

CHILD PROSTITUTION: HOW WE HAVE FAILED AS A SOCIETY?

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Abstract

A major concern globally in today's time is child prostitution. However, the sad truth is that it has still not received the sufficient attention in India because people lack the sensitivity towards the topic and are not comfortable talking about it. It is a problem which snatches childhood from a child, and rob them off their human rights to live a life full of dignity. Child prostitution can also take other forms one such form is child trafficking. Children are forcefully migrated for sexual purposes, which results in child trafficking.

There is a need for stringent laws and regulations against child prostitution as well as the issues which are associated with it, such as child trafficking, child pornography, etc. The focus of such regulations should be on all the people who are engaged in the entire conduct of child prostitution, since the very beginning till the end.

This article tries to study the scope of child prostitution and also evaluate the causes of child prostitution and the risk which those small children are subjected to. The article then shifts its focus on the laws which are present in India for child prostitution. Finally the article attempts to evaluate the trend of the issue in India and gives some solutions and recommendations to combat child prostitution.

Keywords: Child Prostitution, Child Trafficking, Human Rights, Child Pornography.

INTRODUCTION

Very often the society lacks the capability to deal with such issues which are present in the society. This results in the issues getting eclipsed. This happens more frequently in issues which involve moral obligations. Child prostitution is one such moral issue. Many crucial spheres of culture, especially the ideals which regulate around the principles of childhood, sexuality and family

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becomes answerable whenever children or young people are exposed to sexual abuses for commercial purposes. There is distribution of powers which is done unequally that makes both the children as well as the young people vulnerable to prostitution both from the family as well as the society.

One of the worst form of child abuse is child prostitution. Before getting into the details of child prostitution, it is imperative to know what is meant by the term “Child” and “Prostitution”. The Immoral Traffic Prevention Act, 1956 is the legislation which talks about trafficking of human with the intention of unlawful sexual activities. The Act defines the term “Child” under Section 2(aa) as ‘*A person who has not completed the age of 16 years. A minor under the Act is a person whose age lies between 16 to 18 years*’. Further, the Act defines the term “Prostitution” under Section 2(f) as ‘*The sexual exploitation or abuse of persons for commercial purposes*’.

In common parlance, prostitution means any act which involves promiscuous sexual intercourse or any other kind of sexual act done for hire. The term ‘Prostitution’ also finds its definition under the United Nations Convention on the Rights of the Child, 1989. The Convention defines “Child Prostitution” as ‘*Sexual exploitation of a child below the age of 18 years for remuneration in cash or kind*’. The children are forced to get themselves engaged in sexual activities for fulfillment of their basic needs such as shelter, food and clothing. So, we can say that child prostitution basically means sexual exploitation or sexual abuse of children for commercial purposes.

When a person gets any kind of benefit which is a result of commercial transaction which involves a child in any sexual activity is the onset of child prostitution. An intermediary who does the work of managing or overseeing the transaction, or a person who is engaged in the work of negotiation and exploitation of children control these children and their activities. Children who are engaged in prostitution are sent at various places for fulfillment of sexual activities such as brothels, bars, hotels, homes, clubs and even on streets. These activities are not always conduct of an organized network. It may be carried out by individual pimps at small scale or through criminal networks at large scale.

Child prostitution cases have seen a rise in recent years throughout the world. The crimes such as child prostitution or child trafficking have seen an unprecedented increase and the end

consequences are heart breaking. This illicit trade affects the victims and their families the most. The victims are not able to live a life of dignity or independence. Though, the worst thing is that the culprits actually go free and are not made to face any consequences for the sins that they commit.

Child prostitution is also related to erotic entertainment purposes. There are people who travel to various foreign locations for child sex tourism. According to research conducted worldwide, there are more than ten million people who are engaged in child prostitution worldwide. It exists in both developed as well as under-developed countries. The most common victims of child prostitution is young girls, though the number of young boys getting trapped into this illicit trade practice is also seeing a rise. The states which are party to the United Nations are making attempts to get rid of this illicit trade either under the Convention on the Rights of the Child or under the Optional Protocol on the Sale of Children, Child Prostitution or Child Pornography. There are also specific associations made to stop this practice.³

PROSTITUTION IN INDIA

Though India has not made prostitution illegal, but activities which are related to prostitution such as pimping, soliciting or maintaining brothels are made illegal. If reports are believed, there are more than 20 million prostitutes in India and more than 30% of them are minors.

History of Prostitution

One of the oldest professions throughout the world is prostitution whose origin can be traced back to the start of the organized society. Almost every country and every society in some way or the other practices prostitution.

In India, the Vedas, which are considered to be the oldest known Indian literature talks about prostitution as an established and organized institution. In Indian Mythology, there are references of celestial demigods acting as high class prostitutes, known by the name of Menaka, Rambha, Urvashi, Thilothamma. They are defined to be the perfect embodiment of feminine charm and

³ Child Prostitution, Encyclopedia, Cengage, Last visited, 21st Oct, 2021, 7:15 PM <https://www.encyclopedia.com/children/encyclopedias-almanacs-transcripts-and-maps/child-prostitution>

unsurpassed beauty, highly accomplished in dance and music. They used their charm and beauty to entertain gods as well as their guests in the Lord Indra Court, who is the Lord of the Hindu Gods. They were also sent down to earth to test the purity of the saints and their depth as well as their devotion in the penances which they were performing.

Throughout the epic Mahabharata, till the reign of Kauravas and the Pandavas, the prostitutes were common. They were considered to be a crucial part of the king's courts. In Brahmanic Bharat, each dynasty used to possess harems of aristocracy. It is very common to have concubines in aristocratic families. Kautilya's "Arthasasthra" in details talks about the codes of conduct for the prostitutes for their activities, behaviors and way of living. It also talks about the code of conducts of the people who are taking favors from them. They are given certain rights, duties as well as prerogatives. Vatsyayan was a famous Indian sage of the 3rd Century B.C. He had written many pages in his monumental written material "Kamasutra" on prostitutes and their ways of living their lives.

The famous temples of Ujjain, "Mahakala" had religious prostitutes connected to it, which made the system of holy prostitutes common in the country. Holy prostitutes were basically girls who were offered for the services of the gods and the religion by their parents. The South India recognizes these girls as "Devadasis" while North India recognises them as "Mukhies". These women were given honour as they were considered to be very essential while giving prayers. However, the monks slowly started neglecting the moral policies which their ancestors once followed, started misusing the practices which were in existence since long ago which resulted in development of prostitution underneath the garb of spiritual dedication of women to temples.

During the medieval period, a lot of importance was given to wine and ladies. The Muslim rulers recognized Prostitution which further flourished the profession underneath the royal patronage. This era made words such as "Tawaif" and "Mujra" common. During this period, prostitution even shared a nexus with the liberal arts within the sub-continent. The status of dancers and singers were raised to the upper level in the courts of the Mughal rulers. Mughal Emperor Jhangi had 6,000 mistresses in his harem which was a sign of wealth, authority and power. Towards the end of the Mughal dynasty, singing ladies and concubines came out of the royal palaces. They were not trained for any other profession and society failed to supply jobs to them. Therefore, sue to

economic downfall they had to continue the trade of sex. This position of women failed to improve throughout the British regime. Their conditions continued to deteriorate and due to the absence of management as well as regulation on part of the state, prostitution increased to great level. Economic hardships and social disabilities of women made them a victim of sex trade.

It is a known fact that it is easier to abuse a child than to abuse an adult. The exploiters use this mechanism as they are not capable to defend themselves. This attitude is the result of social, economic power, the never ending desire for experiencing new things, feeling of impunity which is related to anonymity. Moreover, there are cultures, myths and prejudice which justifies the exploration of youngster's sexual relations. For example, in Asia, some men think that if they engage in sexual activity with virgin young girls they will not be infected with sexually transmitted diseases ever and it will also cure their ill health. There is another belief that engaging in sexual activity with young virgin women will increase their virility along with bringing longevity in life and success in business.⁴

Types of Prostitutes

Broadly speaking, on the basis of their “modus operandi”, the prostitutes can be classified as follows⁵:

1. **Brothel Prostitutes:** The prostitute which carries out their activities in a brothel which is run and controlled by an ex-prostitute are known as brothel prostitutes. They work commission which are based on their sexual services.
2. **Call Girl Prostitutes:** The prostitutes which operate independently are called call girl prostitutes. They are either available independently or can be solicited by middlemen.
3. **Street Prostitutes:** The prostitutes which solicit customers on streets and take the customers to specific place of assignation are called street prostitutes.
4. **Other Types:** Prostitutes which are found in bars, dance clubs, massage parlors, etc fall under the category of clandestine prostitutes.

⁴ Shankar Megha, Legal Services India, The Veracity of Child Prostitution in India, last visited 23rd Oct, 2021, 2:35 PM, <http://www.legalservicesindia.com/article/1727/The-Veracity-of-Child-Prostitution-in-India.html>

⁵ Ibid.

Factors which results in Prostitution

It is not feasible to be able to figure out all the factors which leads to increasing trend of prostitution in our country as it is very often believed that the roots of prostitution goes deep down to each fabric of the Indian society. One factor of prostitution may be the subordination of women by men both socially and economically⁶. According to some of the researchers, factors responsible for increasing trend of trade of sex are as follows:

1. Poverty:

One of the main causes of prostitution is poverty. Poor parents are burdened financially and do not have a choice but to sell their children to earn money to fulfill family expenses. There have also been instances where children of poor families have the feeling of abandonment and they themselves run away and end up in the hands of exploiters who promise them both work and remuneration.

2. Money:

If we compare prostitution to other jobs, the salary in the former one is very lucrative. As a result of wars, epidemics or natural disasters, many children end up becoming orphans who are so vulnerable that they are ready to accept all kind of works. In such cases, prostitution comes out to be a very easy way to earn money.

3. Child Trafficking:

There are many children who are kidnapped or abducted by the exploiters themselves or by the people whom the abductors have sent. Such children are forced to engage in disgraceful sex trade against their will.

4. Rise of Sex Market:

⁶ Ibid.

If we look at the trend followed in the last four decades, there have been novel ways of communication which have made the sex trade business more subtle and industrialized. The increase in the pornographic activities has also led to rise of the sex market.

5. Abduction:

Young children, especially girls from the rural areas are abducted from their homes in the pretext of money, good job, audition in films or serials and in some cases even marriage to a boy of a rich family, but upon reaching the city they are given away to the exploiters who then forces them to engage in sex trade.

6. Devadasi System:

This system gives religious sanction to the work of prostitution. Thousands of girls in various states of India are every year given away by their parent for religious dedication. Due to a long period of living as concubines, they then move forward to prostitution in the urban areas.

7. Rape:

There are girls who at a very young age experience sexual exploitation, even rape either by their family members or other known people, which forces them to enter into prostitution. Rape is a stigma on women in the Indian society and the victims are often not accepted by their family members. Rather they face some kind of humiliation or other from every part of the society and hence they choose to enter the trade of sex as they can't find a safe place for themselves nor can they see a bright future ahead of them.

8. Children of Women in Prostitution:

Children of women who are themselves into prostitution, especially female child also end up in prostitution. The main reason for this being that these children are not accepted by the society and there is no safe place for these children. They are not able to come out of this vicious cycle neither do they have any alternate way of livelihood.

Sufferings or Miseries of the Prostitutes

Prostitutes are treated in a very inhuman way in their stay at the brothels. They are beaten up when they are small so that they fear from their owners and once they attain the age whereby they are capable enough to attract customers, they are forced to go and seduce customers. They constantly work to bring money for the owners of the brothels and are kept as house arrest so that they can't escape. They get small portions of the entire money which they earn on a daily basis. If government reports are to be believed, there are more than three million prostitutes in India and they suffer from numerous fatal diseases including sexually transmitted diseases. These sex workers don't get access to proper medical care. They are exploited sexually by their exploiters, other senior male and female prostitutes and finally by the customers who pay money for them. These children have no choice but to leave their fate in the hands of their exploiters.

Apart from facing lack of medical facilities or vulnerability to STDs, these children suffer both physical as well as psychological illness. They face physical illness including tears in their private parts, after effects of pain and torture they are inflicted with, infection and also unwanted pregnancy. On the other hand, they also face psychological illness. They may show signs of depression, confusion of sexual or personality orientation, behavioral issues such as anger or aggression, sleeping disorder, lack of self confidence, hatred towards adults, inability to trust anyone, among others.⁷

STEPS TAKEN TO END CHILD PROSTITUTION

Child prostitution is the worst form of Child Labour. It is a kind of force or threat which they are subjected to for confining them. Children are not able to seek help for themselves. It is the sexual exploitation of minors for monetary benefits. There have been many steps taken at both national and the state level for controlling the trade of sex. However, for the purpose of this study, the Authors have restricted their research only to the national level.

There have been steps taken by the Indian government to combat child prostitution. Some of them are mentioned below:

⁷ Child Prostitution, Encyclopedia, Cengage, Last visited, 25th Oct, 2021, 7:15 PM
<https://www.encyclopedia.com/children/encyclopedias-almanacs-transcripts-and-maps/child-prostitution>

1. The Indian Constitution drafted in 1950

Constitution of any nation is the vehicle responsible for its progress. It is the basic document which contains the first and fundamental law of the country. The Constitution is entrusted with the work of protecting the weaker sections of the society. The Indian Constitution has special provisions for protection of women and children. Article 14⁸ enshrines Right to Equality. Article 15(3)⁹ provides for making of special laws for women and children. Article 21¹⁰ enshrines Right to life and Personal liberty. Article 23¹¹ provides right against exploitation¹². The Indian Constitution also provides for Directive Principles of State Policies as guide for states to pass legislations to in favor of women and children. The philosophy underlining DPSP is very progressive. It endeavors to protect women and children from getting exploited in every sphere of life. Article 39(e)¹³ asks the states to ensure that the strength of workers, both men and women, and even children must not be abused. Article 39(f)¹⁴ laid down various procedural as well as normative safeguards for foreigners to adopt Indian children¹⁵.

2. Indian Penal Code,1860

⁸ Article 14 of Indian Constitution: The State shall not deny to any person equality before law or the equal protection of the laws within the territory of India.

⁹ Article 15(3) of Indian Constitution: Nothing in this article shall prevent the state from making any special provision for women and children.

¹⁰ Article 21 of Indian Constitution: No person shall be deprived of his life or personal liberty except according to a procedure established by law.

¹¹ Article 23 of Indian Constitution: Prohibition of traffic in human beings and forced labour – Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

Nothing in this article shall prevent the State imposing compulsory service for public purposes, and in imposing such service the state shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

¹² Raj Bahadur v. Legal Remembrancer, AIR 1953 Cal 522.

The Judiciary held that trafficking of women for immoral purposes is prohibited under Article 23.

¹³ Article 39(e) of Indian Constitution: The State shall, in particular, direct its policy towards securing - that the health and strength of workers, men and women and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

¹⁴ Article 39 (f) Indian Constitution: The State shall, in particular, direct its policy towards securing - that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that child hood and youth are protected against exploitation and against moral and material abandonment

¹⁵ State of Rajasthan Vs. Om Prakash, AIR 2002 SC 2235.

The Supreme Court by referring to Article 39(f) said that the Courts would follow a specific approach while dealing with cases of child rape. It being crime against humanity, the Court said that, in such cases, responsibility on the shoulders of the Courts, was more onerous so as to provide proper legal protection to these children.

The State is entrusted with the most important function of maintenance of peace and security and protects the law and order in the State. The Indian Penal Code is a substantive law whereas the Code of Criminal Procedure is a procedural law. IPC acts as an aid to the special laws which have been enacted to curb the evil of child prostitution. Section 366 A¹⁶ makes the act of procuring girls from a place to another punishable. Section 366 B¹⁷ makes the act of importing minor girls punishable. Section 372¹⁸ and 373¹⁹ of the IPC makes buying and selling of girls of any age for the purpose of trafficking or prostitution punishable. The main aim of this Section is to protecting the children from illicit acts of prostitution

3. Code of Criminal Procedure, 1973

CrPC lays down provisions for protection of girls from sexual exploitation. Section 98²⁰ aims in giving relief to any girl or woman who has been abducted and/or detained for unlawful purposes.

¹⁶ Section 366A of IPC, 1860- Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduce to illicit intercourse with another person, shall be punishable with imprisonment which may extend to 10 years, and shall also be liable to fine.

¹⁷ Section 366B of IPC, 1860- Whoever imports into (India) from any country outside India [or from the state of Jammu and Kashmir] and girl under the age of 21 years with intent that she may be or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to 10 years and shall also be liable to fine.

¹⁸ Section 372 of IPC- Whoever sells, lets to hire, or otherwise disposes of any 'person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, of knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to 10 years, and shall be liable to fine.

Explanation 1. When a female under the age of 18 years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

Explanation -2. - For the purposes of this section 'illicit intercourse' means sexual intercourse between persons not united by marriage or by any union or by any union or tie which, though not amounting to a marriage, is recognised by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasi - marital relation .

¹⁹ Section 373 of IPC- Whoever buys, hires or otherwise obtains possession of any person under the age of 18 years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, of knowing it to be likely that such person will at any age be employed or used for any purpose, shall be punished within imprisonment of either description for a term which may extend to 10 years, and shall also be liable to fine.

Explanation -1. Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of 18 years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

²⁰ Sec 98 of Cr.P.C.- Upon complaint made on both of the abduction or unlawful detention of a woman or a female child under the age of eighteen years for any lawful purpose a District Magistrate, sub-divisional Magistrate or Magistrate of the first class any make an order for the immediate restoration of such woman to he liberty or of such

It instructs the District Magistrate to order immediate restoration of any female below the age of majority to her liberty/ to her parents/ to her lawful guardian if any complain is received of her being abducted or unlawfully detained.

4. The Immoral Traffic Prevention Act, 1956

The Suppression of Immoral Traffic in Women and Girls Act, 1956 was the first enactment which mentioned the provisions for prevention of immoral trafficking in girls and women. However, the Act was not able to prove itself to be adequate and was amended in 1970 and later in 1986. The principle Act was short titled²¹ as the Immoral Traffic Prevention Act, 1956.²²

The Act does not make the act of prostitution unlawful or punishable. The main intention behind enactment of the Act is abolishing commercialization of sexual abuse and exploitation and trafficking of young children as a means of livelihood for the exploiters. The Act aims to achieve two fold objectives: firstly, punishing people who are engaged in the trade of exploiting and secondly, rescuing and rehabilitating the victims of such trades. The Act opines that men can also be subjected to trafficking. Section 9²³ of the Act provides punishment for people who are involved in such heinous crimes. The Central Government has the power to appoint trafficking officers for carrying on various activities.

5. The Juvenile Justice (Care and Protection of Children) Act, 2000

This Act was passed by the Indian Government to give legal sanction to the Convention on the Rights of the Child. The law amended and consolidated various laws in relation to children who

female child to her husband parent guardian or other person having the lawful charge of such child and may compel compliance with such order using such force as may be necessary.

²¹ The Suppression of Immoral Traffic in Women and Girls Bill having been passed by both Houses of Parliament received the assent of the President on 30th December, 1956. It came on the Statute Book as the Suppression of Immoral Trafficking in Women and Girls Act, 1956 (104 of 1956). By Section 3 of the Suppression of Immoral Traffic in Women and Girls (Amendment) Act, 1986 (44 of 1986) the nomenclature of the Act has been changed with effect from 26th January, 1987. Now it stands as THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956 (104 of 1956).

²² Sheela Barse, A Critique of the Suppression of Immoral Traffic in Women and Girls Act 1956, Neer Gaurav Research and Development Foundation, Mumbai, India.

²³ Section 9 of the IPTA- Any person who having the custody, charge or care of, or a position of authority over any person, cause or aids or abets the seduction for prostitution of that person shall be punishable on conviction with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine: Provided that the court may for adequate and special reasons to the mentioned in the judgment impose a sentence of imprisonment for a term of less than seven years.

are in need of care or protection. It has detailed provisions for protection, care, treatment, vocational training, development, education²⁴, rehabilitation of children²⁵ who are rescued from the grip of the exploiters who carry on the work of sex trade. The Act aims to cater the needs of the children by adopting such approaches for adjudicating and disposing matters which are friendly for the children's interest. Finally the recourse shall be made to various institutions established under the Act.

CONCLUSION

Child prostitution is the worst form of Child Labour. It is a kind of force or threat which they are subjected to for confining them. Children are not able to seek help for themselves. It is the sexual exploitation of minors for monetary benefits. It has various facets to it including mental and physical abuse, prostitution, pornography, child trafficking. Small children are kidnapped, forced into slavery, dangerous working conditions as labourers or engage in any other unlawful acts for the benefits of the traffickers. They live lives as captives and are treated as slaves. The conditions they are subjected to are highly disturbing and unpleasant. They are not well nourished, as they lack proper food or basic requirements to live.

Child prostitution is often hidden from the public eye. It is not an issue which only underdeveloped or developing countries face, it is a global issue but it has still not received the required global attention. The children who are into this trade are often lured to engage in sexual activities and are not there by choice. When children become a part of this trade, they face various physical and psychological abuse which is against the basic human rights of a person.

There are also children or grown up people who are able to run away from the grip of the exploiters but the trauma which they have been subjected to remains with them for their entire life. But, the number of children who are able to escape is very less in comparison to the number of children

²⁴ Gaurav Jain v. Union of India, AIR 1990 SC 292.

In a public interest litigation Writ Petition the question of justification of establishing separate hostels and schools for the children of prostitutes came up. The children of prostitutes, if not segregated from their mothers, may lead into the career of prostitution which may eventually aggravate juvenile delinquency.

²⁵ Upendra Bakshi Vs. State of U.P. AIR 1983, 2 SCC 308.

It was found that the inmates of Agra Protective Homes were living in inhuman and degrading conditions in blatant violation of Article 21 of the Constitution

who are forced to enter into sex trade. There are some children who are not able to see the adulthood as well, whereas there are others who remains sex slave for the rest of their lives.

RECOMMENDATIONS

Child prostitution is a very complex issue as it has its roots deep in the society. Thus, the Author is of the opinion that it should be handled by different angles. On the one hand, steps should be taken by the State agencies to check that no new incumbents enters into this trade, while on the other hand, the State agencies should establish rehabilitation centre for those children and even young people who are into this trade.

The State should look into the matter that all these children are provided with basic education so that they are able to love a life of dignity. They should be provided with guidance and counseling both in the school and also outside the school premises. Awareness should be spread among people about child prostitution and its ill effects. The focus of the law and the society should not merely be restricted to getting rid of child prostitution but also be towards changing the people's mentality who engage in such activities or even parents who knowingly send their children into these activities for some monetary gains by severely punishing them. This will create a fear in the mind of people who are of the same mentality.