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CHILD ABUSE: GLOBAL CONCERN & HUMAN RIGHTS BASED APPROACH

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Abstract:

"Childhood should be carefree, playing in the sun; not living a nightmare in the darkness of the soul."

— **Dave Pelzer**

Child Trafficking is a widespread issue on a global level. A very high number of children and women have become the victim of trafficking for forced labour and commercial sex. The United Nations has stated that approximately one million to four million people are trafficked on a global level every year which values more than 10 billion dollars. 20% of the total victim who are trafficked fall in the children category (below the age of 18). Such children go through various forms of violence and sexual exploitation once trafficked. The victims of child trafficking are taken away from their family and are deprived of normal and healthy growth and development process. This consequently results in mental health problems and a negative well being.

The research paper attempts to deliberate on the violation of Child Rights through Child Trafficking and analyse the role of the family in increasing number of trafficking. The paper further compares the characteristics between the countries comprising of highest and lowest number of trafficking, lastly analyses the existing law framework around Child trafficking

on a global level to understand the efficiency on a deeper level.

Key Words: *Child Trafficking, Forced Labour, Sexual Exploitation, Child Rights.*

Introduction

Immoral trafficking is one of the most heinous kind of crimes, yet an occurrence that takes place very often in this world. This is a criminal activity which is considered to be one of the most remunerative and profit making. In the **Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children**¹²⁸⁷, supplementing the United Nations Convention against Transnational Organized Crime, the term **trafficking** is defined as follows in Article 3(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs¹²⁸⁸. When the same is done with respect to a child who has not completed the age of 18 years yet, shall be known as child trafficking.

Research questions:

1. Does Child Immoral Trafficking come under the ambit of "Erga Omnes" principle and which aspect of Child Rights are violated in Immoral trafficking?

¹²⁸⁷ Protocol, U. (2000). UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children

¹²⁸⁸ Article 3(a), Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention (2022, November 12).

2. What is the role and relation of family of a child victim and increasing number of trafficking?
3. What are the characteristics of the countries with least and highest number of Child Immoral Trafficking? (A comparative analysis).
3. How effective is the existing law system on a global level and the measures taken by United Nations, UNICEF and ILO?

Research objectives:

- To ascertain and evaluate the reasons behind trafficking
- To analyse the difference between the countries with highest and lowest child trafficking number.
- To ascertain the role and relation between the family the increasing trafficking.
- To critically analyse the existing laws and their effectiveness.

1. Does Child Immoral Trafficking concept come under the ambit of “Erga Omnes” principle and which aspect of **Child Rights are violated in Immoral trafficking?**

Child trafficking under “Erga Omnes” and as a violation of Child Rights:

The Latin phrase “Erga Omnes” means “towards all or everyone”. In this context, it is referred to the Rights and the Duties that are given and owed to everyone in the international community. The concept of Child Trafficking does fall under the principle of Erga Omnes¹²⁸⁹, that means all the children have the right to be safe under their parent’s guidance, protection against violence and abuse and right for healthy development, the obligation falls on the countries on global level to assure that such rights of every individual is protected and the obligation is towards everyone. Through various UN conventions, different countries have ratified

¹²⁸⁹ Goodwin-Gill, Guy S., ‘Crime in International Law: Obligations Erga Omnes and the Duty to Prosecute’ in Guy S. Goodwin-Gill, and Stefan Talmon (eds) *The Reality of International Law: Essays in Honour of Ian Brownlie* (Oxford, 1999; online edn, Oxford Academic 22 Mar. 2012),

the conventions related to child trafficking and protection of children which means that such ratified convention is owed to all on a global level and that is the obligation of the ratifying nation to make sure that such law is followed. In connection with Child Trafficking Conventions, it should be made sure globally that no person is trafficked and the Rights given to each individual is protected, the principle “Erga Omnes” preaches the same.

The United Nations Convention on the Rights of the Child (UNCRC)¹²⁹⁰ enforced in 1990 has protection from abuse, violence, or neglect; Right to life, survival, and development; Right to education that enables them to achieve their full potential; Right to the freedom to speak up and be heard; Right to be raised by or to have a relationship with their parents. The four foundations of children’s rights are: Respect for the child’s opinions, non discrimination, the right to life, survival, and development, and the child’s best interests.¹²⁹¹ These rights have been ratified by all the members of the UN excluding the US, which consequentially means that all these rights are applicable and enforceable globally.

Immoral trafficking essentially violates all these basic rights as¹²⁹², child victim is put through abuse and violence physically, mentally, emotionally and psychologically and they do not get the right to education, do not get to have a healthy relation with their parents, but are neglected, their interest and opinion is not taken into consideration and treated just as objects just for profit making. Those child victims go through depression, post traumatic stress disorder (PTSD), various anxiety disorders, suicidal thoughts, and somatic illnesses such incapacitating bodily pain or malfunction. They

¹²⁹⁰ S Grover, *Child Soldier Victims of Genocidal Forcible Transfer* (2012) 2. See also J Willems, *Children’s Rights and Human Development- a Multidisciplinary Reader*, (2010) 582.

¹²⁹¹ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.refworld.org/docid/3ae6b38f0.html>

¹²⁹² Sweileh, W.M. Research trends on human trafficking: a bibliometric analysis using Scopus database. *Global Health* 14, 106 (2018). <https://doi.org/10.1186/s12992-018-0427-9>

are also in some cases forced to consume alcohol and drugs in sex trafficking.

The United Nations has stated that approximately one million to four million people are trafficked on a global level every year which values more than 10 billion dollars¹²⁹³. 20% of the total victim who are trafficked fall in the children category (below the age of 18). However, considering the statistics in different continents and countries, it is clearly shown that in some regions of Africa and Mekong children are the most trafficked (nearly 100%). The National Human Rights Commission has said that, around 12.6 million children go missing as per the Government record, but the number says that it is up to 100 million as estimated by the unofficial sources, and those children are pressured into forced child labour, activities including pornography, massage parlour (sexual exploitation), dancing, petty crimes, domestic work, agricultural labour, begging, organ trafficking, or prostitution in brothels, or beer bars, even in children majority of the portion trafficked is girls. It is one of the major business across the globe. Hence, Child Immoral Trafficking directly violates the various Child Rights as mentioned above, and it also come under the aspect of "Erga Omnes"

2. The role of family of a victim and increasing number of trafficking:

The role of the family in a child's life is very important, In some unfortunate situations, the family of the child itself goes ahead and sells the child to the trafficker, it may be because of the economical or the financial condition of the family, or as a matter of culture, In some countries there is a practice to use girls for sexual purpose (Temple prostitution is prevalent in Greece, Rome and Devdasi system in India) which is normalized as culture, so right after their puberty they are made to work as one either in the same region or by way of being

trafficked to another place. Such children may be used for forced labour, begging, organ trafficking and many other illegal reasons.

Child marriage can be another route for child trafficking for instance the child in which family is married into is indulged in trafficking or that family makes a link with the trafficker. Unemployment in the family/(male members especially) and the poor condition may also force the family to sell the children off, since they cannot take proper care of the children and the family as a whole.

According to recently disclosed statistics from several organizations that have been examined together for the first time, It has been noticed that almost half of identified cases of child trafficking start with some family member participation/involvement.

According to the statistics¹²⁹⁴, 41% of the children are being trafficked with the help of some family member or relative. Such children are suppressed, controlled and overpowered by the family through psychological abuse, physical abuse and sexual abuse in 51%, 33%, and 19% respectively¹²⁹⁵.

It was also drawn to the attention that, the child trafficking cases in which the family member is indulged in the initial stage, it is majorly intended for forced labour rather than sexual exploitation, only 36% of the children are trafficked for sexual purpose, whereas, in the cases where the family is not involved nearly 84% of the children are trafficked for sexual purpose. The children who are trafficked for sexual purpose are mostly aged 15 to 17.

These figures are based on information made public by The Counter-Trafficking Data Collaborative (CTDC), the first data portal in the world to include case data on human trafficking provided by numerous authorities. Family participation in cases of child trafficking can be

¹²⁹⁴ West, Amanda. "Child Trafficking and Child Welfare." *Journal of Human Trafficking*, vol. 3, no. 2, Informa UK Limited, Oct. 2016, pp. 125-35, <https://doi.org/10.1080/23322705.2016.1175046>.

¹²⁹⁵ Cohen JA, Deblinger E, Mannarino AP, Steer RA. A multisite, randomized controlled trial for children with sexual abuse-related PTSD symptoms. *Journal of the American Academy of Child & Adolescent Psychiatry*. 2004

¹²⁹³ United Nations Office on Drugs and Crime. Global Report on Trafficking in Persons 2014. Vienna: United Nations, 2014.

up to four times more than in cases of adult trafficking, demonstrating the urgent need for increased anti-trafficking initiatives that target children and their families.

Hence it can be concluded that, in some unfortunate situations the closest ones or the family members who are the most trusted ones, because of the mentioned reasons get involved in selling their own children. So it can be understood that the family contributes majorly to the growing number of child trafficking which needs to be curbed with effective measures.

3. What are the characteristics of the countries with least and highest number of Child Immoral Trafficking? (A comparative analysis).

The recent data announced by the UNICEF in 2021, says that highest number of Child trafficking takes place in **Africa** mainly in the west region¹²⁹⁶ and in **Mekong** which is near to Vietnam and Laos.

In west region of Africa this crime takes place mainly in **Ghana, Nigeria, Niger, Benin, Togo, Burkina Faso and Cote d'Ivoire**¹²⁹⁷ and have recorded the highest number of trafficking. Here, the whole 100% of the human trafficking victims are children.

It can be evidently seen that these above mentioned countries have the following characteristics which is negatively impacting on the growth of the country and aiding to such crimes like trafficking. Most of these nations are underdeveloped, being poor and having high rates of unemployment which reached 34.1% in the recent years. These countries do not have all the facilities to achieve the human basic needs, such as healthy food and water, shelter to everyone and education, which consequently leads to have unemployment, where not enough employment opportunities are there hence the economic or financial condition of the families is bad.

There is misuse of money, money is being misappropriated by the corrupted government

for their own advantage and comfort, and also a large portion of money was spent on weapons so only a small portion was left on facilities like pensions, medical facilities and education, which again impacts the economical condition of the country ultimately. In most of the parts of Africa there is shortage of potable water, and lack of such basic facilities, which compels the families to send their children to such places (either with an opportunity to work there or with an elderly person) where at least some facilities can be provided but even in this process the children do get trafficked and used for some other purpose.

According to UNICEF, Save The Children Initiative in 2006, it was recorded that 32% of the total child Trafficking number is contributed by Africa. As these above mentioned reasons encourage people to follow the illegal measures to earn money and satisfy their needs, and since human trafficking is a very lucrative business, and sufficient profit can be gained out of this activity, a lot of people are indulged in child trafficking leading to a high rate of child trafficking in these regions.

Now when we look at the other side of the coin, we can see that **United States and Uruguay** have recorded the least number of Child Trafficking. Some of the main reasons that have aided to achieve that are as follows: Economical condition and development of the country contributes majorly, here in such countries the people have a better quality of life, with high income and better economical conditions. So since, poverty is not a major issue that factor does not push people to commit to such heinous activities to earn money.

Better quality of education, there is a high rate of literacy recorded with 79% of the adults being educated. Children and women also have a better understanding of their Rights and Duties. There can be seen plenty of employment opportunities encouraging the citizens to work towards that. The law enforcement is better and way more effective with right protection of Human Rights and Child Rights. There is also a

¹²⁹⁶ Detrick. (2002). Trafficking in Children in West and Central Africa. Gender and Development, Vol.10, Issue -1, 38-42

¹²⁹⁷ <https://worldpopulationreview.com/country-rankings/child-trafficking-by-country>

better migration laws and provisions for refugees hence the risk of trafficking also comes down in that aspect. Hence, this is how it can be attempted to bring down the rate of trafficking in every country.

4.How effective is the existing regulating system on a global level and the measures taken by United Nations, UNICEF and ILO.

It was stated by the UN Chief that Trafficking is an “All out assault on People’s Rights, Safety and Dignity” United Nations has been constantly working on making the legal framework and the guidelines given to the nations about Child and Human Trafficking more efficient.

In the year of **2000**, The UN in order to regulate trafficking in person initiated a “**Protocol to Prevent, Suppress and Punish Trafficking in Persons**” especially among women and children. This protocol has been signed and approved by 177 countries out of 195 countries. By signing a convention or any International law, a nation commits to enforce the same¹²⁹⁸. The requirements outlined in these international treaties must be incorporated in domestic law to ensure efficient execution. **This protocol involves steps to stop Human and Child trafficking, prosecute traffickers, and also protect the victims of such trafficking by defending their internationally recognized human rights**¹²⁹⁹.

International Convention for the Suppression of the Traffic in Women and Children (1921):

The issue of international trafficking of women and children was addressed by this convention. In accordance with Article 7 of the agreement, countries must adopt both statutory and non-statutory actions to prevent the trafficking of women and children¹³⁰⁰.

¹²⁹⁸ Bassiouni, M. (1991). Enslavement as an International Crime. Journal of International Law and Policies, Vol.23, 445-517

¹²⁹⁹ <https://blog.ipleaders.in/international-laws-child-trafficking/#:~:text=The%20Hague%20Convention%20on%20Protection,c hild%20trafficking%20and%20child%20laundering.>

¹³⁰⁰ <https://globalizationandhealth.biomedcentral.com/articles/10.1186/s12992-018-0427-9>

UDHR(1948): All the inherent rights of a person were incorporated in the historic proclamation known as the UDHR, which was adopted by the United Nations General Assembly. These are unalienable natural rights that, despite not being enforceable by law, are nonetheless crucial, and violating them can have a wide range of negative legal repercussions. It has outlined some provisions for Child Trafficking since it is one of the worst kinds of Human Rights abuse.

International Covenant on Civil and Political Rights(1966) -This convention deals with the subject of slavery connected to trafficking and forbids all forms of slavery and slave trades (Article 8).

The Convention on the Rights of the Child (1989): According to Article 35 of this Convention, governments are required to take measures to prevent the kidnapping, sale, or trafficking of any children in their respective nations.

UNICEF:(1953)

The aim of this agency is to lessen the vulnerabilities of young people who are subjected to trafficking. It assists its allies in strengthening the laws, regulations, and programme that combat this threat for trafficking. These include a study and revision of the law, the creation of minimum employment requirements, and access to education, among other things. Additionally, UNICEF collaborates with local governments to change traditions and behaviour that make children more susceptible to human trafficking. In order to effectively combat trafficking, it also offers training to professionals that work with children, such as social workers, medical care providers and police officials.

International Labour Organization:(1919)

It aims to bring about labour that is easily accessible, sustainable, and productive while upholding the workers' equity, security, and equality¹³⁰¹. ILO has a strong stance against child traffickers and backs schemes were proposed

¹³⁰¹ ILO. (1973). ILO Convention Concerning Minimum Age for Admission to Employment,

by governments and civil society organizations to stop child trafficking. 1999 Convention on Worst Forms of Child Labor was a great achievement in reducing child trafficking.

In conclusion, the International Community is attempting and trying to make the regulations more efficient but yet the traffickers are sometimes successful in finding the loop holes and getting away with the liability, so the measures taken for the betterment at the global level is effective but it is aimed to be much more efficient.

Conclusion:

Child Trafficking is a heinous crime and it violates the basic child rights. 54 percent of youngsters are trafficked for sexual exploitation, and 33 percent are trafficked for forced labour. The most frequent form of forced labour for children is begging (19% of cases)¹³⁰², domestic labour (18% of cases), or employment in the hospitality industry (8% of cases). While girls are more commonly trafficked into domestic work and to a lesser extent begging, boys are more likely to be coerced into begging or peddling.

The children may go through various forms of violence and exploitation once trafficked. The victims child trafficking are taken away from their family and are deprived of normal and healthy growth and development process. This consequently results in mental health problems and a negative well being¹³⁰³.

According to the survey conducted by South London and Maudsley (SLaM) NHS (National Health service) Foundation Trust, the largest provider of secondary mental health care in Europe, it has been clinically diagnosed that the victims of child trafficking often experience all these below mentioned mental health related issues: 22% go through Post Traumatic Stress Disorder¹³⁰⁴, around 22% experience depression

and mood disorder, some go through childhood emotional problems, less or no self confidence, hesitation and extreme stress and nervousness. Children may also start having suicidal thoughts and also indulge in self harming (33%)¹³⁰⁵.

Hence, it is immensely important to make sure that children do not suffer such loss, but are protected against it. It is the responsibility of each country to protect the children as well as the duty of the International community and lastly the moral obligation of every adult individual to protect the child.

References:

1. <https://www.legalserviceindia.com/legal/article-12-immoral-trafficking-of-minor-girl-child-in-india-laws-to-protect-them.html>
2. The Immoral Traffic (Prevention) Act, 1956.
3. Advani Dr. Purnima, Member, National Commission for Women, 2000 'Impact of Tourism on Children's Delhi'
4. <https://www.unicef-irc.org/research/research-on-child-trafficking/>
5. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 96 UNTS 271, G.A. Res. 317(IV), done Dec. 2, 1949, entered into force July 25, 1951.
6. Kara S, 'Designing More Effective Laws Against Human Trafficking', Northwestern University School Of Law Northwestern Journal Of International Human Rights, Volume 9, Number 2 (Spring 2011).
7. Nair P M, Human Trafficking – Dimensions, Challenges And Response (Konark Publishers Pvt. Ltd 2010)
8. Beotra B R & Saxena R N, B.R. Beotra's the Immoral Traffic (Prevention) Act, 1956 (The Law Book Company (P) Ltd 1996)

¹³⁰² R Fong, JB Cardoso (2010) Elsifer Evaluation and Programme Planning, International Journal of Current and Advanced Research.

¹³⁰³ Kiss L, Pocock NS, Naisanguansri V, Suos S, Dickson B, Thuy D, et al. Health of men, women, and children in post trafficking services in Cambodia, Thailand, and Vietnam: an observational cross-sectional study. The Lancet Global Health. 2015; 3(3)

¹³⁰⁴ National Institute for Clinical Excellence. Post-traumatic stress disorder (PTSD): The management of PTSD in adults and children in primary and secondary care. Clinical guideline. 2005;26

¹³⁰⁵ Oram S, Sto

ckl H, Busza J, Howard LM, Zimmerman C. Prevalence and risk of violence and the physical, mental, and sexual health problems associated with human trafficking: systematic review. PLoS Med. 2012; 9(5)