

## MODERN DAY SLAVERY: CHILD PROSTITUTION IN INDIA

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*" Law in every country has tried to regulate prostitution so that it may be kept within its legitimate bounds without unduly encroaching upon the institution of marriage and family."*

*-Report of the Law Commission of India<sup>3</sup>*

### *Abstract*

Prostitution existed in the society from the time immemorial. Although it appears as a profession in Vedas but it was in existence much before that. Child prostitution is one of its kind and came into picture much later. Children are sexually exploited for the financial benefit of third parties. Children are pushed to prostitution as being physically weak they can't defend themselves and are easier to abuse. According to the reports of various NGOs, around 12000 to 15000 women and children are trafficked each year into country for sex trade. Although prostitution provides living to the women but the child prostitution exploits the naive minds and deprives them from their childhood often causing physical injuries like sexually transmitted diseases, unwanted pregnancy, infections etc. and also psychological traumas like depression, personality confusion, lack of self-confidence etc. In the Indian legal system many laws have been framed from time to time for the protection of the young souls from this evil practice. This paper describes the state of child prostitution in India by highlighting its causes, its consequences on the society as well as victims and also provides for the figures which show the extent of this crime in the country. Furthermore, it aims to analyze the remedies provided in the Constitution of India, the provisions contained in criminal law and various other enactments passed for safeguarding the children from such abuse. Moreover, the role played by the judiciary has also been accentuated.

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## INTRODUCTION

Prostitution is said to have existed in the society from the earliest times. It is the act of engaging in the sexual relations especially for the monetary benefits. In India, the prostitution is legal but the evil practices like pimping, pampering and child prostitution are illegal.

The term “Child” has been defined by the United Nations Convention on the Rights of the Child (UNCRC) as “a Child means every human being below the age of 18 years”.<sup>4</sup> Child prostitution designates the use of children for sexual activities in exchange for remuneration or another form of retribution (gifts, food, clothes, etc.). This activity is included under the umbrella term of sexual exploitation.<sup>5</sup> Usually the child prostitution begins from the trafficking of children. Child trafficking is defined as the “recruitment, transportation, transfer, harboring or receipt” of a child for the purpose of exploitation by the United Nations Palermo Protocol.<sup>6</sup> In the year 2017, 3535 children were trafficked and this figure was 2772 and 2914 for the year 2018 and 2019 respectively.<sup>7</sup> They are kidnapped and are pushed to sex trade. There are two ways by which the children are trafficked- by forcefully taking them away from their homes and selling them and the second one is when the traffickers convince by giving them fake opportunities like of some job etc. Primarily, these children are subject to trade in child prostitution and child pornography. According to the report of National crimes record bureau titled as, “Crime in India 2020”, a total of 39006 children were abducted and kidnapped, Uttar Pradesh having the highest cases and Manipur having the lowest.<sup>8</sup> Around 2 million women and children are trafficked for sex in the red-light area in which girls are the majority.<sup>9</sup>

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1. Understanding Child Rights , *available at:* <https://vikaspedia.in/education/child-rights/understanding-child-rights#:~:NCRC,receive%20it%20from%20the%20State>. (Last visited at Oct. 11, 2021).
  2. Fanny Busuttill, Child Prostitution, *available at:* <https://www.humanium.org/en/child-prostitution/> (last visited on Oct. 13, 2021).
  3. What is Child trafficking, *available at:* <https://www.ecpat.org.uk/faqs/what-is-child-trafficking> (last visited on Oct. 13, 2021).
  4. Department-Related Parliamentary Standing Committee on the Home Affairs, “230<sup>th</sup> report on atrocities and crimes against women and children, 2021” (March 2021).
  5. National Crime Records Bureau, “Crime in India 2020” (September 2020).
  6. Child Trafficking in India, *available at:* <https://www.childlineindia.org/a/issues/child-trafficking> (last visited Oct. 20, 2021).
  7. Sidhartha Sarkar, “Rethinking Human Trafficking in India: Nature, Extent and Identification of Survivors” 103 *The Commonwealth Journal of International Affairs* 483-495 2014.

Many definitions have been given to the child prostitution. The United Nations defines it as "the act of engaging or offering the services of a child to perform sexual acts for money or other consideration with that person or any other person". International labour organization defines it as "the use, procuring or offering of a child for prostitution". It is a pure evil as it violates them of their basic rights. Indian brothels have most of the Child prostitutes from Nepal. In most of the cases, children are not put into prostitution by their families but by pimps and brothels. Children make nearly 40% of prostitutes in the country.<sup>10</sup> In one study of 456 sex workers in Mumbai, who had been rescued by police, one-fifth of them were under 18 years and two-third of them were less than 20 years. According to a madam in Kamatipura, the average age of girls supplied to the brothels in the last two years has decreased from 14 and 16 years to 10 and 14 years. A girl between 10 and 12 years fetches the highest price. So, one can analyze the reality of child prostitution or child sex rackets in India. Child prostitution is the ultimate denial of the rights of the child.<sup>11</sup>

## **WAYS OF CHILD PROSTITUTION**

As discussed above, there are majorly three ways by which child prostitution takes place in India-

- i. Through pimps- Pimps force children to have sexual relations various methods like starvation, beating, rape, confinement, giving them drugs against their will, threats of violence against their family members and they enjoy the financial benefits derived from the prostitution of such children.
- ii. Through brothels- a brothel is an area where people engage in paid sex with the prostitutes. Often, children are used as prostitutes in such brothels. Child sex workers rescued in 2017 from west Bengal revealed that there were hidden cells in the brothels. Such cells were used to keep children in confinement and also to hide them at the time of police raids.<sup>12</sup>

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8. The Veracity of Child Prostitution in India, *available at*: <http://www.legalservicesindia.com/article/1727/The-Veracity-of-Child-Prostitution-in-India.html> ( last visited Oct.14, 2021).

9. Anuradha Nagaraj, Rescued sex workers in India reveals hidden cells in brothels, *available at*: <https://www.reuters.com/article/us-india-trafficking-brothels-idUSKBN1E71R1> (last visited Oct. 17, 2021).

- iii. Through family and friends- Sometimes members of family or friends manipulate the children psychologically and push them towards or win their trust and sell them to pimps or in brothels. A 12-year-old girl was sold to a brothel by her own grandmother for a meagre sum in 2011. Similarly, a father sold his daughter to a trafficker who claimed that the girl would work in a silk factory near Calcutta but was actually sold to a brothel's owner.<sup>13</sup>

## **CAUSES OF CHILD PROSTITUTION**

There are diverse causes of the sexual exploitation of children by the way of prostitution.

- i. Lack of education- lack of education is the biggest cause. Children have the fundamental right to education but people from lower economic backgrounds cannot afford the expensive private education and the conditions of government the schools in majority of states are so poor that they discourage the children as well as parents from enrolling them in schools. Also, the education system is such that it does not make a child employable at the young age. Parents prefer to send their child to earn a living rather than waste his time in school. Traffickers take advantage and often lure the parents with lies about better education, better job etc. for a small sum of money.
- ii. Dysfunctional family and society structure- Often there is a culture of alcoholism, gambling, rigorous patriarchy etc. at home which creates a very toxic atmosphere in the family. The children don not get the parental care and often try to find solace outside home. This is worsened by poverty and neglect, which sometimes compel them to leave their homes only to throw them in the trap of sex traffickers.
- iii. Youngs girls as the objects of desire- In different parts of the country, there is a huge demand of the Minor girls in the sex trade. This is because they are seen as objects of desires, who are obliged to satisfy the lust of men and are earlier to exploit. According to a September 2015 report in India Today, girls are “sold openly” in Agra and Patna and auctioned for their virginity.<sup>14</sup>

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10. Anne Backhaus, Daughters for Sale: India's Child Slavery Scourge, *available at*: <https://abcnews.go.com/International/daughters-sale-indias-child-slavery-scourge/story?id=20540368> (last visited Oct. 17, 2021).

11. Causes of child trafficking in India, *available at*: <https://www.savethechildren.in/news/causes-of-child-trafficking-in-india/> (last visited Oct. 24, 2021).

- iv. Ignorance and consumerism- this is a major factor especially in the present times. The urge to buy more and more materialistic stuff encourages some parents to trade their children for their own selfish needs. Nowadays, it is seen that even children are selling their bodies to keep up with their peers and own things which they otherwise cannot afford.
- v. Family prostitutes- many times, if a prostitute has a child specially a girl child, she would prefer to put her in the profession of prostitution. This could be because of the social custom or because of the rigid thinking that prostitution is easy money or can be because of the early exposure of the child towards sexual activities.
- vi. Poverty- Huge amount of money is involved in child prostitution. The poor families are either lured with the monetary benefits or are coerced into selling their children to be used in sex trade. If such poor people do not agree to send their child, the children are kidnapped. The National Crime Record Bureau (NCRB) has even reported cases where children have “disappeared”, with a frequency of one in eight minutes.<sup>15</sup>

## **CONSEQUENCES OF CHILD PROSTITUTION**

There are serious consequences of the child prostitution on the young minds. They face many challenges which leads to their mental and physical suffering. Most common effects of this evil on children are-

- i. Psychological and emotional stress- the activities of these children are mostly directed by the brothel owners and pimps. They are made to work against their will. the children involved in these practices lose their morale and give up on their lives leading them to emotional stress, anxiety, depression etc.
- ii. Physical abuse- when children are not ready to work against their will, they are usually beaten, starved, sexually abused and are forced to work. These things together make them physically very weak and often lead to their deaths. Also, sometimes permanent physical damage is caused to them with which they have to live for the rest of their lives.

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12. Supra.

- iii. Sexually transmitted diseases- The children have high risk of being attached from the sexually transmitted diseases like AIDS, syphilis, tuberculosis, anemia and others. Since, child prostitution is illegal in the country, these health issues are not properly addressed. The pimps fear of to take children to the hospital as they might get caught. So, mostly quack doctors hired by such pimps treat the children leading to more complications in their health. Girls are forced to get aborted frequently, which is done by these quack doctors. They use poor methods and equipment for this process which further endangers their life.
- iv. Drug Trafficking- Child prostitutes are made addicted to drugs. So that they can find some purpose for staying in the brothels. They are also made to sell drugs to their clients by luring them of their affects. Thus, they are involved in more crimes, further deteriorating their morale.
- v. Confinement- It has been revealed by some rescued child prostitutes that they are kept hidden cells in the brothels to abstain them from running away and also to hide them in case there is a police raid. This reduces these children to mere zoo animals, who are used in show and are again trapped in their cages. These children always live in distress of the police raids.

## **CONSITUTIONAL AND LEGISLATIVE PROVISIONS FOR CHILD PROSITUTION**

The previous sections threw light on the present scenario of child prostitution in India. Child prostitution is one of the most heinous crime. It involves violation of fundamental rights of the innocent souls. Therefore, it is the duty of the state to provide protection to the innocent souls with a view to create conditions in which every child can develop his/her personality to the fullest extent. An attempt has been made in present section to discuss various constitutional and legislative provisions in respect of prevention of trafficking of children specifically for prostitution.

### **1. CONSITUTIONAL PROVISIONS**

#### **1.1 Fundamental Rights**

CONSTITUTION OF INDIA- A LIVING DOCUMENT is the Grundnorm in India.<sup>16</sup> Part III of the Constitution of India, provides “Fundamental Rights”. It does not only provide fundamental rights but also gives them protection and a ray of hope to live a life freely. It requires necessary steps to be taken by legislature for the protection of vulnerable sections of the society. Article 15(3) enables the state to confer special rights upon women and children.<sup>17</sup> It provides that the state should make special provisions for women and children to improve the status of women and children in the society. The Constitution of India has also prohibited the deprivation of the two rights- (a) Right to life; and (b) Right to Personal Liberty, except according to the procedure established by law.<sup>18</sup> The right to life includes the right to live with human dignity, right to reputation, right to health, right to protection against abuse and right to just and humane conditions of work. Article 23(1) has prohibited “traffic in human beings” and has declared that any contravention of this prohibition, punishable by law.<sup>19</sup>

## **1.2 Directive Principles of State policy**

Part IV of the Constitution of India, relates to “Directive Principles of State Policy”, secures to the people of India including children, political, civil, economic and social rights. The main object behind the Directive Principles is to set forth the objectives to be achieved by the State, which aims to protect and save the innocent souls. In a Welfare State, the directives have been regarded as Heart and Soul of the Constitution.<sup>20</sup> Article 39(e) directs the State to give effect to its policy towards securing that the health and strength of men and women including children are not abused and they should not be forced by the economic necessity to enter avocations unsuited to their age and strength.<sup>21</sup> It imposes imperative duty upon the State to provide protection and facilities by way of suitable policies. Similarly, Article 39(f) is specifically related with right to equal opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that

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13. Govt. of A.P. v. P.L. Devi, AIR 2008 SC 1640.

14. The Constitution of India, art. 15(3).

15. The Constitution of India, art. 21.

16. The Constitution of India, art. 23(1). See also art. 21A, *inserted vide* the Constitution (Eighty-six Amendment Act, 2002 (w.e.f. April 1, 2010).

17. Charu Khurana v. Union of India, AIR 2015 SC 839.

18. The Constitution of India, art. 39(e).

their childhood and youth is fairly protected against any form of exploitation and against moral and material abandonment.<sup>22</sup> Thus, the Principles enshrined in Constitution of India imposes ultimate responsibility upon the State to provide all facilities to all its citizens including children's, by making any special provisions in its policies.

### **1.3 Fundamental Duties**

Part IV-A of the Constitution of India, titled as "Fundamental Duties." Article 51-A contains a code of fundamental duties. The provisions are made for dealing with democratic conduct and behavior of individuals or associations. Article 51-A (k) provides that it is the duty of every parent or the guardian to provide opportunities to the child for education, between the age of 6-14 years.<sup>23</sup> It is supplemented by Article 21A.<sup>24</sup> Thus, the Constitution of India has made it mandatory that the citizens must abide by and adhere to its provision.

## **2. INDIAN PENAL CODE**

The protection of particularly vulnerable children against intentional violence, abuse, cruelty or unwelcome sexual approaches, is of utmost important in a modern State like India. Insecurity of life, liberty and property tending to breeding lawlessness in the State. The Criminal Law in India has been codified in Indian Penal Code and Code of Criminal Procedure, the former is substantive law and the latter is adjective law. The India Penal Code contains various sections with respect to the commercial sexual exploitation of children. There are various sections in the IPC that either deals directly or indirectly with protection of a child. Kidnapping from India<sup>25</sup>, kidnapping from lawful guardianship<sup>26</sup>, abduction<sup>27</sup> or by any means, induces a minor girl under 18 years of age to go from one part of place to another and force her or to seduce her to have illicit course of intercourse with another person is punishable offence.<sup>28</sup> Similarly,

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19. The Constitution of India, art. 39(f).

20. The Constitution of India, art. 51-A(k), *inserted vide* the Constitution (Eighty-six Amendment Act), 2002 (w.e.f. April 1, 2010) after taking into consideration the 165<sup>th</sup> Report of the Law Commission of India and the recommendations made by standing committee of parliament.

21. The Constitution of India, art. 21A.

22. The Indian Penal Code, 1860 (Act 45 of 1860), s. 360.

23. The Indian Penal Code, 1860 (Act 45 of 1860), s. 361.

24. The Indian Penal Code, 1860 (Act 45 of 1860), s. 362.

25. The Indian Penal Code, 1860 (Act 45 of 1860), s. 366A.

Section 366 B makes the importation of a girl below the age of 21 years punishable.<sup>29</sup> These provisions intend to punish the imports and exports of girls for commercial sexual exploitation. Section 372<sup>30</sup> and Section 373<sup>31</sup> provides punishment for selling and buying a person under the age of 18 years of either sex for the purpose of prostitution, illicit intercourse or for any other immoral purpose. These Sections primarily intend to provide protection to the minors even against his/her own parents or lawful guardians. The object behind is to curb prostitution by attacking the fountainhead of the heinous crime. Further, Punishment of imprisonment extending up to 1 years has also been provided for the offence of unlawfully compelling any person to labour against the will of that person.<sup>32</sup> So no child can be unlawfully compelled to labour against his/her will if the employment of a child is physically, socially and morally harmful to his/her personal growth. The sexual abuse of children has also been provided in the present legislation by protecting it within the provisions of sexual offences. The definition of rape has been provided under Section 375,<sup>33</sup> and punishment has been given under Section 376.<sup>34</sup> Section 377 makes all acts of carnal intercourse against minors punishable.<sup>35</sup> The provision intends to cover sexual violence against boys. The Law Commission in its 172<sup>nd</sup> Report recommended the substitution of definition of rape by definition of sexual assault.<sup>36</sup> The commission noted, “Not only women but young boys are being increasingly subjected to forced sexual assaults. Forced sexual assaults causes no less trauma and psychological damage to a boy than to a girl subjected to such offence. Boys and Girls both are being subjected to sexual intercourse too.”<sup>37</sup> Hence, the report acknowledged that boys too are victim of commercial sexual exploitation.

### 3. CRIMINAL PROCEDURE CODE

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26. The Indian Penal Code, 1860 (Act 45 of 1860), s. 366B.
  27. The Indian Penal Code, 1860 (Act 45 of 1860), s. 372.
  28. The Indian Penal Code, 1860 (Act 45 of 1860), s. 373.
  29. The Indian Penal Code, 1860 (Act 45 of 1860), s. 374.
  30. The Indian Penal Code, 1860 (Act 45 of 1860), s. 375, *substituted vide* The Criminal Law (Amendment) Act, 2013 (w.r.e.f. February 3, 2013).
  31. The Indian Penal Code, 1860 (Act 45 of 1860), s. 376, *substituted vide* The Criminal Law (Amendment) Act, 2013 (w.r.e.f. February 3, 2013).
  32. The Indian Penal Code, 1860 (Act 45 of 1860), s. 377; See also in *Navtej Singh Johar v. Union of India*, AIR 2018 SC 146, the Apex court held that consensual sexual relationship between two adult homosexuals, heterosexuals or lesbians is no more an offence under Section 377 of the code.
  33. Law Commission of India, “172<sup>nd</sup> Report on Review of Rape Laws”, Government of India (March, 2000).
  34. *Ibid.* Chapter 3 para. 3.1.

The Criminal Procedure Code also provide protection to a child from sexual abuse and violence. Section 154 proviso to sub-section 1 of Code of Criminal Procedure, provides that when an offence of outrage of modesty, rape or word intended to insult the modesty of a woman has been committed, then First Information Report shall be recorded by a woman police officer or any woman officer.<sup>38</sup> Further proviso to Section 160 of Code of Criminal Procedure, provides for recording of statement of a child below 15 years of age, woman or a mentally or physically disabled person shall take only at the place of where he/she resides.<sup>39</sup> In addition to this, Section 353 provides that every judgment shall be pronounced in open court, where access of public generally allowed.<sup>40</sup> But a provision has been made in where the inquiry into and trial of any offence in certain cases shall be conducted in camera.<sup>41</sup> The object behind the provision is to given special protection to children against probable indignities and inconveniences.

#### **4. THE IMMORAL TRAFFIC PREVENTION ACT, 1986**

The present legislation is only the legislation which deals exclusively with prevention of immoral trafficking. The Act aims to prevent trafficking in persons for commercial sexual abuse and exploitation. The Act defines ‘prostitution’ as the sexual exploitation or abuse of person for commercial purposes and the expression prostitute should be construed accordingly.<sup>42</sup> Under this act, child means a person who has not completed 16 years of age<sup>43</sup> and a minor means a person who has completed the age of 16 but who has not completed the age of 18.<sup>44</sup> Section 2<sup>45</sup> provides wider definition of brothel and Section 3<sup>46</sup> provides for the punishment of any person for keeping a brothel or allowing premises to be used as brothel.

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35. The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 154(1). See also in *Lalita Kumari v. Government of Uttar Pradesh*, AIR 2014 SC 187, the Supreme Court held that the word “Shall” leaves no discretion in police officer to hold preliminary inquiry under Section 154 of the code.

36. The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 160(1), *substituted vide* The Criminal Law (Amendment) Act, 2013 (w.r.e.f. February 3, 2013).

37. The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 353, 326.

38. The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 327(2).

39. The Immoral Traffic (Prevention) Act, 1956, s. 2f.

40. The Immoral Traffic (Prevention) Act, 1956, s. 2(aa). As per The Immoral Traffic (Prevention) Amendment Bill, 2006 and The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018, child means a person under the age of 18 years, whilst omitting the definition of major and minor.

41. The Immoral Traffic (Prevention) Act, 1956, s. 2(cb).

42. The Immoral Traffic (Prevention) Act, 1956, s. 2(a).

43. The Immoral Traffic (Prevention) Act, 1956, s. 3.

Furthermore, Provisions for punishment has also been provided for living on earning of child prostitute.<sup>47</sup>

The said legislation provides rigorous punishment for the person who procures or attempts to procure, induces to go from any place, takes or attempts to take away any person with an intention to make him carry on prostitution, the punishment is rigorous imprisonment of three to seven years.<sup>48</sup> If the offence is committed against the will of a person, then the imprisonment shall extend to seven to 14 years, and if the same is done against the will of child, then the imprisonment shall extend from seven years to life imprisonment .<sup>49</sup> Section 6 of this Act<sup>50</sup>, provides punishment for detaining a person in the premises where the prostitution is carried on.

### **5. THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015**

The act provides provisions for the care, protection and rehabilitation of children rescued from those procuring, inducing or taking a person for the sake of commercial sexual abuse and exploitation. The Act provides for the establishment of Child Welfare Committees (CWC) and Juvenile Justice Boards (JJB) in all districts throughout the country in order to deal with children in need of care and protection. The definition of “child in need of care and protection” under this Act, includes victim of sexual abuse.<sup>51</sup> The Act doesn’t provide the definition of the term ‘sexual abuse’. However, Section 23 to 27 has dealt with “special offences” committed against juveniles.<sup>52</sup> In newly amended Act<sup>53</sup>, District Magistrates and Additional District Magistrates have been conferred with additional power to ensure the smooth implementation of the Act and evaluation of the functioning of statutory bodies. The act also provides that all offences against children under this Act will be tried in Children’s Court, which is equivalent to a Session Court.<sup>54</sup>

### **6. THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012**

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44. The Immoral Traffic (Prevention) Act, 1956, s. 4.

45. The Immoral Traffic (Prevention) Act, 1956, s. 5.

46. Ibid.

47. The Immoral Traffic (Prevention) Act, 1956, s.6.

48. The Juvenile Justice (Care and Protection of Children) Act, 2015, s. 2(14). See also The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021.

49. The Juvenile Justice (Care and Protection of Children) Act, 2015, s. 23, 24, 25, 26; s. 27 substituted vide The Juvenile Justice (Care and Protection of Children) Act, 2021.

50. The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021.

51. The Juvenile Justice (Care and Protection of Children) Act, 2015, s. 86.

The Government of India has brought out the Protection of Children from Sexual Offences Act, 2012, to protect the children from sexual assault, sexual harassment, pornography and to provide a child friendly system in these offences through all the stages of judicial process.<sup>55</sup> The Act contains nine chapters and forty-six sections.<sup>56</sup> The Act, in itself a remarkable step towards gender neutrality- it recognizes both boys and girls as victims of sexual offences. This addresses several child rights issues in a systematic and uniform manner. It makes it mandatory for the police to register an FIR in all cases of sexual abuse.<sup>57</sup> It also provides for strong action against encroaching upon right to privacy and confidentiality of the victims.<sup>58</sup> The National Commission for the Protection of Child Rights (NCPR) and the State Commission for the Protection of Child Rights (SCPCRs) have been empowered with the responsibility of monitoring the provisions of said Act.<sup>59</sup> The Act further provides a list of all types of sexual offences along with the stringent punishments (See Table no. 1.) Parliament amended the law in order to prevent the engagement of children in sexual exploitation through Protection of Children from Sexual Offences Amendment Act, 2019.<sup>60</sup>

**Table 1. List of all sexual offences under the act along with the punishment for the offence<sup>61</sup>**

S. No	Description of Offence	Punishment
1.	<p><b>Section 3: Penetrative Sexual Assault</b></p> <p>a person commits “Penetrative Sexual Assault” if he: (i) penetrates his penis into the vagina, mouth, urethra or anus of a child, or (ii) inserts any object, or (iii) manipulates any part of a child’s body, or (iv) applies his mouth to a child’s body parts, or (v) makes a child do the same.</p>	<p><b>Section 4</b></p> <p>Punishment is not less than seven years which may extend up to 10 years, or minimum 2</p>

52. The Protection of Children from Sexual Offences Act, 2012.

53. The Protection of Children from Sexual Offences Act, 2012.

54. The Protection of Children from Sexual Offences Act, 2012, s. 19.

55. The Protection of Children from Sexual Offences Act, 2012, s. 23.

56. The Protection of Children from Sexual Offences Act, 2012, s. 44.

57. The Protection of Children from Sexual Offences (Amendment) Act, 2019.

58. The Protection of Children from Sexual Offences (Amendment) Act, 2019, s. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14(1), 14(2), 14(3), 14(4), 14(5).

		years in case a child is under 16 years of age.
<b>2.</b>	<p><b>Section 5: Aggravated form of Penetrative Assault</b></p> <p>It includes cases of penetrative assault committed by: (i) a police officer, a member of armed forces, security forces, public servant, staff of remand home, jail, hospital or school commits penetrative assault, or (ii) any other person through gang, or (iii) a person using deadly weapons, fire or heated substance, or (iv) any person by which physically incapacitates the child or causes the child to become mentally ill, (v) a person makes a child pregnant, or (vi) a person inflicting the child with HIV or any other threatening disease, or (vii) by a person on a child below 12 years of age, or (viii) a person on a child repeatedly, or (ix) a relative of child, or (x) owner and staff of any institution, or (xi) a person during natural calamity or (xii) a person causing a death of child.</p>	<p><b>Section 6</b></p> <p>Punishment is not less than 20 years which may extend up to imprisonment for life, and a fine, or death penalty.</p>
<b>3.</b>	<p><b>Section 7: Sexual Assault</b></p> <p>It involves touches the private part (vagina, penis, anus or breast of child), physical contact with sexual intent.</p>	<p><b>Section 8</b></p> <p>Punishment is not less than 3 years of imprisonment which may extend up to 5 years, and a fine.</p>
<b>4.</b>	<p><b>Section 9: Aggravated Sexual Assault</b></p> <p>Sexual assault by any other person as mentioned in Section 5 of the Act, except whoever give any kind of chemical substance or hormone to induce early sexual maturity.</p>	<p><b>Section 10</b></p> <p>Punishment is not less than 5 years of imprisonment,</p>
<b>5.</b>	<p><b>Section 11: Sexual Harassment</b></p>	<p><b>Section 12</b></p>

	Sexual Harassment of the child with sexual intent if a person: (i) making any gesture or sounds, or (ii) making a child exhibit his body or any part, or (iii) showing any pornographic content to a child, or (iv) enticing a child for pornographic purposes.	Imprisonment up to 3 years, and a fine.
6.	<b>Section 13: Use of Child for Pornographic Purposes</b>  Using a child in any form of media for the purpose of sexual gratification.	<b>Section 14(1)</b>  Punishment is less than 5 years of imprisonment, and a fine or in case of subsequent conviction which may be extend up to 7 years, and a fine.
7.	<b>Section 14(2)</b>  Using the child for pornographic purposes as referred to in Section 3 by directly participating in pornographic acts.	<b>Section 14(3)</b>  Punishment is not less than 10 years of imprisonment which may extend up to imprisonment for life.
8.	<b>Section 14(3)</b>  Using the child for pornographic purposes as referred to in Section 5 by directly participating in pornographic acts.	<b>Section 14(3)</b>  Rigorous imprisonment for life and a fine.
9.	<b>Section 14(4)</b>	<b>Section 14(4)</b>

	Using the child for pornographic purposes as referred to in Section 7 by directly participating in pornographic acts.	Punishment is not less than 6 years of imprisonment which may extend up to 8 years, and a fine.
<b>10.</b>	<b>Section 14(5)</b>  Using the child for pornographic purposes as referred to in Section 9 by directly participating in pornographic acts.	<b>Section 14(5)</b>  Punishment is not than 8 years of imprisonment, which may extend up to 10 years, and a fine.

## 7. ROLE OF JUDICIARY

The Judiciary plays an important role as the guardian and protector of Fundamental Rights of citizen and non-citizens alike. The court is not only the Sentinel of the Fundamental Rights, but also, a balancing wheel between rights and social control.<sup>62</sup>

Dealing with the issue of protection, treatment and rehabilitation of the victims, in case of **Vishal Jeet v. Union of India**,<sup>63</sup> the Supreme Court issued the following directions:

1. The State Governments and Union Territories should take appropriate and speedy action under the existing laws.
2. The State Governments and Union Territories should also set up a separate advisory committee within their respective zones for evolving programmes for the care, protection, treatment, development and rehabilitation of the victims.
3. The State Governments and Union Territories should take steps in providing adequate and rehabilitative homes.
4. The Central Government should set up a committee in accordance with direction no. 2.

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59. Sahara India Real Estate Ltd. & anr. v. S.E.B.I. & anr., AIR 2012 SC 3829.

60. AIR 1990 SC 1412.

In the landmark decision of the Supreme Court in **Gaurav Jain's**<sup>64</sup> case, the court issued directions for the constitution of a “Committee on the Prostitution, Child Prostitutes and Plan of Action to Combat Trafficking and Commercial and Sexual Exploitation of Children and Women, to examine the problem and for the segregation of the children of prostitutes from their mothers living in the prostitute homes.”<sup>65</sup>

Further, in case of **Bachpan Bachao Andolan v. Union of India**<sup>66</sup>, the Supreme Court directed all the States to constitute Juveniles Justice Boards, Child Welfare Committees and special Juvenile Police in every district.

Medical Examination play an important role during the trial in linking the accused with sexual crimes. The Supreme Court while dealing with the matter of gender-based violence, in case of **Lilu alias Rajesh and anr. v. State of Haryana**,<sup>67</sup> held that medical procedures should not be carried out in a manner that constitutes cruel, inhuman or degrading treatment. The Court further observed that it is the duty of the State Governments to provide all necessary medical services to survivors of sexual violence.

The need for the free, fair and speedy trial of the cases relating to sexual abuse has been emphasized again and again by Courts. In the latest case of **Alakh Alok Srivastava v. Union of India**,<sup>68</sup> the apex court of India issued the following directions:

1. The High Courts shall ensure that cases registered under the POCSO Act are tried and disposed of by the Special Courts and the Presiding Officers of the Courts are sensitized in the matters of child protection and psychological response.
2. The Special Courts should not grant unnecessary adjournments and complete the trial within a specific time frame under the Act.
3. The High Courts must take necessary steps to provide child friendly atmosphere in the Special Courts in accordance with the provisions of POCSO Act.

The Supreme Court while considering the issue of compensation to children who are victims of sexual offences, and observed that NALSA's Compensation Scheme 2018<sup>69</sup> should function

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

62. Gaurav Jain v. Union of India, AIR 1997 SC 3021.

63. 2010 12 SCC 180.

64. 2013 14 SCC 643.

65. 2018 5 SCC 651.

66. NALSA's, “Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes-2018”

as a guideline to the Special Court for the award of compensation to the victim of child abuse.<sup>70</sup> The said Scheme also provides for the rehabilitation of the victims of sexual abuse.

## **ANALYSIS OF THE LEGAL PROVISIONS FOR THE PROTECTION OF CHILDREN**

The provisions have been framed with the intention of saving the children from exploitation but with the world changing at fast pace, they seem to lag. The way by which such cases are dealt with is reducing the faith of the victims in the justice system of the country. The Indian penal code, 1860 was framed during the colonial era, when the socio-economic and political organization of society was way different than today. However, most of the laws are still static and have not evolved with time. Criminal law of the land imposes strict punishments on the offenders but its major emphasis on regulating the adult behavior rather than imposing strict punishments. Juvenile justice act intends to take care of the children and protect the vulnerable ones. Its lays sufficient provisions for such protection. Only thing which is not justiciable and appropriate in the context of the child abuse is that, the only provision under which a case can be filed against an offender refers to the punishment for cruelty to juveniles.

The issues and needs of the suffering children have been taken into consideration by the Immoral trafficking act, 1986. This act constitutes pushing a person into prostitution as an offence and in case of children, the punishment has been extended to life imprisonment. Protection of children from sexual offences act, 2012 mentions very clear offences and their punishments. This act has covered the types of sexual offences against children extensively but many provisions of the act highlight gender bias as the accused has been referred to as he in them but the truth is that 10% more boys suffer from child abuse than girls. As mentioned above, the Judiciary has time to time taken steps for the protection and rehabilitation of children and in providing them justice.

To safeguard the children from prostitution, few steps need to be taken. The spread of awareness through education is most important one. They should be enabled to choose a way of life of human dignity. Laws should not only focus on the change of attitude but shall impose such strict punishments, that they set example for the onlookers also refraining them from

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67. Nipun Saxena v. Union of India, 2018 SC.

indulging in similar activities. ECPAT (End Child Prostitution, Child Pornography and Trafficking of Children for sexual purposes) is a non-governmental organization and a global network of civil society organization exclusively dedicated to ending the Commercial Sexual Exploitation of Children (CSEC). It focuses on ending four main manifestations of CSEC: child pornography, the exploitation of children in prostitution, the trafficking of children for sexual purposes and the sexual exploitation of children in travel and tourism. ECPAT is a network of 102-member organizations in 93 countries with one common mission: to end sexual exploitation of children. It seeks to encourage the world community to ensure that children everywhere enjoy their fundamental rights free and secure from all forms of commercial sexual exploitation.<sup>71</sup> An initiative called "Bachpan Bachao Andolan" is an India-based movement campaigning for the rights of children and for an end to human trafficking.<sup>72</sup>

## **CONCLUSION**

In the end, it can be inferred that the issue like child prostitution is often concealed from the public eye. It is a global issue and is not confined to only developing countries. The children are often lured and tricked to fall in this mud. They suffer from such traumas which no person at any age shall suffer from. NGOs and some private organizations are working towards the protection and rescue of children from the brothels and from pimps. Multiple laws as mentioned above have been framed for the same purpose, but it is also seen that no country has been successful in removing the child prostitution just by legislations. Although, there is no need of any amendments because laws are sufficient. What is required is the effective implementation of these law to make sure that the future generations of our country are safe, secure and can live their life with freedom and dignity.

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