among the underprivileged sections of the population. This is the reason why India is not only the hub but simultaneously a transit point for child trafficking.² Economic deprivation plays an important role in the child trafficking it has many catalyst which makes it very profitable criminal business in the world.

Laws related to child abuse in India

The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994:

This act was passed for the regulation of the pre-natal diagnostic techniques which were used for the determination of the child sex or any other genetic abnormalities or metabolic disorders or chromosomal abnormalities or sex related disorders which may occur in the fetus. It was in a large number used to determine the female fetus and its elimination. This Act prevents misuse of sex determination leading to the female feticides.³

Protection of Children from Sexual Offences Act,2012:

POCSO Act derives its powers from Article 15(3) of the Constitution of India which permits the government to make special provisions for children. The punishment for the committer of this offence or attempter of this offence is imprisonment of any description provided for the offence, for a term which may extend to one half of the life imprisonment or, as the case may be, one-half of the longest term of imprisonment for that offence or with fine or both⁴.

The Juvenile Justice (Care and Protection of Children)Act, 2015:

This act was passed to consolidate and amend the law related to the children alleged and found to be in conflict with law and children in need of care and protection by catering to the basic needs proper care,protection, development etc,by adopting child friendly approach in the adjudication and disposal of matter in the best interest of the children and for their rehabilitation.

Crimes against children:

Children are easy targets of the various criminals as they are unaware of the consequences of their acts they get easily emotionally attached with the persons.

²<https://www.savethechildren.in/articles/violation-of-child-rights-in-Indian-society>

³THE PRE-NATAL DIAGNOSTIC TECHNIQUES (REGULATION AND PREVENTION OF MISUSE) ACT, 1994, No. 14 of 2003, Acts of Parliament, 1994 (India)

⁴User Handbook for Implementation of the POCSO Act 2012

The various ways to exploit children are: child marriage, child trafficking, child abuse and child labor. Everyday large numbers of children are abused in the sphere of their own family. A large number of children abandoned by their own parents. Illiteracy backward social conditions and poor economic conditions are the most common reasons of all kinds of child rights violations especially among poor parents. Children are kidnapped for the purpose of making them beggars, prostitutes ,etc.⁵ various laws and policies are in favor of children to protect the children from the abuse by their parents and from the society⁶ .since there is no classification of offences committed against the children or the crimes in which children were the victims are considered as considered as crime against children . the general penal code of this country and the various protective and preventive ‘special and local laws’ specifically mention the offences wherein children are known to be victims .such offences are construed as crime against children.⁷Crime against children has numerous broad based causations rooted in criminological,⁸ psychological, and biological theory constructs. Crimes which are committed against children have dire consequences, not just for the victims but for the society.

Child Marriages

Child marriages are not new in India it has existed from ancient times. It was used as a weapon for protecting the girl child from the being abducted and raped by the foreign rulers. First, it was used as a tool of protection but later on due to practices for several years it became a custom, though it has been reduced now a days but it is still prevalent in the rural parts of the country, which is the sad reality of today’s India.

In medieval India with the change of the thinking of the people the women were regarded as the pride of the family and were subjected to the more discipline. Since young women were considered as irrational and irresponsible in love so they were married early but not below the age of 12, with the passage of time this age has been reduced to the 6 and it became common practice to marry the girls between 6 to 8 years of age. ⁹

⁵ The nithari village killing.

⁶ Neera burra ,rescuing destitute children ,indian express, 17 march 1998

⁷ Mr. Marbudlang Mylliempdah http://www.mati.gov.in/docs/crimes_against_children.pdf

⁸<https://studymoose.com/crimes-against-children-essay>

⁹<https://terredasie.com/english/english-articles/history-of-child-marriage-in-india/>

Reasons for child marriages

There are various reasons for the child marriages they are listed as follows:

1. Poverty
2. Insecurity
3. Political and financial reasons
4. Lack of education
5. Patriarchy and gender inequalities
6. Inadequate implementation of the law¹⁰

Laws against child marriage in India

Indian constitution prohibit the child marriages through various laws such as

The Child Marriage Restraint Act,1929

This act is applicable to whole of India except the state of Jammu and Kashmir. This act punishes the male adult below 21 years of age and above 18 years of age who is marrying a child with simple imprisonment of 15 days and fine or both. This act punishes the male adult above the age of 21 years who is marrying a child with simple imprisonment which may extend to three months and will also be liable for fine. Guardian of the child and any person who has solemnized the marriage of the child shall be punishable with simple imprisonment which may extend up to 3 months and shall also be liable to fine.¹¹

Prohibition of Child Marriage Act,2006

This act is applicable to whole of India except the state of Jammu and Kashmir. Child Marriage is an offence which is punishable with imprisonment which may extend to 2 years, or with fine up to 1 lakhs or both. Court can issue injunctions prohibiting the solemnization of child marriages (section 13, PCMA 2006) Offences under this act are cognizable and non-bail able (section 15, PCMA 2006).¹²

Child Trafficking

The international labor organization (ILO) says trafficking is among “forms of slavery or practices similar to slavery” and should be eliminated as soon as possible. Talking about the specific issue of child trafficking during emergencies, United Nation Secretary General Ban ki

¹⁰<https://www.indiatoday.in/education-today/gk-current-affairs/story/child-marriage-india-1293581-2018-07-23>

¹¹<https://indiankanoon.org/doc/323064/>

¹²<http://childlineindia.org.in/pdf/Child-Marriage-handbook.pdf>

moon said “human traffickers prey on the most desperate and vulnerable. To end this inhuman practice, we must do more to shield migrants and refugees from those who would exploit their yearnings for a better, safer and more dignified future”.¹³ Protocol to prevent, suppress and punish trafficking in persons especially women and children. The definition of article 3(a) defines child trafficking as transportation, recruitment of a child for the purpose of exploitation.¹⁴

Effects of child trafficking

Isolation

Children are trafficked from their family and are lamented from the touch of love, care and protection. They are forced to work under hazardous areas.

Education

Where children support their families for income, they hardly go to school. Girls are sexually assaulted and are not encouraged for education.

Physical health

Child trafficking victims experience inhumane conditions, abuse and are deprived from basic health care rights. Acid is poured into the eyes of some children for begging purpose. The life of such children's is always in danger. The consequences of child trafficking are horrible. The victims need to undergo proper healing process in the rehabilitation centers.¹⁵

Laws related to child trafficking

Article 23(1) of the Constitution of India prohibits the trafficking of human beings.

The Immoral Traffic(Prevention)Act,1956: This act was passed in pursuance of the International Convention signed at New York on the 9th of may,1950for [the Prevention of Immoral Traffic]. Section 4 of this Act provides punishment for living on the earning of the prostitution of a child or minor with imprisonment not less than 7 years and not more than 10 years.

The person who is procuring, inducing or taking the child for sake of prostitution shall be punished under section 5 of this Act with imprisonment not less than 7 years which may extend to life.¹⁶

¹³<https://theirworld.org/explainers/child-trafficking>

¹⁴<https://theirworld.org/explainers/child-trafficking>

¹⁵<https://www.indiacelebrating.com/essay/child-trafficking-essay/>

¹⁶<https://indiacode.nic.in/bitstream/123456789/1661/1/1956104.pdf>

Child Labor

The word “child labor” is defined a work that disposes children of their childhood and their dignity which is injurious to physical and mental development.

India has the largest number of child laborers in the entire world; the approximated number of working children in our country is around 44 million. Children work in almost all the sectors of the economy, i.e. in agriculture, manufacturing sectors etc. child labor is directly associated with illiteracy as over 40 million children are out of school in India. While calculating the rate of illiteracy, malnutrition a United Nations Report notes, *“The countries with highest illiteracy rates and the most backward in school enrolment are in general those, which suffer from malnutrition and have the greatest child labor problem”*¹⁷

It has been proved that child labor and poverty are intimately linked. Child labor spoils the entire childhood of a child. Bonded labor also known as debt bondage ,it occurs normally when a person is forced to work to pay off a debt and whatever they earn that amount of money goes to pay off their loans. Children who are bonded with their family or inherit debt from their parents are usually found in agriculture sectors. In 1997, UNICEF listed four myths surrounding child labor which included:

1. Child labor is only problem in developing countries
2. Child labor will end when poverty ends
3. Mainly child laborers work in sweatshops
4. Pressuring government is the only way to stop child labor

The **National Policy on Child Labor 1987** has been formulated to address the socio-economic issues. This policy deals with the situations where children are forced to work to earn wages for their families, and where abuses connected with such factors. In 2002, a report of the study group on women and children prepared by **National commission on labor**, recommended the enactment of child labor prohibition and education bill,2001. The bill recognizes every child out of school as a child labor or a potential child labor and this problem can be tackled by ensuring universal education.

The patriarchal value system that operates in the family clarifies the unequal labor for boys and girls.

¹⁷Child labor : the UNICEF approach 2007

Judicial approach towards child rights and trafficking

Children are the assets for Nation. And it fully depends on how children grow and develop. As **Milton** a great poet said “*child shows the man as morning show the day*”. There are certain provisions in Indian constitution article 24 states that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any hazardous employment. Article 39(e)and(f) provide that state shall direct its policy towards securing to “ensure that the health and strength of workers,men and women and the tender age of children are not forced by economic necessity to enter avocation unsuited to their age and strength.

Judicial responses in right to education cases:

- In the judgment of *unnikrishnan’s*¹⁸ case the apex court held that right to education, understood in article 45 and 47 means every child of the country has the right to free education and care until the age of 14 and after the age of 14 the right to education is restrain by the limit of the economic capacity of the state and its development.
- In *Rohit singhal*¹⁹ case the court held that in following to the National Education Policy, 1986 the government of India established Jawahar Navodaya Vidyalaya (JNV) all over country. These schools were co-educational and are called Navodaya Vidyalaya Samiti which is financially aided from government of India.

There’s a famous proverb:

“A child without education is like a bird without wings”.

Education is like an investment made by the nation for children for harvesting a future crop of responsible citizens. Children are innocent. They need to be valued, nurtured, caressed and protected.

Judicial response in trafficking and sexual abuse cases:

- In *Vishal jeet v. Union of India*²⁰ the Supreme Court issued directions that all state governments must direct their law enforcing authorities to take appropriate speedy steps against child trafficking.

¹⁸ AIR 1993 1 scc 645:sc 2178

¹⁹ AIR 2003 1 scc 687 sc 2088 scw 84

²⁰ AIR2008 (NOC) 707 (del)

- In *Sakshi v. Union of India*²¹ the court held that a screen or some arrangements must be made where the victim do not see the body or the face of the accused. The victim of child sexual abuse should be allowed sufficient breaks while giving testimony.

Judicial responses in child labor cases:

- In *Laborers of salal hydro project*²² the sc held that whenever there is a construction project which is lastly for a long period of time, must ensure that children of workers, who are working living at or near the project site are given facilities for schooling.
- In *M.C. Mehta v. State of Tamil Nadu*²³ the apex court observed that the aim of article 45 of constitution remains a far away dream due to poor economic conditions, children are compelled to seek employment.

CONCLUSION

Child abuse and child trafficking are not only offences against child but also toward society. Because children are the future of our nation. Though there are certain legislations but at present there is no law to protect children from sexual assault. There's a welcome step by a legislation *preventions of offences Against Child Bill,2009* this law will protect children from child abuse and also sexual exploitation. And finally it is to be noted that participation is the key, so children must be involved in decision making and must be made aware about the rights. Judiciary is also playing an important role in the protection of the children it is giving decisions in the favors of the child or which are good for the welfare of the child. State governments create various orphanages and child homes where children are kept and given for adoption. But the reality is that these child homes and orphanages are now becoming the places where children are tortured and are sexually abused .The government should check these shelter homes and should do the police verification of these places under the supervision of the IPS rank officers so that the safety of the child can be insured.

²¹ AIR 2004 sc 3566 SCW 3449 SCC 518

²² AIR 1983 lab IC 542

²³ AIR 1991 sc 283