LAW ON TRAFFICKING IN CHILD FOR PROSTITUTION: THE CRITICAL DENIAL OF HUMAN RIGHTS

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Abstract

Prostitutes are not a new phenomenon in our society. It is one of the world's oldest social problems, as well as one of the world's oldest professions, along with poverty. It is possible to detect references to prostitutes in religious texts and epics dating back to the pre-historic era. In recent years, for understandable reasons, the Convention on the Rights of the Child, which was established by the United Nations in 1989, has been the principal focus of international attention for the protection of children's rights, as has been the case since its adoption. The right to life and liberty belongs to every human person, yet the extent to which these rights can be enforced in practice differs from country to country. These rights come with a set of duties and responsibilities to uphold them. The judiciary plays an extremely vital role in the governance of a democracy, and it is second to none. In fact, the judiciary takes a large and unique significance as a result of its extremely crucial role of passing judgement on the conduct of the other two members as well as the privilege of interpreting the constitutional requirements. Most countries have legislation to safeguard children, but there is a significant gap between what is written and what is enforced.

Keywords: law, trafficking, child, prostitution, human rights, etc.

1. INTRODUCTION

Prostitutes are not a new phenomenon in our society. It is one of the world's oldest social problems, as well as one of the world's oldest professions, along with poverty. It is possible to detect references to prostitutes in religious texts and epics dating back to the pre-historic era [20, 21]. Such ladies as Nagar Badhus and Kinnmaris make their livings through dancing performances and prostitution, to name a couple of instances. It refers to the beginning of history, and in several European and American countries, prostitution was also practiced as an institution. It has existed as an institution from the days of the colonial era and continues to exist today. A large number of prostitutes accompanied the other colonial settlers on their journey. Some were taken with other offenders, while others were transported alone. In colonial America, the sermons of preachers, criminal statutes, traveler's writings, and reports of jail conditions all witness to the existence and scope of prostitution in the region. Because of the growth of eastern industrial centres and the rise of western mining towns, prostitution flourished during the nineteenth century.
2. INTERNATIONAL TRAFFIC AND EXPLOITATION OF PROSTITUTION

Previously, prostitution was restricted to areas within a country's borders. It has now spread to an international level as a result of its popularity [15]. As a result of the fall in their economic status, wealthy nations are taking advantage of women and children in third world countries [21]. For the purpose of alleviating their urgent issues of poverty, unemployment and overpopulation, third world countries seek refuge under the cover of industrialization, without taking into consideration the social consequences in human terms of their actions. Although the gritty underground of the international flesh trade appears to be a preposterous throwback to the days of country slavery, it is booming in the 1990s. Amsterdam, which has long been known for its tolerance of the local sex industry [19], now has a prostitute population that is 60 percent South American, South East Asian, and African, with a share that reaches 80 percent among the city's trade mark store window prostitutes, according to the city's official statistics. When it comes to delivering a lady into the “working life,” recruiters in Japan get paid as much as 8000 dollars. Young Portuguese women are brought to Spain by Portuguese procurers, who offer those positions at pubs, nightclubs, restaurants, and hotels in the country. These jobs are used by procurers to lure young women into prostitution while they are employed elsewhere [21, 22]. As a kind of slavery with international repercussions, prostitution is a crime against humanity. The fight against it must be waged on an international scale, according to experts [15]. Increasing public awareness is critical, but it must be done in a coordinated manner on a worldwide basis.

3. CHILD PROSTITUTION THE CRUCIAL DENIAL OF HUMAN RIGHTS IS AN ISSUE

The concept of a "child" has been extensively explored in the diverse literature of oriental nations. Many paintings and coins depicting children have been produced by the three ancient civilizations, which are Egyptian, Chinese, and Indian. Children have been the child of many paintings and coins produced by the three ancient civilizations. As a result, it was frequently used to refer to a boy child, relegating the girl child to a secondary position. The expression "child" may be used in the following ways: "Human Rights are the fundamental and inalienable rights that every person has simply because he or she is a human being." [18] Human beings are vulnerable in civil, political, economic, social, and cultural processes, and they must be protected as a result of this protection. The right to life and liberty belongs to every human person, yet the extent to which these rights can be enforced in practise differs from country to country. These rights come with a set of duties and responsibilities to uphold them. Everyone has a responsibility to adhere by the law in order to preserve freedom, rights, and justice for all [13], and everyone has a duty to work together to achieve this goal. When practising one's liberties and rights, everyone must remember to keep the rights and freedoms of others in mind as well [13]. Human trafficking and exploitation in various forms by traffickers in human beings is one of the most heinous types of human rights violation [18] that can be found everywhere on the planet today. Trafficking in its broadest definition involves not only the exploitation of others or the provision of services, but also enslavement or activities that are comparable to slavery, as well as the traffic in human persons. Child prostitution is an obvious violation of the fundamental right to live one's life with honour. The right to health care [22], the right to liberty and personal security [14], as well as the right to be free from torture, aggression, cruelty, or degrading treatment, are all violated as a result of this practise.

- As a term referring to the relationship that exists between parents and their children [16].
- as a term to indicate relative ability to perform a task, such as saying that a child cannot move a large boulder, and

- as a term of special protection under welfare legislation, such as those that prohibit child labour and prostitution [17].

It is interesting to note that there is no consistency when it comes to the legal age of a child. Varied laws have different interpretations of it. However, despite the commonly understood norm, different laws define a person as being below the age of 16 as a child, someone between the ages of 16 and 18, someone over the age of 18, and someone above the age of 18. In common language, a child is a person who, because of his or her age, immature cognitive process, and flawed judgment, is unable to appreciate the repercussions of his or her own actions. According to Indian law, such a person is referred to as a "minor." [18, 19] According to the Indian Penal Code, a child may not be capable of developing any criminal associations until a specific age, and until that time, he or she is immune from any legal consequences. Beyond that age, however, he or she may be held accountable for his or her actions and subjected to punishment. Child prostitution is defined as the sexual exploitation of a child for monetary or in-kind recompense [19], which is frequently but not always conducted through the use of an intermediary (parents, family members, procurers, etc). Child prostitution is defined by the United Nations Convention on the Rights of the Child (1990) as the sexual exploitation of a child under the age of 18 years for monetary or in-kind recompense or reward. Child prostitution is intimately associated with child pornography on the internet. It refers to the visual or auditory depiction of a child for the purpose of providing sexual enjoyment to the viewer or listener, and it includes the creation, distribution, and/or use of such material for this purpose.

3.1 Child prostitution in International viewpoint

In recent years, child prostitution has emerged as a global phenomenon of alarming proportions, affecting people all over the world. It can be found in both developing and developed countries; however, the numbers in the former are somewhat higher. Despite efforts to alleviate the situation, it continues to be overwhelming and intractable. The situation is deteriorating in a number of different places of the world. Because of its cross-border nature, the sexual exploitation of children [19] has become more sinister in recent years. Children are increasingly being sold and trafficked across international borders, including between developing and developed countries, as well as between developing and developed countries themselves. The spread of child prostitution throughout the world is one of the less positive aspects of globalisation, and it should be addressed on all seven continents of the world. According to the United Nations Convention on the Rights of the Child, adopted in 1989, the term "child" refers to a person who is under the age of eighteen. A definition of child prostitution developed from the United Nations Special Rapporteur on the Sale of Children's Reports from 1990 to 1994. Child prostitution occurs in a variety of settings, ranging from solitary cases to large groups of victims of organised crime. The majority of the victims are children who have run away from home or from state institutions; others have been sold by their parents or have been coerced or tricked into prostitution; and still others are street children [16].

4. INTERNATIONAL HUMAN RIGHTS LAW PROTECTING CHILDREN

In recent years, for understandable reasons, the Convention on the Rights of the Child, which was established by the United Nations in 1989, has been the principal focus of international attention for the protection of children's rights, as has been the case since its adoption. The Convention was the conclusion of years of deliberation and debate regarding the most effective international measures for
preserving the rights of children everywhere, and it was signed by all countries in the world. As part of international human rights law [15, 18], which has grown in significance significantly during the Second World War, the Convention represents a legal development. Prior to 1939, State Sovereignty and the preservation of "domestic jurisdiction" as an area outside the scope of international law were the dominating influences on public international law. International law acknowledged as absolute a state's sovereignty with respect to things within domestic jurisdiction, except to the extent that a state should have accepted international legal responsibilities to such an extent as it was willing to tolerate in order to exercise its own sovereignty. In a nutshell, international law was generally seen as a system of law that applied between states. Individuals acquiring rights or becoming the subject of responsibilities was very much the exception rather than the rule in terms of legal jurisdiction. The global experience of states during the Second World War served as a stimulus for the transformation of the fundamental goals of international law that occurred after the war. There was widespread, virtually universal acceptance of the need for the protection of human rights and fundamental freedoms [13, 18], particularly in the United Nations system. Following the general concepts of human rights embodied in the United Nations Charter itself, the Universal Declaration of Human Rights was drafted, which has had a significant impact on the formulation of many new national constitutions and municipal laws around the world, particularly in commonwealth countries after they gained independence from the United Kingdom. The Universal Declaration's idea has been converted into international commitments and regional obligations at the international and regional level.

4.1 The international legal framework governing trafficking in persons

The establishment of the International Agreement for the Suppression of the White Slave Trade in 1904 was the first step in the fight against international trafficking in women and girls [21]. The agreement was drafted with the goal of providing effective protection against criminal trafficking, commonly known as the "white slave trade," to women and girls under the age of majority who are subjected to abuse or compulsion. Then there was the International Convention for the Suppression of the White Slave Trade, which was signed in Paris on May 4, 1910, to put an end to the practise. Any person who, in order to gratify the desires of others, has hired, abducted, or incited even without the consent of the woman or girl in question to engage in immoral behaviour for immoral purposes [22], even if the various acts that constitute the offence were committed in different countries, shall be punished under this convention. It was the Paris Convention of 4 October 1921 and the Geneva Convention on the Prohibition of the Traffic in Women and Children of 30 September 1921 and 11 October 1933 that extended the terms of the 1910 Convention to include persons under the age of 21, as well as the obligation of signatories to exercise greater control over emigration employment agencies, as outlined in the 1910 Convention. The Geneva Convention, which was signed on October 11, 1933, vowed to pursue criminals who kidnap women or girls under the age of 21 for the purpose of prostitution abroad, even if they give their agreement. The International Community, the League of Nations, and the United Nations General Assembly unanimously approved the Convention for the Suppression of the Circulation of Trafficking in Persons and the Publication of Obscene Publications on October 20, 1947, as Resolution 126 (II) of the General Assembly of the United Nations. The purpose of this Convention is to protect minors from the harmful effects of pornography [18, 19], which is closely associated with prostitution because of the strong relationship between the two.

Then there was the 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of Prostitution of Others, which was signed on the 2nd of December. It was officially implemented on March 21, 1950. According to the United Nations Social Commission, a new questionnaire based on the Convention was developed to examine prostitution, and the results of the
study were to be published on a regular basis in the International Review of Criminal Policy. The United Nations published guidelines for fighting prostitution in 1959, which were published in 1959. It is strongly urged by the experts that governments refrain from treating prostitution as a criminal offence since doing so drives prostitution into the criminal underworld and makes it easier for professional extortionists to take advantage of prostitution victims.

5. THE IMPORTANCE OF THE INDIAN JUDICIARY

The judiciary plays an extremely vital role in the governance of a democracy, and it is second to none. In fact, the judiciary takes a large and unique significance as a result of its extremely crucial role of passing judgement on the conduct of the other two members as well as the privilege of interpreting the constitutional requirements. The goal of achieving a just society is one such goal that has existed long before the beginning of the Christian era was established. The Indian Judiciary currently has a central position in the effort to establish a just society. As an institution, the Indian Judiciary has always been held in high regard by the people of this country. The law established by the Legislature is not capable of ensuring total justice in all aspects of our society's affairs. The judiciary, with their innovative vision, has attempted to fill in the gaps that exist between the law and the ordinary by announcing their new interpretations of existing laws.

The Supreme Court, as part of the process, established several new legal principles that will keep the system of justice alive and active in order to ensure the protection of human rights and social justice [18]. The courts are a very important structure in the legal system, and they constitute one of its most important structures. Courts are a decision-making body with the authority to make decisions. These decisions are guided by provisions in various statutes that are currently in effect in the United States. Children in India can come into direct touch with the courts and the legal system in a variety of circumstances, including as criminals and as witnesses to crimes, among others. Ordinary civil and criminal courts, which operate on the adversarial basis, are available. In order to secure legally binding decisions and remedies, the system employs formal procedural justice. In addition to the regular courts and legal procedures, there are specialist courts that are available. The Juvenile Courts, also known as the Juvenile Justice Boards, and family courts are the two types of courts that children most frequently visit. It is planned to use these courts to provide conciliation, counselling, and individualised treatment using a casework approach, with inputs and expertise from the fields of law, psychiatry, and social work, among others. In these courts, attempts have been made to be simple, casual, and adaptable in their operation. Children, by definition, are unable to petition the courts on their own behalf; as a result, they have had to rely on the state's duty as guardian of the family. Children's needs have been met on numerous occasions by the courts through public interest litigation, particularly in the areas of improvement of conditions for children in institutions, prisons, illegal confinement, treatment of physically and mentally disabled children, child labour [17], adoption, juvenile justice, prevention of trafficking in young girls, and the welfare and well-being of children of prostitutes. Several of these matters were brought before the courts by social activists, journalists, or media reports and others were brought before the courts on their own initiative.

The Supreme Court has typically held that the problem of child prostitution in our country is one of the most serious issues facing our society, and that it requires a complete and in-depth investigation, as well as a humanistic approach rather than a strictly legalistic approach. The court was extremely concerned about finding a satisfactory solution to the problem of eradicating this disease because the issue was so complicated. The Supreme Court stated: "It is extremely deplorable and heartbreaking to learn that many poor children and girls in their prime years of life are taken to the "flesh market" and
forcibly pushed into the flesh trade, which is carried out in complete violation of all canons of morality, decency, and dignity of human mankind." In fact, there are no two ways about it: this rude and awful crime, done with all manner of unfathomable vulgarity, should be abolished at all levels by taking drastic measures.”

6. CONCLUSION

Over the years, child prostitution, as well as abuse and exploitation of teenage children [16], have occurred in various forms all over the world, including the United States. Increased attention has been drawn to the problem of child trafficking as it has become increasingly transnationalized, owing to the relationship between supply and demand, criminality, and the subsequent chain effect. A large number of western counties have emerged as a prospective market for the provision of children's products. Pedophiles from a number of developed countries continue to travel to developing countries in order to prey on innocent youngsters. The selling of children is, unfortunately, the result of criminal activity. Small-scale operators to large-scale multinational networks are all represented by criminal elements. Most countries have legislation to safeguard children, but there is a significant gap between what is written and what is enforced.

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