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PROTECTION OF CHILD & CRIMINAL JUSTICE ADMINISTRATION – CHILD TRAFFICKING & CHILD PROSTITUTION

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ABSTRACT

All children rights are by virtue of being human. Today's child is tomorrow's citizen. Child is the future human capital. Human society perpetuates through its children. The future and stability of it depends on the quality of its children. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our larger purpose reducing inequality and ensuring social justice.

There are various offences against children including physical and mental that is, sexual, abuse and injury, neglect or negligent treatment and any other kinds of exploitation.

Violence may take place in homes, schools, orphanages, residential care facilities, on the streets, in the workplace, in prisons and in places of detention. It can affect children's physical and mental health, impair their ability to learn and socialize, and undermine their development as functional adults and good parents later in life. Their nurture and solicitude are our responsibility.

There are various laws relating to offences against children in India- The Indian Penal Code, 1860 ; The Immoral Traffic (Prevention) Act,1956 ; The Code of Criminal Procedure,1973 . So, the paper would focus on the law's and procedures which intend to protect the children from various deviant activities and to rehabilitate them into the mainstream of the society for the progress and prosperity of the nation.

INTRODUCTION

The children who are generally forced or born into a discriminated situation are at risk of abuse and getting exploited. The lack of a protection system either due to mis-implementation of national laws and programmes or the absence of protection is used in different ways by different organizations in different situations. To protect the child's right from harm is known as child protection. It also compliments other rights which ensure that children receive what they need in order to survive, develop and thrive. It covers a wide range of important, diverse and urgent issues like- child prostitution is very closely linked to economic factors. Other issues are- Child marriage, Missing children, Child Labour, Street Children, Child beggars, Abuse and violence, Juvenile offenders. In India, we have enacted many laws and formulated many policies related to children in order to protect them and to give them a conducive atmosphere for sound development. The unprivileged children in India are still struggling for survival, hunger, ill-health, lack of education, exploitation, trafficking and sexual abuse.

The International legal framework concerning juvenile justice is well- established. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), 1985; The Riyadh Guidelines, 1990; The Havana Rules 1990; were adopted to prevent children and young people from engaging into the criminal activities as well as protect the human rights of youth already found to have broken the law. The UNCRC, 1989, which is a landmark in international child rights legislation. It is a children's rights treaty setting out the civil, political, economic, social, health and cultural rights of children.

As we know that, Children are a supremely important asset of a nation. Also India is committed to achieving the sustainable development goals, its national and international obligations, so our resources and policies have to be aligned to deliver better, more sustainable outcomes for children.

CHILD TRAFFICKING

Initially, Human Trafficking is the illegal trade of human beings. It is a crime against humanity. It includes conveying, relocating or receiving a person by means of force, threat, misrepresentation or other means for the objective of exploiting them. Every year, thousands of men, women and children fall into the network of traffickers, in their own countries and abroad. Every country in the world is to some extent affected by trafficking, whether as a country of origin, transit or destination for victims. Trafficking of children is a form of human trafficking and is defined as "recruitment, transportation, transfer, harbouring, and receipt" of a child for the purpose of exploitation. It is internationally recognized as a serious crime that exists in every region of the world and has human rights implications. It is a crime involving the movement of a child with the ultimate aim of child's exploitation. It is an organized crime which violates all presumptions of human dignity and rights. It may take place for many reasons- labour, commercial sexual exploitation, organ trade etc. Trafficking is a centre and state subject. Poverty, illiteracy, lack of livelihood options, natural/manmade disasters make a person vulnerable to trafficking. India faces both In-country and Cross Border Trafficking. It is considered to be the modern day slavery. These are-

- a) Sex trafficking
- b) Domestic servitude
- c) Factory and farm slavery
- d) Child soldier slavery

Causes for child trafficking-

- a) Poverty
- b) Unemployment
- c) Homeless
- d) War
- e) Infanticide
- f) Child marriage
- g) Domestic violence
- h) Lack of employment opportunities

Impact of trafficking on society-

- a) Fuels organized crime
- b) Deprives countries of human capital
- c) Promotes social breakdown
- d) Undermines public health
- e) Subverts government authority
- f) Imposes enormous economic cost

Law's

Constitution-

It prohibits "traffic in human beings and beggar and other similar forms of labour".¹It prohibits employment of children below 14 years of age in factories, mines and other hazardous employment.²

Other fundamental rights enshrined in the constitution which are related to trafficking are Article 14 relating to equality before law. Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth. Article 21 is related to protection of life and personal liberty and Article 22 provides protection from arrest and detention except under certain condition's. Article 38 directs the State to secure and protect social order by ensuring justice- social, economic and political shall inform all the institution's of national life. Basically, it provides opportunities to make equal results.

Article 39(f) says that children should be given opportunities and facilities to develop in a healthy manner and conditions of freedom and dignity and that childhood should be protected against exploitation.

Article 45 makes provision for free and compulsory education for children. It is a fundamental right provided to children.

Indian Penal Code-

The IPC contains section's dealing with trafficking and imposes criminal penalties for offences like- kidnapping, abduction, buying or selling a person for slavery, rape etc. Section's 366, 366A, 366B, 370, 370A, 372 & 373. The accused suffers punishment of 7 or more years under these provision's.

The Immoral Traffic Prevention Act, 1956-

It is the main legislative tool for preventing and combating trafficking in human beings in India. Its main aim is to abolish traffic in women and girls who have adopted prostitution as a systematised way of earning the livelihood by becoming a victim of it. Any person who lives on the earnings of prostitution of other person shall be punishable with 2 years and the earnings be of a child then 7 years. If a person is found with a child in a brothel, he shall be punished with 7 years imprisonment. If a person has custody over the child and he engages him in prostitution then he shall be punishable with 10 years.

CrPC-

If a female is to be searched then it shall be practically done by a female only (Section 52(2)) and if the person of the female is to be examined then also it has to be done by a female registered medical practitioner. (Section 53(2)). If a woman is abducted or unlawfully detained or a female child under the age of 18 years for any unlawful purpose, then the magistrate may restore the woman or female child to her guardian's.

The inquiry and trial of rape cases be done in camera, which shall be practicably done by a woman magistrate.

Cases on Child Trafficking-

The judiciary has played an important role in combating the menace of child trafficking. The right's of the child are protected by the fundamental rights and directive and state policies. There are many landmark judgements which have acted as a catalyst in establishing the rights of children. The apex court held the right of a child against exploitation under Art. 24.³ The apex court held the children working in hazardous factories and their right to development.⁴

¹ INDIA CONST. art. 23.

² INDIA CONST. art. 24.

³ People's Union for Democratic Rights v. Union of India AIR 1982 SC 1473 (India)

⁴ M.C. Mehta v. State of T.N. (1991) 1 SCC 283 (India)

The Supreme Court of India asked the Law Commission to consider certain important issues regarding sexual abuse of children submitted by the petitioner and the feasibility of amendment to 375 and 376 IPC.⁵The apex court held that the children being trafficked in adoption racked due to the lack of an effective protection mechanism. The court went to create an appropriate mechanism to fill the gap, especially in the context of inter country adoptions.⁶The Supreme Court held that “ children of prostitutes should not be permitted to live in the inferno and the undesirable surroundings of prostitute homes”, the apex court issued directions to ensure the protection of human rights of such persons. The court also desired that the ground realities should be tapped with meaningful imperatives, apart from the administrative action which aims at arresting immoral traffic of women under the ITP Act through inter-state or Interpol arrangements and the nodal agency like the CBI is charged to investigate and prevent such crimes. The Supreme Court also observed about children of the prostitutes and their right to equality of opportunity, dignity, care, protection and rehabilitation.⁷ The Hon’ble Supreme Court observed that: “trafficking in women and children has become an increasingly lucrative business especially since the risk of being prosecuted is very low. Women and children donot usually come to the brothels on their own will, but are brought through highly systematic, organised and illegal trafficking networks run by experienced individuals who buy, transport and sell children into prostitution. Traffickers tend to work in groups and children being trafficked often change hands to ensure that neither the trafficker include gang members, police, pimps and even politicians, all working as a nexus. Trafficking networks are well organised and have linkages both within the country and in the neighbouring countries. Most traffickers are men. The role of women in this business is restricted to recruitment at the brothels.”⁸

Child Prostitution-

It is the practice whereby a child sells his or her body for sexual activities in return for remuneration or any other form of consideration. Child pornography laws include a photograph or videotape including undeveloped film or videotape as well as data stored electronically which can be converted into a visual image.

Provisions of The Immoral Trafficking (Prevention) Act

Child is a person who has not completed the age of 18 years.⁹The Supreme Court held that the expression “dealing with offences under the Act” includes detection, registering of the crime and investigation of the crime. Section 13 provides for appointment of special police officer for each area to be specified by the State government for dealing with offences under the act.¹⁰

Prostitution is not only inherently harmful and dehumanizing to women and children; it also fuels the growth of trafficking in persons, or modern-day slavery. Women and girls, worldwide, are lured to foreign nations with promises of jobs. Then, they are forced into prostitution. The recruitment, harbouring, transportation, provision or obtaining of a person for the purpose of a commercial sex act, in which a commercial sex act is induced by force, fraud, or coercion or in which the person forced to perform such an act is under the age of 18 years.¹¹

⁵Sakshi v. Union of India (1999) 8 SCC 591 (India)

⁶ Lakshmi Kant Pandey v. Union of India AIR 1984 SC 469 (India)

⁷Gaurav Jain v. Union of India AIR 1997 SC 3021 (India)

⁸BachpanBachaoAndolan v. Union of India (2011) 5 SCC 1 (India)

⁹ Sec.2(aa)

¹⁰ Delhi Administration v. Ram Singh AIR 1962 SC 63 (India)

¹¹US Trafficking Victims Protection Act (2000)

Prostitution is not a Trade-

The Allahabad High Court held that if a profession or trade that is an “ inherently immoral activity like prostitution,” then “it is open to the state to impose a total ban; and no one can claim any fundamental right to carry on such an activity.”¹²

The court observed that, it obligates both Central, State & Union territories to protect them from the evils (child abuse), provide free and good education and make them good citizens of this country.¹³

Child Prostitution is a kind of child labour, a force, a threat used used to confine them. They cannot seek the help to release themselves. Child prostitution is a commercial exploitation of women and children, minors who are sexually abused used for monetary gain. It involves mental abuse, physical abuse, pornography, prostitution, smuggling of children for unlawful purposes. They are kidnapped, thrown into slavery, forced to labour and engage in other unlawful activities for economic gains by the traffickers. Treated as slave, they live a life of captivity. There condition is unpleasant and highly disturbing. They remain malnourished without proper food and basic human requirements.

International Law's on Prostitution-

- 1) Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children(2002)
- 2) UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW-1981)
- 3) Convention on the Rights of the Child (1989)
- 4) ILO Convention 182 - Elimination of the Worst Forms of Child Labour.
- 5) Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2002)

CONCLUSION

The children are the future of tomorrow they should be given good nourishment at home itself. Proper care and treatment never leads a person to a wrongful path. A person should be highly spiritual so as to differentiate between right and wrong morally.

“Children require the protective umbrella of society for better growth and development as they are not in a position to claim their entitlements. State is the foster father for all those children, who are deprived of parental care because it is not on their physical and mental well-being that the future of nation depends. Ideally speaking, every home should be a “child care home”, but the ground realities are different. Materialism has adversely affected familial relationship....homes are breaking and indifference has settled in community behaviour.”¹⁴

¹²Kaushailiya v. State AIR 1963 Ald. 71 (India)

¹³Childline India Foundation and another v. Allan John Waters and others (2011) 6 SCC 261 (India)

¹⁴Legal Aid Committee v. Union of India AIR 1989 SC 1278 (India)