

**THE UNGUARDED AND POWERLESS; CHILD PROSTITUTION IN
INDIA**

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ABSTRACT

“*Lolita, light of my life, fire of my loins*”, this quote encapsulates the mind of a paedophile, of a perverted, desperate mind. What Vladimir Nabokov’s novel *Lolita* was, however, a very subtle version of sexual exploitation of a child. A child is someone who brings in a new zeal and vivaciousness into everyone related to him/her. But, not all of us are lucky enough to live the perfect, innocent, nostalgic life a child should. In today’s ever greedy, lustful and broken world, most children are forced into the immoral business of prostitution. The sad part is not that they are doing something they would never want to but that when they realize that they should get out of it, it is too late. The stigma present in our judgemental society is so deeply rooted that hardly anyone speaks up for those being battered through the clutches of humans’ sins. With India, the biggest market of child prostitution, the authors have tried to throw light on this menace and that how India is not one isolated country. The teeth of this disease are so deep that many examples of generations of prostitutes are being produced due to it being a ‘taboo’. In this paper, a genuine and a humble request by two concerned citizens has been made in order to bring out the lacunae in the system, in the minds and the inadequacies of previous laws. We are moving fast towards a country which is economically, technologically strong, but, in that quest, we are forgetting that human security and that too, of that vulnerable class consisting children are still sexually exploited, trafficked, abandoned and lastly, hurt.

Keywords

Child Prostitution, Devadasi, Juveniles, Exploitation, Menace.

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INTRODUCTION

Wherever the human race becomes vulnerable in the hands of lamentable poverty, family dysfunctions, hunger, unemployment, illiteracy, traditions and last but not the least the alarming population growth there is slavery and exploitation. Prostitution being one of the forms of slavery is a social phenomenon that is as old as the human race. Although, its expositions have been ever changing in congruous with the social change. In this paper, the authors aim to point out how such continual changes in these age old manifestations are leading us to nothing but mortification when it comes to the cumulative lowering of the age of the individuals actively engaged in the commercial sex trade. There needs to be this realization that none of these under aged kids voluntarily choose to be sexually exploited, it isn't a game of *gilli-danda* that they volunteer to play. These child workers do not enter the trade to embrace it rather these children are victims of cruelty and power at the houses of the ones with authority. This profession does not only degrade the young ones by traumatizing them at a psychological level but ruin them physically to the extent of death by making them rapidly vulnerable to Sexually Transmitted Diseases (STD) including Acquired Immune Deficiency Syndrome (AIDS), which is not curable and eventually leads to the death of the victim. Once these kinds acquire such Sexually Transmitted Diseases, they become old in the trade because of the impossibility to sell their bodies for sexual purposes due to infection which increases the demand for a fresh lot of children and this vicious trap doesn't end but only spreads.

The first inclusive legislation to deal with the issue was the Immoral Traffic Prevention Act (ITPA), 1956. The objective of the Act are twofold; on the one hand, it wants to check sexual exploitation and abuse of women and children by prescribing heavy punishments to offenders and on the other hand, it seeks to rescue victims of flesh-trade and those in moral danger by providing for a rescue and rehabilitative machinery.³ Despite the amendments, the legislation falls short of its objectives and does not prove to be very effective measure to check the commercialized flesh trade. The issue is deep rooted in human nature and the social inequalities: the law status of women and rampant poverty has contributed considerably to

³KP YADAV, TRAFFICKING AN EMERGING SOCIAL PROBLEM pg. 20 (1st ed. 2006).

social aberration among women. Without striking at the root cause of the problem, the legislation can only aim at suppression and not prevention.⁴

Constitution upholds the principles of humanism, social and economic justice and the dignity of the individual other with equal protection of law for all its citizens, victims of prostitution can by no means be debarred from these, the state is exhorted to protect women and children from exploitation.⁵Article 21 of the Constitution guarantees Right to Life interpreted by *Bandhua Mukti Morcha Case*⁶ as right to live with dignity and Article 23 of the Constitution Trafficking in Human Beings is prohibited and is a punishable offence by law. “Health and strength of women and tender age of children shall not be abused and citizens shall not be forced by economic necessity to enter into avocations unsuited to their age and strength”⁷.

The International Labor Organization (ILO) discussed a report entitled, *Global Alliance against Forced Labor*, the report starts by defining the concept of forced labor. It is not to be confused with poor working conditions or sub-standard wages. Rather ILO considers *two elements* are involved in forced labor: *firstly*, the work is exacted under the menace of penalty; and *secondly*, it is undertaken involuntarily. The report estimates that at least 2.4 million people are victims of human trafficking.⁸The National Human Rights Commission (NHRC) study highlighted that among the trafficked girls, 20.7 per cent were below 18 years and a majority were pushed into the trade at a very young age, more than 60 per cent of the victims of commercial sexual exploitation were also victims of child marriage, 32.5 per cent had been pushed into brothels while they were less than 16 years, while 21.4 per cent were in the 16-17 years age group.⁹ Child marriage, child prostitution and rape are interlinked crimes, in most of the cases, one leads to another. The stigma attached to rape is so ingrained in the society that it makes survival punishing for rape victims. In most of the cases of young girls getting raped majority of the times out of coercion end up negotiating with the accused by getting married to him because the family believes no one else would want to be with a rape victim other than the one who performed it, without taking into consideration the safety to the victim.

⁴*Id.* at 21.

⁵*Id.* at 22.

⁶*Bandhua Mukti Morcha v. Union of India* 1984 AIR 802

⁷INDIA CONST. art. 39, cl.1.

⁸*Supra* note 1, at 13.

⁹*Id.* at 19.

The failure of government in rehabilitation is reflected in the high re-trafficking rate. The study found that 17.5 per cent had been rescued once earlier; 1.8 per cent rescued twice before and 6.6 per cent rescued more than twice and more than 57.5 per cent had been arrested earlier. Without proper rehabilitation, it was observed, they have no option but to return to the brothels.¹⁰ Arbitrary estimates by experts claim that as many as 3 out of every 5 girls in our country is sexually abused. In fact 75% of the sexual crime in India is against minor.¹¹

HISTORICAL BACKGROUND

Devadasi or Devaradiyar were known to be the “female servant of god” were women who were dedicated to god for purpose of worship and service of a deity or a temple for the rest of her life, they were considered to be given in marriage to god. These women enjoyed a high level of social status as they learnt dance and music and as many as 64 types of arts, an essential part of their curriculum at temple worship; they specialized in Indian classical dance forms like Bharatnatyam and Odissi.¹² The Devadasi system was originally introduced as a part of the tantric beliefs and methods of worship in certain temples of India to provide regular female attendants to the presiding deities. But over a period of time the system degenerated and was put to great misuse, giving enough scope and opportunity to the critics of Hinduism to speak about it disparagingly. It is completely wrong to believe that Hinduism favours the Devadasi system. If that was so it would have been practiced in every Hindu temple, not just a few.¹³

Devadasi was considered to be a religious practice and it was carried out with utmost pious intentions, a form of worship, to portray devotion. But a century ago, a campaign was launched to portray devadasis as prostitutes and as immoral women. The smear campaign continues to this date. It has become customary to talk of abolition of the ‘evil’ of devadasi system. The system was legally abolished many years ago in all states where the practice was prevalent. The institution is almost dead and exists today as a fossilized version of its original

¹⁰KP YADAV, *TRAFFICKING AN EMERGING SOCIAL PROBLEM* pg. 19 (1st ed. 2006).

¹¹*Id.* at 3.

¹²KrithihaRajam, *How Devadasis went from having high social status to being sex slaves and child prostitutes*, YOUR STORY, (May, 2017), <https://yourstory.com/2017/04/devadasis-india/>.

¹³Jayaram V, *Hinduism and Prostitution*, (Apr. 28, 2013), HINDUWEBSITE.COM, http://www.hinduwebsite.com/hinduism/h_prostitution.asp.

form.¹⁴This extremely religious practice of this cult is drastically misunderstood by the general public as the intention to serve their deity is often confused with attending to the needs of general public which includes fulfilling sexual needs of these men around; this led to the belief that they practice prostitution.¹⁵ This is one of the most exploited professions which resulted in the ban of this practice which led to the extreme discontent among the worshipper of 'Yellamma', deity in whose name the dedication is made.¹⁶

In the present scenario, Devadasis are prime contributors child prostitution and commercial sex trade who are contributed to temples when they are of four or five years. Majority of them belong to the Dalit community; belonging to the Madoga and Valmiki castes, the most underprivileged castes in India. Their future is ruined by their own parents as they play the role of a pimp and sell their daughters for commercial purposes to earn and fill the stomach of the entire family.¹⁷ Most of these families are looked down upon by the upper caste, guided by the Hindu caste system; they are not even allowed to enter the premises of the village, ostracized because of their social status.¹⁸Hence, their unemployment and illiteracy is inevitable, if some of them even manage to study that level of education they procure is not enough to maintain influx of a stable income in the family. At most, they end up working as sewage cleaners or rag pickers and therefore the parents are forced to become pimps of their own daughters and dedicate them in the name of a 'Devadasi' and these girls become the sole bread earners of the family.

CHILD PROSTITUTION IN INDIA

According to a 1998 report of the DWCD around 30 per cent of the sex workers in India are below the age of 18 years, while 40 per cent were introduced to the trade as minors.¹⁹However the Joint Women's Programme (JWP), a Delhi-based women's organization, has put the ratio of under-16 sex workers at a high of 68 per cent.²⁰ India is both a destination and transit country for traffickers, faced with tackling both inter-province and

¹⁴ Anil Chawla, *Devadasi – Sinners or Sinned against*, SAMARTHBHARAT.COM, (Aug. 28, 2002), <http://www.samarthbharat.com/files/devadasihistory.pdf>,

¹⁵K.L.Kamat, *The Yellamma Cult*, KAMAT'S POTPOURRI, (Jul.31st, 2000), <http://www.kamat.com/kalranga/people/yellamma/yellamma.htm>.

¹⁶*Supra* note 12.

¹⁷*Supra* note 9.

¹⁸*Supra* note 15

¹⁹ KP YADAV, *TRAFFICKING AN EMERGING SOCIAL PROBLEM* pg. 156 (1st ed. 2006).

²⁰*Id.*

inter-national trafficking. 5,000 to 10,000 Nepalese children, mostly between the ages of 10 and 18, are trafficked into India annually.²¹ Most of them end up in the sex trade while some become domestic workers. A study by the Indian Health Association released in 1993, quoted in *Child Trafficking in India* published by The Haq Foundation in 2001, found that 10 per cent of children engaged in commercial sex are children of sex workers, about 40 percent had been abducted and 5 per cent had been victims of rape and 8 per cent of incestuous relations.²² Child prostitution in India is treated under the following heads:

1. Rise of Child Prostitution in India

The number of registered cases of commercial child sexual exploitation is on an alarming rise with children being kidnapped, trafficked, and sold for the purpose of forcing them into the sex trade. Many surveys have been conducted to find out the extent of child prostitution. Dr. Gilada's paper on perspectives and positional problems of social intervention" shows that, "70% of women are forced into prostitution and 20% of these are child prostitutes. "Statistics of the survey done show:-City Population Prostitute Population Bombay 10 million 100,000, Calcutta 9 million 100,000, Delhi 7 million 40,000, Agra 3 million 40,000."²³

Between 2013 and 2014, at least 67,000 children in India went missing, of whom 45% were minors trafficked into prostitution.²⁴ According to the National Crime Records Bureau, a girl is abducted every eight minutes in India.²⁵ The 2013 report of the National Crimes Records Bureau reveals there were 48,338 recorded cases of child rape from 2001 to 2011.²⁶ In 2001 there were 2,113 cases recorded, while in 2011 there were 7,112, a rise of 336%. The report also revealed that 43% of these rape cases were abducted minor girls.²⁷

A total of 3,490 cases of child trafficking (consisting of cases under section 370 & 370A IPC, importation of girls from foreign country (section 366B IPC), procurement of minor girls (section 366A IPC), buying of minors for prostitution (section 373 IPC), selling of minors for prostitution (section 372 IPC) and cases under Immoral Traffic (P) Act) were reported in the

²¹*Id.* at pg. 159.

²²*Id.*

²³Vijeta Verma, *Periodic Research Commercial Sexual Exploitation of Children*, SOCIAL RESEARCH FOUNDATION (Aug. 2013), <http://www.socialresearchfoundation.com/periodicresearch/30.%20vijeta%20verma.pdf>

²⁴*Half of India's missing children last year were sold into prostitution*, SCROLL.IN, (Dec. 20, 2017), <https://scroll.in/article/677280/half-of-indias-missing-children-last-year-were-sold-into-prostitution>

²⁵*Id.*

²⁶*Id.*

²⁷*Id.*

country during 2015.²⁸ 11 cases of 'buying of minor for prostitution (under section 373 of IPC)' and 111 cases of 'selling of minors for prostitution (under section 372 of IPC)' were registered in the country during the year 2015 against 14 and 122 such cases registered in the year 2014 respectively. Only Maharashtra, Haryana, Telangana and Uttar Pradesh reported cases of 'buying of minors for prostitution'.²⁹ Out of 21,604 cases in which trials were completed, 7,690 cases ended in conviction. Thus the conviction rate under crime against children at the national level stood at 35.6%. The conviction rate under crime head 'buying of minor for prostitution' (100.0%) and juvenile Justice (Care and Protection of Children) Act, 2000 (54.5%) were highest during the year 2015.³⁰

With selling and purchasing of minors for commercial sexual trade at such an alarming rate there needs to be serious steps that need to be taken in order to protect and put a stop to this progressive growth in the crime rates against children. The authors in the last section of the research would point out a few recommendations and necessary steps that need to be taken and implemented in order to secure the rights of these affected children who contribute towards the future of our country.

2. Child Pornography and India's addiction

India has emerged as the biggest producer and consumer of child pornography despite abolition of such material online, an offending video is created in India every 40 minutes and Kerala tops the list in uploading such content while Haryana leads in viewing it, on mobile.³¹ Alarmingly, 35-38 per cent of the total porn uploaded on the web is related to children or teenagers with Kerala, Haryana, Assam, Punjab, Bihar, and Delhi are amongst the biggest contributors towards child pornography.³² The Director of the Indian Cyber Army (ICA), said: 'The content and consumers of child pornography are growing at a sharp rate. There are no exact statistics but our findings show that search engines get over 1, 16,000 queries on every single day and that is a really significant amount of requests for this

²⁸ Crime In India, *Snapshots- 2015*, Pg.3, 2015

²⁹ Crime In India, *Ch. 6- Crime against Children*, Pg. 101, 2015

³⁰ *Id.* at 102.

³¹ Shashank Shekhar, *India has one of world's worse rates of online child pornography despite crackdown, cyber experts reveal*, MAIL ONLINE INDIA, (Sep. 5, 2017, 11:19 PM), <http://www.dailymail.co.uk/indiahome/indianews/article-4855694/India-world-s-worse-rates-online-child-pornography.html>

³² *Id.*

country.³³

3. Juvenile Care Houses: Hell Holes of India

Many of the child rape cases take place in juvenile justice homes i.e. observation home, special home, or children's home or shelter home set up, certified or recognized and registered respectively under sections 8, 9, 34, sub-section (3) of section 34 and section 37 of the Juvenile Justice (Care and Protection of Children) Act.³⁴ It will not be an understatement to state that juvenile justice homes, established to provide care and protection as well as re-integration, rehabilitation and restoration of the juveniles in conflict with law and children in need of care and protection, have become India's hell holes where inmates are subjected to sexual assault and exploitation, torture and ill treatment apart from being forced to live in inhuman conditions. The girls remain the most vulnerable.³⁵

Not only are these Juvenile Justice Homes a center for child sexual exploitation but such heinous crimes like trafficking of children for commercial sexual exploitation are also carried out at various orphanages where a child is supposed to be provided with utmost care and should set examples of great values. Manager of Sarbabhowmik Sishu Ananta Ashram, Deepak Bal was accused for sexual exploitation of 10 out of the 90 teenaged girls residing at the orphanage; the administration had sealed the orphanage.³⁶ On further medical examination if these girls, the acquisition turned out to be true and these girls stated that he used to sexually exploit these girls on promise of marrying them.³⁷

4. Policy Initiatives against Trafficking and Commercial Sexual abuse in India

The union government has directed the state governments to draft plans for action against trafficking in persons at the state levels and has also circulated guidelines for these; according to the National Human Rights Commission and surveys by various NGOs the following are considered 'high-traffic' states- Andhra Pradesh, Uttar Pradesh and West Bengal, there is

³³*Id.*

³⁴*Annual Reports of the National Crimes Records Bureau, Ministry of Home Affairs, www.ncrb.nic.in*

³⁵ India's Hell Holes: Child Sexual Assault in Juvenile Justice Homes, *Ch. 1 Executive Summary and Recommendations*, Pg. 1, 2013

³⁶*Assault in orphanage, THE TELEGRAPH, (Aug. 20, 2012),*
https://www.telegraphindia.com/1120820/jsp/odisha/story_15872879.jsp

³⁷*Id.*

trafficking also within what is known as the 'Pink Triangle' which consists of Delhi, Jaipur, Agra, Uttar Pradesh an area where there is tourism at a high rate along high-density transport routes.³⁸ One of the biggest loopholes in the functioning of our government is the prime focus on rehabilitation of victims rather than the focus should be to prevent it from happening in the first instance, there is no heed being paid to combating or curbing trafficking networks. Most reporting states have conducted field based research and reports from most states are that corruption and gender discrimination attitudes are widely prevalent among law enforcement bodies, especially the police.³⁹ The Government of India works closely with UN agencies such as the UNICEF, UNIFEM, UNHCR, in its efforts to combat trafficking in children and other persons. India's national plan for action on Child Trafficking was in fact drawn up principally by the Department of Women and Child Development, the review the implementation of the plan, numerous sensitizations programmes under it, development of documents and collation of information are also being jointly undertaken.⁴⁰ Ninth SAARC Summit expressed concerns at the trafficking of women and children within and between countries; they welcomed the finalization of the draft text on the Regional Convention on Combating the Crime of Trafficking in Women and Children for Prostitution and noted that this would be a vital instrument in dealing with this problem.⁴¹

The victims of the traditional form of sexual exploitation known as the devadasi tradition are members of self-help groups established by the Karnataka Government. Launched in 6 districts of the state, the programmes offer skill development activities like making incense, tailoring and handloom weaving and helping these women to secure employment, the programme is also has also been tied up with the Karnataka State Industrial Development Corporation (KSIDC) for marketing of the goods made by beneficiaries.⁴² The Andhra Pradesh state government finalized a rescue policy for child victims of trafficking, the drought prone areas of the state yield large bodies of migrants, always a rich opportunity for trafficking women and children and using the for purposes of trade.⁴³ The government has also done surveys on the extent of the practice of the *Jogin* tradition, dedicating children to

³⁸ *Id* at 166.

³⁹ *Id*.

⁴⁰ *Id* at 169.

⁴¹ *Ninth SAARC summit male*, SAARC TOURISM, <http://www.saarctourism.org/ninth-saarc-summit.html>

⁴² *Id* at 172.

⁴³ *Id*.

temple of gods for sexual prostitution subsequently.⁴⁴ Madhya Pradesh state government's age-old scheme 'Jabali' for Children works with voluntary organization in the attempt to "eliminate commercial sexual exploitation" in the state, focusing on children in certain castes and tribes where trafficking and such exploitation is more prominent, Jabali not only provides shelter for victims, it also provides training in skills that can provide alternate sources of income and make these kids independent and self-sufficient.⁴⁵ Track child, Zipnets, Swadhar shelter homes, Ujjwalla and toll free children's helpline number amongst others are various NGOs and also initiatives introduced by the government of India in order to track missing kids and look into the rehabilitation of victims of commercial sexual exploitation.

Legal Status of Child Prostitution (Home and Away)

The legality of child prostitution in India and in other countries is marred with the fact that a huge amount of hullabaloo is created because of the stigmatizing nature of it since its inception. Child prostitution is covered under various Indian and International statutes which the authors have tried to bring forth in the paper. The problem, though, is not the formulation of those laws but their implementation which is still being used as a cushion cover for the perpetrators.

1. Indian Laws

(1.i) The Constitution of India

The Constitution framers were quite sensitive when it came to catering to the needs of the victimised child. As envisaged by A.V. Dicey, the rule of law includes:

- (a) Supremacy of law,
- (b) Equality before the law,
- (c) Predominance of legal spirit.⁴⁶

This discourse of Dicey's vision has been followed by the Constitution framers. Thus, Article 21 guarantees the protection of human life with dignity. Article 23 is the right against exploitation. This article makes a duality of narrative in its reading: *firstly*, traffic in human

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ A.V. DICEY, THE LAW OF CONSTITUTION, 198 (8th ed. 1885).

beings, beggar or any kind of forced labour is prohibited⁴⁷ and *secondly*, any kind of contravention of the first clause is an offence punishable under law.⁴⁸ Therefore, the Constitution clearly makes out from the very onset that trafficking in any form is prohibited and would be punishable under law. In *Bachpan Bachao Andolan v. Union of India*⁴⁹, the Apex Court of the country held that anything done in contravention of Article 23 or any provision affecting a child's rights is punishable in law.

Similarly, in *Raj Bahadur v. Legal Remembrancer*⁵⁰, the Court also held that trafficking of women for immoral purposes is forbidden under Article 23 of the Constitution. The Constitution has made sure that both women and children are protected and given special privilege given the frailty of their rights in the society.⁵¹ Apart from the Fundamental Rights, the Directive Principles of State Policy (DPSP) have also been enshrined keeping the safety and protection of women and children.⁵²

To protect the youth and to give the children a healthy future, the DPSP have been formulated accordingly.⁵³ Thus, in *State of Rajasthan v. Om Prakash*⁵⁴, the Supreme Court tended towards a sensitive approach for cases involving child rape. In another case involving the safeguarding of the rights of the children of the *fallen women* (prostitutes), the Supreme Court again gave directions for their protection and declaring the different treatment meted out to them as being discriminatory.⁵⁵

(1.ii) The Indian Penal Code

The State has a duty not only to protect its citizens from the bad influence in the society. It's also duty bound to provide a peaceful and healthy environment to the citizens and their harmonious coexistence. Therefore, to stop the overreaching powers of the perpetrators, India adopted a substantive law in the form of the Indian Penal Code, 1860 and a procedural law known as the Criminal Procedure Code, 1973.

⁴⁷ INDIA CONST. art. 23, cl. 1.

⁴⁸ INDIA CONST. art. 23, cl. 2.

⁴⁹ *Bachpan Bachao Andolan v. Union of India*, (2011) 5 S.C.C. 1 (India).

⁵⁰ *Raj Bahadur v. Legal Remembrancer*, AIR 1953 Cal 522.

⁵¹ INDIA CONST. art. 15 cl. 3.

⁵² INDIA CONST. art. 39 cl. e.

⁵³ INDIA CONST. art. 39 cl. f

⁵⁴ *State of Rajasthan v. Om Prakash* AIR 2002 SC 2235 (India).

⁵⁵ *Gaurav Jain v. Union of India* 1989 SCR Supl. (2) 173 (India).

The Indian Penal Code, a colonial gift envisages the wrongs against the people belonging to tender age, i.e. children. Section 315 of the Code makes the act of infanticide criminal in nature. Further, if an abandoned child is left out in the open and it results in the death of the said child, the parents would be then charged with culpable homicide or murder.⁵⁶ Similarly, a number of sections of the Code deal with kidnapping and abduction of minors.⁵⁷

Section 366A, especially makes procurement of a minor girl from one part of place to another as punishable. Also, section 366B of the Code makes the importation of a girl below the age of 21 years as punishable in the eyes of the law. The recent order passed by the Uttarakhand High Court is thus in consonance with the abovementioned provisions which make trafficking of minors a crime.⁵⁸ There lies a strict prohibition of buying⁵⁹ or selling⁶⁰ of minor girls from third parties and hence comes heavily against the brothel owners and all those earning profits arising out of such business. Apart from these, the general laws against rape⁶¹ which are applicable to everyone alike.

(1.iii) Juvenile Justice (Care and protection of children) Act

The Juvenile Justice Act (JJA), 1986, was the first of its kind which envisaged the protection and care to be provided to the juveniles. The age for boys as juveniles was set at 16 and that for the girls was set at 18 years old. Children were categorized as “delinquent” and “neglected” juveniles. Since the JJA, 1986 was formed an old law, a need to amend the same was felt.

The JJA, 2000, brought some major amendments to the previous Act and it brought a uniform age of both boys and girls to 18 years. A more elaborate law which includes the rehabilitation, care, protection⁶² and providing vocational training to the juveniles who are rescued from those trying to procure or induce them for immoral purposes. The Act also gives the state governments the powers to constitute Child Welfare Committees for any area

⁵⁶ INDIAN PENAL CODE, sec. 317.

⁵⁷ INDIAN PENAL CODE, ss. 363, 364A, 365,366,367, 368 & 369.

⁵⁸ Press Trust of India, *High Court directs Uttarakhand government to abolish begging*, HINDUSTAN TIMES (Dec.7, 2017, 21:15PM), <http://www.hindustantimes.com/dehradun/high-court-directs-uttarakhand-government-to-abolish-begging/story-Lj6k5euMAVeNisVXus3jfk.html>.

⁵⁹ INDIAN PENAL CODE, sec. 373.

⁶⁰ INDIAN PENAL CODE, sec. 372.

⁶¹ INDIAN PENAL CODE, sec. 375, 376.

⁶² JUVENILE JUSTICE ACT, sec. 31.

they deem fit.⁶³ Thus, the problem meted out in Gaurav Jain v. Union of India⁶⁴ was, to a large extent, tackled by this new act. Further, on very similar lines, this Act, making the child the focal point of its narrative makes sure that he is restored back to his parents and that is its prime objective.⁶⁵

This Act, too, was amended further in the year 2006 and then in the aftermath of the infamous Delhi gang rape in December, 2012, a new bill known as the Juvenile Justice Bill (Amendment) 2014 was introduced which was open to huge controversies.⁶⁶

(1.iv) Suppression of Immoral Traffic in Women and Girls Act, 1956

Trafficking, as a subject was first dealt in this Act. A landmark Act, the Suppression of Immoral Traffic in Women (SITA), was an Act which brought a lot of flak towards it. However, at the very first reading of the Act, it looked as a welfare Act for women prostitutes. SITA was in consonance with the UN Convention of 1950⁶⁷ which came heavily against the topic of child trafficking and brothel owners. This Act aimed at the protection of women prostitutes and the rampant disease of prostitution present in India. The mere act of offering your body to the clients came under the definition of prostitution by this Act which made it highly ambiguous.

This Act does not make prostitution illegal *per se*. However, if someone is offering the premises for the act of prostitution, he is liable to be punished.⁶⁸ The Act, with all its ambiguity failed to provide a benchmark of making the evil stop. A highly gender discriminatory and patriarchal statute believed that, *firstly*, that prostitutes must exist in the society to tame the so-called male aggressiveness and *secondly*, that individual prostitutes working on their own are a blot on the society.⁶⁹

Thus, the flak. The two provisions which came under huge scrutiny were section 7(1) and section 8B of the Act. The former makes prostitution illegal in public while the other made it

⁶³ JUVENILE JUSTICE ACT, 2000, sec. 29.

⁶⁴ *Supranote* 10.

⁶⁵ JUVENILE JUSTICE ACT, sec. 39.

⁶⁶ Biranchi Narayan, *Why the new Juvenile Justice Bill is an insult to Nirbhaya*, HUFFPOST (Aug. 29, 2016, 15:11 PM), http://www.huffingtonpost.in/biranchi-narayan-acharya/passed-in-haste-juvenile-_b_8868334.html.

⁶⁷ Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others, ratified by the UNGA on 2nd Dec. 1949, w.e.f. 25 Jul. 1951.

⁶⁸ Depart. Of Women and Child Development, *Report of the National Consultation of Child Prostitution*, 1994.

⁶⁹ *Id.*

punishable, the act of soliciting customers. What this Act, meant, basically was that prostitution is pious and holy as it wears the facade behind the doors and it is illegal if it steps out of it. Also, there is no mention of juvenile prostitutes, who form a different class in themselves. Only, one solitary section (section 19) mentions the need of making welfare homes for such class.⁷⁰

The result of these loopholes was that brothels, they kept on growing exponentially.⁷¹ Hardly the police ever conducted raids and it did no damage to this so called “scourge” of our society. Thus, this Act needed some changes and it came in the form of the Immoral Traffic (Prevention) Act, 1956.

(1.v) The Immoral Traffic (Prevention) Act, 1956.

The Immoral Traffic (Prevention) Act (PITA) was formulated to combat the inadequacies of the parent legislation i.e. SITA. The PITA, though on similar lines to SITA is different in essence as this Act includes eunuchs under its ambit and also because women police officers have been appointed to work on the inter-state trafficking.⁷² Also, this Act includes the possibility of child prostitutes and comes heavily down on the perpetrators.

The courts, too, have been cooperative when it comes to fight off child prostitution. In *Munni v. State of Maharashtra*⁷³, the court held that the decision of the Child Welfare Committee is to remain final on the child’s protection. Sections 3-9 are penal provisions and section 5 of the Act states that if a person procures, induces or takes the child for the purpose of trafficking, a minimum sentence of 7 years extending to life imprisonment can be levied on him.⁷⁴ Further, in *Prerna v. State of Maharashtra*⁷⁵, the divisional bench gave guidelines to not only the child’s protection but his proper rehabilitation and reformation, too.

Apart from these laws, the government of India, both at the State and the Centre level have vowed to protect the children from prostitution and trafficking. Statutes like Child Labour (Prohibition & Regulation) Act, 1986, Transplantation of Human Organs Act, 1994,

⁷⁰ Chapter 4, *Indian Laws on Child Prostitution- an Appraisal*, http://shodhganga.inflibnet.ac.in/bitstream/10603/63874/11/11_chapter%204.pdf.

⁷¹ *Supra* note 23.

⁷² *Supra* note 23.

⁷³ *Munni v. State of Maharashtra* MANU/MH/0754/2011 (India).

⁷⁴ *Ms Khushi Harikrishan v. State of Maharashtra* 2006 Cri. L.J. 612 (Bom).

⁷⁵ *Prerna v. State of Maharashtra* 2003(2) Mah. L.J. 105.

Protection of Children from Sexual Offences Act, 2012, etc. have been working in harmony with each other to end this surge of prostitution and trafficking on the national level, at least.⁷⁶

(2) International Legislation(s) upholding the rights of the trafficked child⁷⁷

(2.i) UN Convention on the Rights of the Child

A major breakthrough for child's rights at the international scenario, The UN CRC was ratified on 11th December, 1992 to which the member countries agreed to fight for child's rights. This convention contains the rights for the survival, protection and development of children including education, sanitation, health, family environment, etc. India is a signatory to this convention.

(2.ii) The Yokohama Global Commitment, 2001

Some 134 countries came together again to fight the menace of sexual exploitation of children in Yokohama, Japan.⁷⁸ This Global summit, again, vowed for a perfect living of that class of humans known as children

(2.iii) UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children

Ratified on 5th May, 2011, this protocol aimed at preventing the widespread trafficking across the borders prevalent in countries, especially in the Third World Countries.

(2.iv) The SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution

This convention dealing with the SAARC countries is determined to combat trafficking and prostitution related to women and children. Provisions like extradition, mutual legal assistance, exchange of information, setting up of Regional Task Force, etc. have been

⁷⁶ NCRB report, *Crime against Children- Chapter 6*, 2015.

⁷⁷ KP YADAV, *TRAFFICKING AN EMERGING SOCIAL PROBLEM* pg. 21 (1st ed. 2006).

⁷⁸ *Id.* at pg. 65.

amassed in this convention of societal benefit. India signed this convention on 5th January, 2012 and ratified it too.⁷⁹

(2.v) UN Optional Protocol on the Involvement of Children in Armed Conflict and the Sale of Children, child Prostitution and child Pornography

As the name goes, this optional protocol is another to combat the problem of children getting victimised by armed conflict, child prostitution or child pornography and hence is of immeasurable importance.

Prostitution of Child: International Scenario

The menace of child prostitution is rampant throughout the globe. Both, the Developed and the Developing Nations, with the important inclusion of the Least Developed Countries are undergoing this phenomenon. To bring home the point of prostitution of children throughout the world, the authors would like to give a handful of examples.

1. Child prostitution in England

In 1932, the British socialist-feminist Dora Russell remarked, “Children, like women and proletariat, are an oppressed class.”⁸⁰ The position, though, has not changed much. Child prostitution remained a consistent, shadowy phenomenon behind the mask of sophistication in the British society from 1880s onwards. Only when the media campaigns, the work of NGOs and the awareness of the citizens grew did the world come to know about it.⁸¹

What affects the child prostitution in England is the juvenile delinquency, the family problems and the inadequacies of economic parity within the people of tender ages. However, it was always thought that child prostitution in England is not that bad but a recent study conducted by surveyors consisting children aged from 11 to 18 years old have affirmed that child prostitution in England can be two or three times more than anticipated.⁸² The most infamous case in the country’s history was when nine men (of Pakistani origin) were accused

⁷⁹ K.P. YADAV, *TRAFFICKING AN EMERGING PROBLEM*, pg. 66 (1 st ed. 2006).

⁸⁰ DORA RUSSELL, *IN DEFENCE OF CHILDREN*, pg. 275 (London, 1932).

⁸¹ Alyson Brown & David Barrett, *Knowledge of Evil: Child Prostitution and Child Sex Abuse in Twentieth Century England*, 37(4), OXFORD J.S.H, 1082, 1083 (2004).

⁸² Jason Bennetto, *More Children than Ever Working as Prostitutes on Britain’s Streets*, INDEPENDENT (Jun. 28, 1998, 23:02 PM), <http://www.independent.co.uk/news/more-children-than-ever-working-as-prostitutes-on-britains-streets-1168361.html>.

and tried for conducting the immoral activity of sexually exploiting and trafficking of children.⁸³ The ever rise in the immigration after the World Wars also contributed a direct rise in the number of perpetrators and their heinous crimes of child sex abuse.

2. The flourishing business of child prostitution in Kenya

One Kenyan child out of three is involved in child prostitution, according to a UNICEF report dated in the year 2006. In a documentary named '*Sold Out Slaves: Kenya's growing Child Prostitution*' by Alexander Avilov, the abysmal position of children is depicted in rather painful living conditions where in a country which is rated one of the five most populated child prostitutes countries, "*supply exceeds demand*". Up to 30% of children between the ages of 12 to 18 years old living in the coastal areas of Malindi, Mombasa, Kilifi and Diani are involved in casual sex work.⁸⁴

According to a very recent study, up to 30,000 girls between 12 to 14 years old are being lured to the hotels and villas in Mombasa.⁸⁵ Thus, this dismal figures have only led to the ever increase in Kenya.

3. The apathy of child prostitution in Taiwan

In the Asian country of Taiwan, according to one report, crime syndicates buy young girls aged 12 to 18 and keep them in brothels⁸⁶ to satiate their own needs and hunger. Therefore, the business of child prostitution in Taiwan is on an alarming rise due to its direct link with criminals.

Being a destination country, Taiwan enjoys a wide diaspora of people flocking to it to enjoy their vacations but what also follows is the ultimate evil of child prostitution with them. The girls of these ages receive some 30-40 customers a day and are paid a minimal amount equivalent to 34 USD.⁸⁷

4. The mysterious case of child prostitution in USA

⁸³ Frances Perraudin, *Offenders in Rochdale Child Sexual Abuse Scandal 'Remain At Large'*, THE GUARDIAN (May. 16, 2017, 7:00 AM).

⁸⁴ UNICEF report, *The Extent and Effect of Sex Tourism and Sexual Exploitation of Children on the Kenyan Coast*, 2006.

⁸⁵ Josh Ruxin, *Asia Is Not Alone: Sex Tourism in Mombasa*, THE NEW YORK TIMES (Jan. 13, 2009, 16:29 PM), <https://kristof.blogs.nytimes.com/2009/01/13/asia-is-not-alone-sex-tourism-in-mombasa/>.

⁸⁶ Off Our Back, *Taiwan: Child Prostitution*, 17(10), 10, 10 (Nov. 1987).

⁸⁷ *Supra* note 84.

The ever increasing drug fixation of the American youth and them getting lured by the criminals for more is one of the biggest reasons of child prostitution in the United States. Moreover, people who are closely related to them at a tender age tend to become the evil in their lives. Up to 7 % of the youth are believed to be involved in the sex trade industry, a drastic rise of 5% since 1998-99.⁸⁸

The biggest problem with child prostitution is that it is not isolated only to the countries trying to fight off poverty. Countries like the US have around 100,000 child prostitutes every year⁸⁹ and it is really disheartening. The figures in other less developed countries like Sri Lanka, Bangladesh, Afghanistan, etc. must be more dismal which the authors have not dwelled into for obviousness.

CONCLUSION AND SUGGESTIONS

The major reason for any societal malfunction and drawback is either a lack of education or simply the unwillingness to learn even though there exists plenty of resources. To this effect, it is of paramount importance that there exists a mutual understanding between the State and the citizens. Thus, a proper perusal of welfare schemes with special emphasis on their implementation without any ambiguous interpretation to it should be done by the people. The difference between a proper State and an improper one is the understanding between the lawmakers and the people who will be affected by it.

The scourge of child prostitution is as old as time immemorial, as old as man was a savage living being. But, now, in today's world, we are not that savage anymore. We vow to abide by the law of the land so that our children live in a healthy and safe environment, so that every child gets his education, a healthy environment and a sense of security. Therefore, we need to implement the existing laws and make sure that they are not misused. The Juvenile Justice Act and the PITA have come under great scrutiny over the years for being inconsistent with changing times and shrewder criminal minds. The recent *Nirbhaya gangrape* brought the JJ Act into spotlight and thus as this society progresses, we, should progress too and give away the archaic laws from the past.

⁸⁸ Geraldine Sealey, *Exposing America's Ugly Child Sex Secret*, ABC NEWS (Dec. 13, 2017), <http://abcnews.go.com/US/story?id=90557&page=1>.

⁸⁹ Sanjay Goel, *5 Countries with Highest Rates of Child Prostitution*, CHANNEL 42 (May. 12, 2016, 17:58 PM), <http://www.channel42.in/news/5-countries-with-highest-rates-of-child-prostitution>.

In this respect, the authors would like to make some suggestions to reduce this menace but before that we should look at the factors limiting us: a) inadequate knowledge about issues and protocols and child prostitutes' rights, b) inconsistent application of issues, c) patriarchal mindset of the majority and finally, d) the prejudice and the parochial mindsets of the law makers. Therefore, keeping the abovementioned factors in mind, this problem can be cured by:

1. Educating and making the potential victims about the risks involved.
2. Educating the people about the harms of children being sexually exploited.
3. Encouraging the parents of the child to be sensitive towards children who are prone to child prostitution.
4. Encouraging the victims to come forward without getting intimidated or fearing to get judged.
5. Establishing local vigilance and surveillance teams to know about the functioning of the brothels in the area.
6. Setting up of Child Welfare Helpline(s) and advertising them throughout the country with great vigour.
7. Implementing stricter measures on the International Borders surrounding India and imposing heavy penalties on the traffickers.