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CHILD PROSTITUTION IN INDIA



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DECLARATION

I, the undersigned, do hereby declare that the work titled 'Child Prostitution in India' is the product of research carried out under the guidance and supervision of Prof. H.K Nagraj.

I further declare that this work is original, except for such assistance taken from sources as have been referred to or mentioned at the respective places, for which necessary acknowledgments have been made.

I also declare that this work has not been submitted either in part or in whole for any degree or diploma at any other university.


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CERTIFICATE

This is to certify that this dissertation entitled 'Child Prostitution in India' submitted by Ms. Suryasnata Mohanty for LL.M Degree Course of National Law School of India University, Bangalore, is a result of her bonafide research satisfactorily carried out by her under my guidance and supervision.

Dt.- 05-05-2009

Place- Bangalore


Prof. H.K Nagraj

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INTRODUCTION

Have we ever wondered who a child prostitute is? How does it feel when he sees children of his age playing whereas he, from the balcony of a brothel, watches them and compares his life to that of theirs? Where his day starts not with the caress of his mother but the scream of the madam because he is late and has to get ready to serve the customers waiting desperately with hunger in their eyes to have a taste of his body and to quench their thirst by having sex with him. We, the proud Indians, have entered into an entirely different world today where a child is no more treated as tender and innocent but rather as a commodity to satisfy our physical needs. The cry of a child prostitute creates a din for us and we behave in a very normal way as if we know nothing. On the one hand we say a child can commit no crime but on the other we treat these kids as criminals carrying a bad character. Aren't we being double standards?

What does it mean to be a child in prostitution? Does it mean lying on a bed with innocent and scary eyes staring at the ceiling in dread as client after client mounts and leaves? Does it mean freedom, the freedom to have sex with ten different men each day? Does it mean measuring one's life not in coffee spoons, toffees, toys, friends, playgrounds but in customers?

The truth is this: we don't know or more specifically don't want to know.

Child prostitution has always been there in our society since time immemorial, be it through the excuses of culture or tradition, or through any other forms. But the question which arises today is that why the child is so unsafe today and why this system of child entering into the flesh trade still continuing. This thesis is a sincere attempt to find out the reason for the same.

HISTORICAL BACKGROUND

Prostitution is one of the oldest professions of the world practiced since the birth of the organized society. Prostitution is practiced in almost all the countries and every type of society. In India, the Vedas, the earliest of the known Indian literature, abound in references to prostitution as an organized and established institution. In Indian mythology there are many references of high-class prostitution in the form of celestial demigods acting as prostitutes. They are referred to as *Menaka*, *Rambha*, *Urvashi*, and *Thilothamma*. They are described as perfect embodiments and unsurpassed beauty and feminine charms. They are highly accomplished in music and dance. They entertained divinities and their guests in the court of Lord *Indira*, the Lord of Hindu Gods. They were also sent to test the real depth of 'tapasya' (penance) and devotion of great saints (Biswanath, 1984).

An apsara named Menaka caused the downfall of the great sage *Vishwamithra*, and became the mother of *Shakuntala*, the immortal heroine of the greatest drama of the world, *Abhigyan Shakuntalam* written by the great poet *Kalidas* of India. Aryan rulers of India followed the system of celestial court and developed the system of guest prostitution. They presented well-accomplished maidens in token of friendship of kings. They were also offered as ransom to the victor to part with his most beloved prostitute. Empires fell and came up for her sake. Another class of girls from infancy were carefully selected and fed on poisonous herbs and venomous foods. They were called Vishkanyas

(Poisonous virgins). The kings to destroy their enemies utilized these prostitutes (Biswanath, 1984).

Prostitutes were common during the reign of the Pandavas and Kauravas (Historical Indian rulers). They were an important part of the court and both dynasties possessed harems of aristocracy in Brahmanic India. Having concubines is common among the aristocracy. Kautilya's famous 'Arthasasthra' contains rules for prostitutes and their activities and gives an account of how prostitutes should behave and how their lives are ordered. A code of conduct was prescribed, for people seeking their favor and for them. They had certain definite prerogatives, rights and duties. Vatsyayan, the noted Indian sage of the Third century B.C. devoted a number of pages on prostitutes and their amorous ways of life in his monumental treatise Kamasutra. Rules of conduct for popular and successful practice of their trade have been prescribed. His classification of the prostitutes indicates that the common, private, and the clandestine prostitutes of today had their prototypes in those olden days (Biswanath, 1984).

The sanctified prostitution in the third century A.D. in the Sanskrit works of Mahakavi Kalidas. Religious prostitutes were attached to the famous temples of Mahakala of Ujjain and the system of holy prostitutes became common. This class consisted of girls who had been offered by the parents to the service of the God and their religion. In the south India, they are known as Devadasi and in North India as Mukhies. These dancing girls were considered essential at the time of offering of prayers and were given a place of honor. Gradually due to the laxity of morals among the priests, they

misused the systems for immoral purposes. Under the garb of religious dedication of girls to temples, clandestine prostitution developed.

The medieval period gave great importance to women and wine. The Muslim rulers with the exception of Aurangzeb recognized prostitution and the profession flourished under royal patronage. After the downfall of the Mughal Empire, hoards of concubines, dancing and singing girls came out of the royal palaces. They were not trained for any profession and society had no jobs to offer them. When faced with economic problem they had no choice but to take recourse to the laziest of all the trades, the trade of sex. The place of women in India did not improve during the British regime. Conditions continued to deteriorate and in the absence of state control and regulation, prostitution thrived on a large commercial scale. Social disabilities and economic hardships of women made them an easy victim to the gangsters of this profession (Biswanath, 1984).¹

This shows that prostitution existed in India in some form or the other from time period to period but the evil has continued to persist and recently it has started spreading its tentacles to engulf the innocent kids even and has gradually snowballed into a commercial enterprise. The concept of child prostitution is not new, and has not always been socially taboo. The ancient Greeks and Romans used children for sexual gratification (Langevin, 1983). In Greece, it was commonplace for adolescent males to be forced into sexual relationships with mature males. This behavior was normal and not objected to by the child's parents or the Greek

¹ www.erces.com/journal/articles/archives/volume3/v02/v03.htm; last visited on 14 April 2009

government (Langevin, 1983). The Romans encouraged adolescent boys and girls not to protest being sold into prostitution. The Roman government even went so far as to declare a public holiday honoring young prostitutes (Kahr, 1991).

India has not been an exception to this problem though. These days there has been a growing problem of sex slavery in India, especially with child prostitution. Looking at India's problem with sex slavery is much more complicated than looking at other Third World countries that have sex slaves. This is because India has roots of sex slavery in its culture, traditions and religion. The practice of child prostitution in our country is in existence since time immemorial. Its roots can be traced back to the age old practice of Devadasi system where young girls are "married" to the "gods" and they then become religious prostitutes, sleeping with priests and others. Thus the problem of child prostitution is not a novel one. What is new, however, is its perception as a social problem and its being a matter of social concern.

RESEARCH METHODOLOGY

Objectives of the study

The purpose of this write up is to examine the intricacies involved in the problem of child prostitution in India and critically analyse the loopholes in the legal framework which adds fuel to the continuance of the same. The researcher also intends to suggest the appropriate measures that would help in taking up cudgels against the existing evils.

Method

The method is purely descriptive and doctrinal in nature. The researcher has also used empirical method for the completion of this work.

Source of data

To accomplish the aforesaid objective reliance has been heavily placed on the secondary data collection obtained from the various sources such as books, journals, periodic reports and pages from internet.

Chapterisations

The introductory chapter deals with the definition and types of prostitution. Before delving into the topic of child prostitution the researcher thought it necessary to throw some light on the definition and types of prostitution prevailing in our society to have a clear idea on that ground. The second chapter gives a brief impression of certain facts regarding child prostitution. This chapter talks about the basic and inherent elements present in the definition and meaning of child prostitution and what is the picture reflected in the present scenario as far as India is concerned. The third chapter deals with the major factors that have contributed towards the development of the problem of child prostitution. The said chapter also deals with the various hardships involved and the harmful effects of child prostitution. Chapter four elaborately puts forth the various legislative provisions, both national and international, which directly or indirectly deal with this so called problem of child prostitution. This chapter also includes within it the

judicial trends in connection with child prostitution. The fifth Chapter deals with the inadequacies in the legal framework and various other reasons which are responsible for the still continuance of the problem of child prostitution. The last chapter hinges on certain suggestions of mine which, in my opinion, will upto some extent, be helpful in finding the solution to this global problem of child prostitution and curbing the same.

Hypotheses:

Poverty is the root cause behind child prostitution.

Research Questions:

I have formulated the following research questions to be looked into and have tried to find answers for it.

1. What are the root causes which lead to this ultimate problem of child prostitution?
2. What is the legal framework furnished at the domestic and international level for dealing with the problem of child prostitution? Are there any loopholes in the existing framework of laws and if so what are the adequate and appropriate changes to be brought in?
3. Can there be any elementary changes in our society apart from the existing legal framework that may help in preventing the occurrence of such a problem?

MODE OF CITATION

Uniform mode style of citation has been used throughout this project.

CHAPTER-1

DEFINITION AND TYPES OF PROSTITUTION

Child prostitution is a problem that we really know very little about. Many people do not even consider child prostitution to be a form of child abuse, but many of these kids have been victims long before they turn to the world of prostitution in which they are only victimized further. As the concept of "Child Prostitution" sounds a bit complicated it is pertinent to go through and understand the meaning of the two words i.e 'child' and 'prostitution' and also to have an idea on its types.

Child:

In the common parlance child is a person who because of his or her age, immature thought process and imperfect judgement, is unable to comprehend his or her own actions. Such a person is called 'minor' under the Indian law. The United Nations Convention on the Rights of the Child defines a child as "every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier."² Since the UNCRC was introduced the International Labour Organisation's Convention Number 182 on the Worst Forms of Child Labour has entered into force. This states that all those aged below 18 should be regarded as children. It is generally accepted within the international child rights community that the age of 18 years is the appropriate age for determining adulthood

² Convention on the Rights of Child. Office of the United Nations High Commissioner for Human Rights. <http://www.unhcr.ch/html/menu3/b/k2crc.htm>. Ratified by 192 of 194 member countries.

Biologically, a child is anyone in the developmental stage of childhood, between infancy and adulthood. One legislation is that a child may not be capable of forming any criminal intention upto a certain age and to that extent he/she enjoys immunity from any legal punishment. But beyond that age he/she may be liable for his/her acts and face punishment.

The expression child may be used in the following manner:³

- As a term denoting relationship as between the parties and their progeny.
- As a term indicating relative capacity to do something e.g. saying that a child cannot move a big boulder
- As a term of special protection under welfare legislation like those prohibiting child labour and prostitution.

As a matter of surprise there is no uniformity with regard to the legal age of 'child' because it varies from legislation to legislation. As per the Indian Penal Code, 1960 a child usually refers to a person below 12yrs of age. As per Child Marriage Restraint Act, 1929 a child for a male is somebody who has not completed 21yrs whereas for a female it is somebody who is below 18yrs of age. Similarly as per Juvenile Justice Act, 2000 a "juvenile" or "child" means a person who has not completed eighteenth year of age whereas as per Factories Act, 1947 and Apprentices Act, 1967 a child refers to a person below 14yrs. As per Child Labour (Prohibition and Regulation) Act, 1986 a child refers to a person who has not completed 14yrs of age.

³ Joseph Gathia, *Child Prostitution in India*, (1999, Ashok Kumar Mittal, Mohan Garden, New Delhi).

From the paragraph mentioned above it is clearly evident that different laws interpret it differently. But the Immoral Traffic Prevention Act, 1986 applies to all as per which a child is a person below 18 yrs of age.

Prostitution:

Prostitution is defined as promiscuous and mercenary sexual behavior with emotional indifference between the partners.

In general parlance the word 'prostitution' is used to describe the selling of sexual favours. Oxford dictionary defines prostitutes as "person who offers himself/herself for sexual intercourse for money".

The word 'prostitute' has been derived from the Latin word 'prostibula' or 'prosesta'.⁴ Thus in other words prostitution is widely described as the world's oldest profession; the practice of selling sex for cash or other immediate compensation or the act or practice of prostituting or offering the body to an indiscriminate intercourse with men; common lewdness of a woman.

As per Immoral Traffic Prevention Act, 1986 "prostitution" means the sexual exploitation or abuse of persons for commercial purposes or for consideration in money or in any other kind.

The important ingredients of prostitution, according to Weaver, are:

- i) Promiscuity, barter and emotional indifference;

⁴ *Supra note 3*

- ii) It is different from the broader concept of sexual immorality due to the commercial nature of the relationship, and
- iii) It is distinguished from illegitimacy, which invariably involves an illicit sex relationship but refers particularly to the production of a child outside the social approval.⁵

Child Prostitution:

Prostitution of children refers to the use of children as prostitutes. Child prostitution is the practice whereby a child is used by adults mostly for sexual activities in return for remuneration or any other form of consideration. It refers to the sexual exploitation of a child for remuneration in cash or in kind, usually but not organised by an intermediary (parent, family members, procurer, etc.). Child sex tourism and trafficking also falls within the category of the prostitution of children.

Thus child prostitution is the practice of engaging the child as a prostitute by various methods. Most generally, the prostitution of children means that a party other than the child benefits from a commercial transaction in which the child is made available for sexual purposes - either an exploiter intermediary (pimp) who controls or oversees the child's activities for profit, or a child abuser who negotiates an exchange directly with a child in order to receive sexual gratification. The provision of children for sexual purposes may also be a medium of exchange between adults.

⁵ *Supra note 3*

A child prostitute is the child being forced into detrimental sexual activities either by a middleman (pimp) or by the abuser directly. In the first case, the intermediary pimp usually sells the child to the brothel. However, in the second case, there is a direct exchange between the abuser and the child whereby the former seeks the favors directly for his gratification. Millions of children especially girls are trapped in this vicious cycle. Studies have shown that Indians have the highest population of child prostitutes as compared to the other continents all over the world.

TYPES OF PROSTITUTION:

There are different types of prostitutes- some of them try to satisfy the customers of the locality and for that they are poorly paid whereas on the other hand there are some who are richly rewarded for their job of satisfying rich customers. Prostitutes are also found in military bases. These days prostitution has been connected with tourism as it has been seen that it yields lucrative results. For instance in Goa prostitution is rampant. Apart from all these there is a special high class prostitution catering to visiting businessmen. It is said to be part of the standard operating procedure of local subsidiaries to include these in their hosting obligation. Generally they prefer choosing women from middle class families, especially students in elite colleges.⁶

Child prostitution as a commercial enterprise is a relatively new phenomenon even if the case of prostituted children is not new to India.⁷ Child prostitution may be found in a

⁶ Dr. P. Kapoor, *The Life and work of call girls in India*, (1975, Vikas Publishing House, Sahibabad, India).

⁷ Documents of UN World Conference on Human Rights, Vienna, 1993

number of categories. Therefore it is pertinent enough to understand the phenomena and various types of prostitution which are prevailing in the society.⁸

Common Prostitutes:

Common prostitutes are those who are trapped and then recruited through the pimps or who are sold off to the brothels and vice-dens maintained by old prostitutes known as madams. These people are probably the most serious of offenders in this whole process. They often spend time in places where young people hang out, such as malls. They manipulate and exploit children into prostitution so that they can make money off them. They find kids who have low self-esteem who need love and protection, and they shower them with attention for a while. Soon the request for prostitution comes in, and it may be too late for the child to say no. They abuse these children physically, and sexually. They take most of their money. These people should be the main focus of enforcement because they may present the biggest danger to prostitutes. Most pimps have female prostitutes; it is rare for males to have pimps. Mostly these girls are lured into this profession by giving them false promises of giving them jobs or misguiding them through false marriages. As most of the girls are from poor families they get tempted with these kinds of false promises and leave their homes to end up in a brothel. If the pimps somehow fail to win over the girls through any of the means mentioned above then the procuring gang may resort to kidnapping and abduction.

⁸ K.K Mukherjee, *Child Prostitution in India*, (1997, GNK, Gaziabad)

Dancing and Singing Women:

Since the Mughal period this group has been treated as a class in itself. Here prostitution is hereditary i.e it is handed down from the mother to the daughter as a profession and therefore is not considered to be immoral. These people are also taken from the Hindu and Muslim communities. The newcomers are trained in the art of singing and dancing and the girls of this family are imparted training in singing and dancing from their childhood by their mothers as a result of which these group of people have acquired excellence in the rendering of classical and semi classical music so much so that they have earned a place of pride and respect among the knowledgeable persons. They do not engage themselves in an open prostitution and are very much selective in entertaining or attending their clients. Their status is considered higher than that of the common prostitutes and they also take pride in calling themselves 'khaandaani'.

Patronised by Darbars:

These girls are selected by the kings and chieftans or landlords and are imparted training in singing and dancing with the special purpose of rendering services for the rulers and satisfying them. This is basically done during the time of some festivals or some special occasions in order to entertain the audience or guests. This class of prostitutes is selected on grounds of their beauty. At times a competition is held between these groups and another similar group from outside and ultimately their excellence and performance had a bearing on the prestige of the darbar. Known by different names like 'Mangalmukhis', 'Nrityamangalis' and 'Kalvanathis', these women and girls are considered to be lucky and there was a belief that if one sees their face in the morning and before the

commencement of some important job or before a journey then it would be auspicious. They had to become the paramours of princes or sardars or important courtiers of the state. Young men from the royal families used to visit them for learning the art of manners and behaviours and lessons of sex education. Their descendants are still found.

Call girls:

This concept has gained its momentum due to modernisation and globalisation. Her basically the hotel managements keep contacts with the society girls who belong to elite or middle class families. They mostly stay in hostels, private houses and are very often quite educated.⁹ An interesting fact in this case is that these girls do not enter into the trade on account of any compulsion or financial difficulties but rather for fun and extra income which they might need for meeting the expense of their luxurious life. They are well dressed, elegant, well mannered and are often classed among voluntary prostitutes.

Before there was a belief that girls above 18 yrs of age are involved in this trade but nowadays this practice has changed. What is seen today is that a number of high school girls are now engaged in selling their bodies. A recent study showed that most of them are compelled to enter into this flesh trade through black mailing. The cases of Jalgoan (Maharashtra), Ajmer and Alwar (Rajasthan) are well known.

⁹ R. Rozario, *Trafficking in women and children in India: Sexual Exploitation and Sale*, (1988 Uppal Publishing House)

Religious Prostitutes:

They are known by different names i.e Devadasis, Khudikar, Basavi bhavin, Naikin and Jogins etc. They enter into this trade as soon as they reach puberty and even in pre puberty stage.¹⁰ The following are a brief description of the categories.

Devadasis

Devadasi is originally described a Hindu religious practice in which girls were "married" and dedicated to a deity (deva or devi). In addition to taking care of the temple, and performing rituals they learned and practiced Bharatanatyam and other classical Indian arts traditions, and enjoyed a high social status.

Following the demise of the great Hindu kingdoms the practice degenerated. Pressure from the colonial "reform" movement led to suppression of the practice. Adherents of this movement considered devadasis immoral since they engaged in sex outside of the traditional concept of marriage, and described them as prostitutes. This practice started about the third century AD. The term devadasi literally means servant (slave). Her duties comprise a combination of (a) propriety, (b) ritual (c) entertainment to assert positive fertility and prosperity. They are also called 'Nitya Sumangalis'.¹¹

Devdasi system is still prevalent in Andhra Pradesh, Maharashtra and Karnataka and some parts of Goa.¹²

¹⁰ Supra note 8

¹¹ Karsenboom, Saskia C., *Devdasi Tradition in South India*, (Motilala Bnrasi Das)

¹² Supra note 3

Jogins

This practice is quite similar to that of devdasi in which the girls are married to God before puberty and they enter into prostitution when they reach puberty. A thinly disguised form of prostitution this practice is prevalent even today in many Hindu temples of south India. Young women, called jogins are lured by priests to serve as consorts of male gods but end up as sex slaves of rich farmers, traders and politicians.¹³

Basavi

It means 'female bull' and it connotes the bulls freedom to wonder. Historically they were only expected to perform the religious duties and were never permitted to marry. This system is known to exist in Andhra Pradesh and in scattered form in some areas of Karnataka. The Basavis do not immediately enter into life long career of prostitutes. They are till now required to perform certain ritual duties. Since such work does not yield sufficient income they ultimately turn to prostitution.¹⁴

Cage Brothel Prostitutes

These are the girls who are confined within four walls, no less than cages, by the madams in the brothels. Traces of it are found in Mumbai. Whatever these girls earn by satisfying their clients, ultimately go to the hands of the brothel keeper till such time that the brothel

¹³ www.ambedkar.org/News/Priestslure.htm; last visited on 17 April 2009

¹⁴ H. Lavanam, *Sanskar*, 1992

keeper's investment is made in procuring them has been recovered.¹⁵ A brothel, also known as a bordello, cathouse or whorehouse, is an establishment specifically dedicated to prostitution, providing the prostitutes a place to meet and to have sexual intercourse with clients. The girls kept in these brothels experience a lot of hardship because they enter into a debt from which they can never ever escape as a result of which they remain as prostitutes forever. Often they are made to stay in very small rooms with unhygienic living condition. Moreover they serve the clients without getting any remuneration for it because it is all taken by the madam who keeps them.

Hitch Hiking prostitutes

These people basically can be seen on road sides of national and state highways of Maharashtra, Rajasthan, Gujarat etc. They operate on temporary and casual basis, often on contract basis, thereby bringing the element of call girl system, mostly under the guidance of an elderly prostitute or a brothel keeper.¹⁶

Apart from all the categories of prostitutes mentioned above there are also several groups in Scheduled Castes or Backward Classes who were traditionally professional entertainers. Today they feel proud of telling that their source of livelihood is prostitution because most of them have taken up prostitution as their main profession. They are Sanis, Bairas, Harias, Kanjars and Sansis in the North India and Basavis, Harin, Baradas, Mang, Gurudus and Dombars in South India.

¹⁵ Supra note 3

¹⁶ *Ibid*

CHAPTER-2

FACTS REGARDING PROSTITUTION

Child prostitution is not an issue that many of us think about or concern ourselves with. There is little literature available on it. The number of young prostitutes on the streets today is unknown, and there may be no way of knowing. There is little information on child prostitution.

The numbers showing how many children have fallen victim to this industry are up for debate. Because such a small number of them actually work on the streets (many work in indoor or “hidden” venues such as massage parlors, escort agencies, pornographic film studios, etc.) it is nearly impossible to attain an accurate number.

Indian territory is a point of origin, receipt, destination and transit in cross border trafficking, adding fuel to the continuance of child prostitution. UNICEF says it has strong evidence that girls from other South Asian nations, specially Nepal and Bangladesh, are not only being brought to brothels in India's big cities, but being sent beyond "to more distant destinations. Every year between 5,000 and 7,000 Nepalese girls are trafficked into the red light districts in Indian cities. Most child prostitutes in India are of Indian origin and live in the six large states of India: Andhra Pradesh, Karnataka, Tamil Nadu, West Bengal, Maharashtra and Uttar Pradesh. There are 300,000-500,000 children in prostitution in India. Karnataka, Andhra Pradesh, Maharashtra, Tamil, Nadu

Uttar Pradesh, Belgaum, Bijapur and Kolhapur are the high-supply zones for women in prostitution.

There are estimated to be over 9,00000 sex workers in India. 35% out of them are believed to be children.¹⁷ Recent reports estimate that the number of children involved in prostitution is increasing at 8 to 10% per annum. UNICEF estimates that every year 1-2 million children under 18 are exploited sexually in prostitution. In Asia alone, the number comes close to 1 million. The number of children who work in prostitution is largest in India (400-500,000).¹⁸ Every hour, four women and girls in India enter prostitution, three of them against their will. About 15% of the prostitutes in Mumbai (Bombay), Delhi, Madras, Calcutta, Hyderabad and Bangalore are children. It is estimated that 30% of the prostitutes in these six cities are under 20 years of age. Nearly half of them became commercial sex workers when they were minors. Conservative estimates state that around 300 000 children in India are suffering commercial sexual abuse, which includes working in pornography. In one study of 456 sex workers in Mumbai who had been 'rescued' by police in February 1996, a fifth were under 18 years and two-thirds were under 20. Figures for children engaged in prostitution in **India's** metropolitan cities range from 270,000 to 400,000.¹⁹

There is a persistent public perception that the problem of sexual exploitation of children is confined to foreign tourists on the beaches of Goa and foreign businessmen in Mumbai (Bombay). But the picture emerging from a number of studies and from

¹⁷ www.shvoong.com/social-sciences/1688826-child-prostitution/; last visited on 15 March 2009

¹⁸ www.blackboxes.org/en/asia_in_school/labour/facts_about_child_prostitution.htm; last visited on 15 April 2009

¹⁹ www.restlessbeings.org/pages/child_prostitution-the_facts; last visited on 2 April 2009

organizations working in the red-light areas of major cities is very different. It observes that it is a picture of children -- mostly girls -- being forced into a brutal existence in brothels where a girl serves up to ten customers a night, every night.²⁰

A four-year-old Indian government study of brothels in the six big cities of Delhi, Bombay, Calcutta, Hyderabad, Madras and Bangalore found up to 100,000 women commercial sex workers there. Nearly a third of them were below 20 years old and 40 percent of them had taken up the profession before the age of 18.

Most women were Indian and were mainly from six large states -- Andhra Pradesh, Karnataka, Tamil Nadu, West Bengal, Maharashtra and Uttar Pradesh. However, more than five out of every 100 women sex workers in Indian brothels are from Nepal and Bangladesh.

NATIONAL STATISTICS²¹

* Over 1 million girls and women are believed to be forced into the sex industry within the country at any given time. Women's rights organisations and NGO's estimate that more than 12,000 and perhaps as many as 50,000 women and children are trafficked into the country annually from neighbouring states for the sex trade.²²

²⁰ Inter Press Service dated 15 May 1996.

²¹ www.globalmarch.org/worstformsreport/world/childprostitutionandpornography.html - last visited on 2 May 2009

²² US Dept of State, Country Reports on Human Rights Practices- 2000, February 2001

* According to an ILO estimate, 15% of the country's estimated 2.3 million prostitutes are children. The traffic is controlled largely by organised crime.²³

* It is estimated that Nepalese children constitute 20% (40,000) of the estimated 200,000 Nepalese prostitutes in India. Girls as young as seven years are trafficked from economically depressed neighborhoods in Nepal and Bangladesh, to the major prostitution centres of Mumbai, Calcutta, and Delhi. In Mumbai, an estimated 90% of sex workers started when they were under 18 years of age; half are from Nepal.²⁴

* Prostitution is widespread, with an estimated 2.3 million prostitutes in the country, some 575,000 of whom are children.²⁵

* According to ILO estimates, 15% of the country's estimated 2.3 million prostitutes are children.²⁶

* Recent studies indicate that of the estimated 9,000,000 prostitutes working in India, some 30% or 2,700,000 are children. A further 10% reported that they had started their 'career' in prostitution before they were 18 years of age. A large number of these children are trafficked from Bangladesh, Pakistan and Nepal.²⁷

* One quarter of prostitutes are minors.²⁸

²³ Supra note 22

²⁴ ECPAT, CSEC Database

http://www.ecpat.net/eng/ecpat_inter/projects/monitoring/online_database/index.asp

²⁵ US dept. of State, Country reports on Human Rights practices, 1999, 25 February 2000

²⁶ *Ibid*

²⁷ ECPAT International, A Step Forward, 1999

²⁸ CATW, The Fact Book on Sexual Exploitation, 1999

* 25-30% of prostitutes are children. An estimated number of child prostitutes is 400,000.²⁹

* There is a growing pattern of trafficking in child prostitutes from Nepal. According to one estimate, 5,000 to 7,000 children, mostly between the ages of 10 and 18, are drawn into this traffic annually. NGOs in the region estimate that some 6,000 to 10,000 girls are trafficked annually from Nepal to Indian brothels and a similar number are trafficked from Bangladesh.³⁰

* Women's rights organisations and NGOs estimate that more than 12,000 and perhaps as many as 50,000 women and children are trafficked into the country annually from neighbouring states for the sex trade.³¹

* 30% of India's 1 million prostitutes are girls below the age of 16 years.³²

* A survey by the Central Social Welfare Board of India indicated that the population of Nepalese women and child victims of commercial sexual exploitation in Indian brothels would be between 70,000 to 100,000 of which 30% were below 18 years.³³

* Over 100,000 child prostitutes are estimated to be in India's major cities.³⁴

²⁹ ILO- IPEC, *Mainstreaming Gender in IPEC Activities*, 1999

³⁰ *Supra* note 25

³¹ *Ibid*

³² SPARC, *The State of Pakistan's Children*, 1999, citing "Child prostitution Increasing in Indo Pak", *The Frontier Post*, 25 November 1998

³³ ILO-IPEC, Usha D. Acharya, *Country report: Nepal*, October 1998

³⁴ June Kane, *Sold for Sex*, Aren Ashgate Publishing Limited Gower House, 1998

* Over the last decade, 200,000 Bangladeshi girls were lured under false circumstances and sold into the sex industry in nations including Pakistan, India and the Middle East.³⁵

* Every year between 5,000 and 7,000 Nepalese girls are trafficked into the red-light districts in Indian cities. Many of the girls are barely 9 or 10 years old.³⁶

* 27,000 Bangladeshi women and children have been forced into prostitution in Indian brothels.³⁷

* 200,000 Nepalese girls under 16 years are in prostitution.³⁸

* 40,000 Nepalese girls under 16 in Indian brothels are forced into prostitution.³⁹

* 300,000-500,000 children are engaged in prostitution.⁴⁰

* 15% of prostitutes in India are under the age of 18 years.⁴¹

* A 1996 survey published in India Today magazine estimated there are between 40,000 and 50,000 child prostitutes in the country, activists now say that figure might have jumped to about 250,000.⁴²

³⁵ CATW Fact Book, citing Tabibul Islam, "Rape of Minors Worry Parents", IPS, 8 April 1998

³⁶ CATW Fact Book, citing Soma Wadhwa, "For sale Childhood", Outlook, 1998

³⁷ CATW fact Book, citing "Women Forced into Indian Brothels", CWCS, June 1998

³⁸ Penelope Saunders, "Sexual trafficking and forced prostitution of Children", 29 October 1998

³⁹ *Ibid*

⁴⁰ CATW Fact Book citing Rahul Bedi, "Bid to Protect children as sex tourism spreads", Daily Telegraph (London), 23 August 1997

⁴¹ ECPAT, "Innocence Sacrificed on Tourism Altar", Bulletin, October 1996

⁴² "Children for Sale", asia week, 1 March 1996

* Conservative estimates say some 300,000 children are involved in the sex industry.⁴³

* 500,000 girls work as sex workers.⁴⁴

* The average age of the Nepalese girls entering an Indian brothel is said to be 10-14 years, some 5,000 to 7,000 of them being trafficked between Nepal and India annually.⁴⁵

* Every year 5,000 to 7,000 Nepalese girls are trafficked to India. An estimated 40,000 to 45,000 of these girls are in Bombay brothels and also nearly an equal number of them are in Calcutta.⁴⁶

* Nepalese social workers estimate the number of Nepalese girls and women working in Indian brothels at about 200,000, and believe that between 5,000 and 7,000 new Nepalese end up in Indian brothels every year.⁴⁷

* There were an estimated 400,000-500,000 child prostitutes in 1991.⁴⁸

⁴³ ECPAT, "Six foreigners charged in India Child Sex Case", The Nation 18 October 1996, Reprinted in ECPAT Bulletin, October 1996

⁴⁴ UNICEF

⁴⁵ UNICEF India, Richard Young, "Understanding Underlying factors", Child workers in Asia, January-June 1996

⁴⁶ Lawyers for Human Rights and Legal Action, The Flesh trade report, 1995-1996

⁴⁷ Human Rights Watch/ Asia, Rape and Profit, June 1995

⁴⁸ Human Rights Watch

LOCAL STATISTICS ⁴⁹

* Half of 100,000 girl prostitutes between 10-14 in Bombay are from Nepal and kept in brothels against their will.⁵⁰

* In Bombay, India, at least half of the city's 100,000 prostitutes are believed to be Nepalese girls.⁵¹

* The number of Nepalese girls and women engaged in prostitution in Calcutta exceeds 27,000, in Delhi it is more than 21,000, in Gorakhpur it is 4,700, and in Banaras it is 3,480.⁵²

* 10,000 Bangladeshi children are in brothels in Bombay and Goa, India.⁵³

* A NGO states that the number of children in flesh trade is increasing by 8-10% every year⁵⁴

* 10,000-12,000 Bangladeshi children are thought to be employed in the brothels of Bombay and West Bengal.⁵⁵

* A report of the Central Advisory Committee on Child Prostitution, published in May 1994 says that 12 to 15% of the prostitutes in Mumbai, Delhi, Madras, Calcutta,

⁴⁹ Supra note 21

⁵⁰ Supra note 38

⁵¹ Supra note 33

⁵² *Ibid*

⁵³ CATW Fact Book, citing "Human smuggling from Bangladesh at alarming level", Reuters, 26 May 1997, citing Trafficking watch Bangladesh

⁵⁴ "The Young and the Damned", The Week, 4 August 1996, reprinted in ECPAT Bulletin, July 1996

⁵⁵ An Alternative report to the UN Committee on the Rights of the Child, submission to the UN CRC, 1997, citing UNICEF, The Progress of the Nations, 1995

Hyderabad and Bangalore are children. It is estimated that 30% of the prostitutes in these cities are aged below 20 and nearly half of them had become commercial sex workers when they were minors. 86% of the prostitutes come from Andhra Pradesh, Karnataka, Tamil Nadu, West Bengal, Maharashtra and Uttar Pradesh. Conservative estimates put the number of children in India suffering commercial sex abuse at 300,000.⁵⁶

* Dr. I.S. Gilada, General Secretary of the Indian Health Organisation(IHO), estimated in various studies conducted between 1985 and 1994 that there were between 70,000 and 100,000 prostitutes in Bombay, 100,000 in Calcutta, 40,000 in Delhi, 40,000 in Pune, and 13,000 in Nagpur.⁵⁷

⁵⁶ Supra note 54

⁵⁷ Supra note 47

AWARENESS LEVEL:

Out of a sample of 100 persons comprising officials, general mass and students excluding students of law, 74 of them said that they are not even aware of child prostitution and the rest of the 26 people said that they are aware of this problem.

SAMPLE- 100

Yes- 74

No- 26

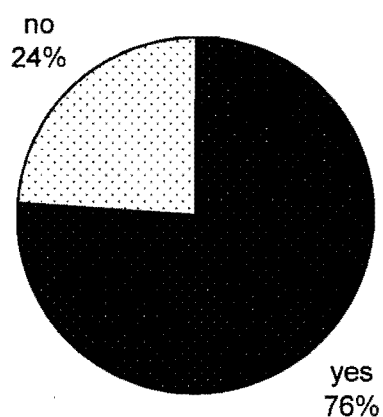


Figure-1

The above pie chart depicts the level of awareness in our society regarding child prostitution. From the graph it is very much clear that though this problem is so extensive still it has not come to limelight and thus most of the people are not aware of the same.

CHAPTER-3

FACTORS LEADING TO CHILD PROSTITUTION

Children turn to prostitution for various reasons. Very often it is children who are in their teens who are prostitutes, but there have been cases of children as young as 12 years old being included. The question has often been raised regarding the very inherent factors that have nurtured and raised this social evil of child prostitution. While some of these factors have been stayed as parasites on the society since time immemorial, the others have gradually contributed their lot to the problem under various social conditions. However the researcher's attempt in streamlining these factors has been successful to the following extent.

Cultural Factors:

There is a growing problem of sex slavery in India, especially with child prostitution. Looking at India's problem with sex slavery is much more complicated than looking at other Third World countries that have sex slaves. This is because India has roots of sex slavery in its culture, traditions and religion. In many Indian societies, the practice of **Devdasi** is widely accepted. Devdasi is where young girls are "married" to the "gods" and they then become religious prostitutes, sleeping with priests and others.⁵⁸ Devdasi system:- many of the devdasis are the girls who were dedicated to the Goddess Yellamma by their parents at a very young age. They are the servants of God as they are

⁵⁸ priproject.homestead.com/Files/child_prostitution_in_india_page.htm -; last visited on 15 March 2009

married to the Goddess. The devadasi tradition, still prevalent in many parts of India, continues to legitimise child prostitution. A devadasi is a woman married to a god and thus sadasuhagan or married, and hence at all times blessed. As such, she becomes the wife of the powerful in the community. Devadasi is known by different names in different states. In the Vijapur district of Karnataka, girls are given to the Monkey God (Hanuman, Maruti), and known as Basvi. In Goa, a devadasi is called Bhavin (the one with devotion), In the Shimoga District of Karnataka, the girls are handed over to the goddess Renuka Devi, and in Hospet, to the goddess Hulganga Devi. The tradition lives on in other states in South India. Girls end up as prostitutes in Bombay and Pune. The Banchara and Bedia peoples of Madhya Pradesh also practice "traditional" prostitution. (Farida Lambey, vice-principal of the Nirmala Niketan College of Social Work, "Devadasi System Continues to Legitimise Prostitution: The Devadasi Tradition and Prostitution," *TOI*, 4 December 1997). This ceremony takes place twice a year. The main one is during the second fortnight of January at Karnatakas Saudatti village in South West of Miraj. Once the girl is married to a Goddess she cannot marry a mortal. Districts bordering Maharashtra and Karnataka, known as the "devadasi belt," have trafficking structures operating at various levels. The children here are in prostitution either because their husbands deserted them, or they are trafficked through coercion and deception In one Karnataka brothel, all 15 girls are devadasi. (Meena Menon, "The Unknown Faces")

The procurers frequent the place in order to get the fresh supplies of girls as 4000 to 5000 girls are dedicated every year to the Goddess.

Attaining puberty is a secondary thing as there is a ceremony known as heath Lawni (or touching ceremony) whereby the girl is made over to the highest bidder.

A study revealed that one third, of which three fourth are under fourteen years, are in Bombay's cheapest brothels. They belong to the low castes like Mahars, Matangs, etc. who give low priority to education. They are so poverty stricken that Fathers, brothers and husbands do not hesitate to sell their daughters, sisters and wives.

It was estimated that in Delhi 50% of the prostitutes are devdasis and in Bombay, Pune, Solapur and Sangli. 15% of them are devdasis,

Prevention of Devdasis Act has been in the statute book since 1935 and amended recently but the system continues even today despite governmental ban. No one pays any heed to those laws, as many believe it is part of their culture to continue these acts. Still the girls are dedicated to the Goddess and forced into virtual prostitution and made to entertain males in order to invoke the blessings of the deity.

Apart from devdasi system practiced in India other factors also play an important role in the continuance of child prostitution as it is a part of their culture. For instance there are some castes that have traditionally accepted prostitution as their profession. The Rajnat tribe is economically organized around a system of child prostitution. This tribe is only one of the many such in Rajasthan. The system of prostitution practiced by this tribe is inherently child prostitution, as the girls enter into prostitution soon after the puberty. This tribe was earlier patronized by the Rajput monarchs which has now settled itself on highways and thus practice prostitution there. The eldest daughter is raised, being fully

aware of the fact that the tribe's survival entirely depends on her labour as a prostitute. When the Rajnat girl reaches puberty, she undergoes an auction like ceremony in which the highest bidder purchases the right to her virginity.⁵⁹

Poverty:

Poverty and illiteracy fuel the problem. Many children are lured away from their villages by vice rings, often with the connivance of poor parents. They end up in the beach resorts of Goa and Kerala, to the south, where drugs such as hashish and heroin are also available cheaply - providing an added attraction to foreigners. Tribal Kolta women and girls from Garhwal hills are compelled to become prostitutes to rescue their family from debt bondage. Poverty stricken young girls from Bengal and Nepal are lured with promises of attractive jobs and marriage. The local Rajputs used to keep the men as animals and exploit their wives, sisters and daughters too. The agents were successful in convincing these women well and hence brought them to Delhi and Agra and sold them to the brothels there.

Nearly 5000 teenagers and women in a Tehsil of Sangli district in South Maharashtra wait for the month of June when the Arabs come and the year long poverty and hunger of these women, children, and babies is dispelled over night. The flesh trade flourishes from June to September and makes all the people connected with it happy.

⁵⁹ R.K Tandon and K.N Sudarshan, *Child Prostitution*, 1997, APH Publishing Corporation, Efficient Offset Printers

In a study conducted by Women's Rehabilitation Centre of Kathmandu on girls of Nepali origin in Bombay brothels, more than half of the respondents cited poverty as the reason for prostitution. They also said that they are often deceived by village men and relatives (popularly called as Gallawals) after being informally married to them, or after being convinced by the prospect of better jobs in the cities. The girls also said that some districts of Nepal have direct links with the brothels in Bombay.⁶⁰

Trafficking:

Trafficking is a term used to describe the illegal trade across borders of goods – especially contraband, such as drugs – for profit. Human trafficking is the commerce and trade in the movement or migration of people, legal and illegal, including both legitimate labor activities as well as forced labor. The term is used in a more narrow sense by advocacy groups to mean the recruitment, transportation, harbouring, or receipt of people for the purposes of slavery, forced labor (including bonded labor or debt bondage), and servitude. It is the fastest growing criminal industry in the world. Exploitation includes forcing people into prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery and servitude. For children, exploitation includes forced prostitution. Trafficking of children often involves exploitation of the parents' extreme poverty. The latter may sell children to traffickers in order to pay off debts or gain income or they may be deceived concerning the prospects of training and a better life for their children.

⁶⁰ Supra note 59

Over the last decade, the concept has been expanded to cover the illegal transport of human beings, in particular women and children, for the purpose of selling them or exploiting their labour.

In 1994, the United Nations General Assembly defined trafficking as the "illicit and clandestine movement of persons across national and international borders, largely from developing countries and some countries with economies in transition with the end goal of forcing women and girl children into sexually or economically oppressive and exploitative situations for the profit of recruiters, traffickers, crime syndicates, as well as other illegal activities related to trafficking, such as forced domestic labour, false marriages, clandestine employment and false adoption.

Trafficking -- especially for commercial sexual exploitation -- has become a worldwide, multi billion-dollar industry. Boys and girls are favoured targets for sexual exploitation and groups with low social standing are often the most vulnerable, such as minorities and refugees. Illicit traffic is expanding through the use of child pornography on the Internet, and low-cost Internet advertising of the commercial sex trade, attracting sex tourists and paedophiles⁶¹

There are no accurate statistics of how many people are involved, but it is estimated that in the last 30 years, trafficking in women and children in Asia for sexual exploitation alone has victimized over 30 million people. Porous borders between some countries in the region allow for extensive trafficking and sexual exploitation of children. In particular, the porous India-Bangladesh and open India-Nepal borders are known for

⁶¹ www.asiasource.org/asip/gupta.cfm; last visited on 18 April 2009

trafficking in women and children. Between 5,000 and 7,000 Nepali girls are trafficked every year across the border to India. Most of them end up as sex workers in brothels in Bombay and New Delhi. 66% of the girls are from families where the annual income is about Rs5 000. They may be sold by their parents, deceived with promises of marriage or a lucrative job or kidnapped and sold to brothel owners. Between 40 - 50% are believed to be under 18 years of age and some are as young as 9 or 10 years old. An estimated 200,000 Nepali women, most of them girls under 18, work in Indian cities.⁶²

Lack of employment:

The environmental degradation and lack of employment avenues in the rural areas also cause people to migrate to big cities. On arrival in overcrowded cities the disintegration of family units takes place through alcoholism, unemployment or disillusionment of better life etc. This in turn leads to emergence of street children and child workers who are forced by their circumstances to work as prostitutes from the early age. The girls are forced to work as sex -workers or beggars. Poverty stricken young girls from Bengal and Nepal are lured with promises of attractive jobs and marriage.

Medical Myths:

There is also the mistaken belief in India that younger children have fewer chances of contracting sexually transmitted diseases. Also, people believe that if men who have contracted the HIV virus or any other sexually transmitted disease, by sleeping with virgins, they will become disinfected and no longer have the disease. Thus the fear of

⁶² Estimates by Maiti Nepal, Child workers in Nepal and National Commission for Women in India

HIV/AIDS has increased the demand for virgins and children. Clients mistakenly believe that children have fewer chances of contracting the disease. Similarly as mentioned earlier there is the myth that a man can rid himself of sexually transmitted diseases if he sleeps with a virgin. 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. In Bombay, children as young as 9 are bought for up to 60,000 rupees, or US\$2,000, at auctions where Arabs bid against Indian men who believe sleeping with a virgin cures gonorrhea and syphilis.⁶³

Some Indian men believe that it is good luck to have sex with scalp-eczema afflicted prostitutes. Infants with the condition, called "pus babies," are sold by their parents to brothels for a premium⁶⁴.

It is interesting to note that several studies have found that the majority of "johns," or customers are men who are middle aged, and who come from white-collar families. Many of these men like young girls because they think of the girls as naive and innocent. The risk of disease is also lower with younger prostitutes simply because they have not been selling themselves as long as adult women. These men may find that it is easier to dominate or manipulate a younger girl than it would be an older, more experienced woman. About 97% of customers are male.

Socio Economic Reasons:

⁶³ Robert I. Friedmann, *India's Shame: Sexual Slavery and Political Corruption are leading to an AIDS Catastrophe*, The Nation, 8 April 1996

⁶⁴ *Ibid*

Growing poverty, increasing urbanization, and industrialization, migration, and widespread unemployment, breaking up of joint family system etc. are also responsible for the prevalence and perpetuation of the child prostitution.

Fraudulent Ways :

In many cases, children are sold or tricked by their relatives or agents working for the issue of child sex workers and many more are tempted into the sex trade by sex tourists and pedophiles who offer children money and other rewards for sexual activities. Pedophilia is the long term sexual interest by adults in children under the legal age of 18. Generally, the acts of a pedophile include any "sexual contact between an offender and a victim, who, due to age/or immaturity, is incapable either legally or realistically of giving consent." Pedophiles can be grouped into three distinct categories: heterosexual pedophiles (attracted to children of the opposite sex), homosexual pedophiles (attracted to children of the same sex), or bisexual pedophiles (attracted to children of both sexes).

The pedophile often seeks out shy, handicapped, and withdrawn children, or those who come from troubled homes or under privileged homes. He then showers them with attention, gifts, taunting them with trips to desirable places like amusement parks, zoo's, concerts, the beach and other such places.

About 7,000 sex workers cross over from Nepal into India every year. 66% of the girls are from families where the annual income is about Rs5 000. They may be sold by their parents, deceived with promises of marriage or a lucrative job or kidnapped and sold

to brothel owners. Between 40 - 50% are believed to be under 18, the age of consent in India, some are as young as 9 or 10 years old.

Tourism Industry Boom :

The most important thing to realize is that child prostitution in general would not be an issue if there was not a demand for it. So who is demanding it? Who is allowing these twelve and thirteen year old girls and boys to exploit their bodies and disregard their self-respect and dignity? One answer to this question is tourists. There is a term related to prostitution coined, "sexual-tourism." This term refers to the act of a person going to a child prostitute for services in a foreign country. Some destinations are portrayed as exotic, and as a result the enticement might encourage people to buy sexual services if they hadn't considered it before. There is an important dynamic at work in tourism which derives from the fact that when a tourist is away from familiar surroundings and in a foreign culture, the moral restraints which give some guidance to behavior in the home situation no longer apply. It is said that the further one travels from home the less moral one becomes. This is one of the leading causes of child prostitution in India where every year lakhs of tourists visit the tourist places (esp. Goa) and target the innocent kids to satisfy their physical needs. Because a majority of the costumers are visiting from other countries, they are therefore harder to prosecute.

Thus foreign tourists are frequenting India because of its relaxed laws and abundant child prostitutes. All different types of people are involved in this child sex-tourism industry. Twenty-five percent of them are Americans. At the same time, offenders are increasingly coming from within Asia itself, particularly Taiwanese, Korean and Japanese tourists. The abusers are not just pedophiles. Most are so-called respectable people-doctors, lawyers, schoolteachers-who think it's not a problem to have sex with a child as long as the kid is foreign and they leave a big tip. The adults may see the children of third world countries as inferior. They may justify their behavior by believing that there are no social taboos in that country regarding having sex with children.

Early marriage:

Quick marriages without proper knowledge of the bridegroom's family background leading to a divorce initiate the gravitation of girls to the red light area. In many instances girls who are unable to cope with their husbands run away and end up as prostitutes. A number of prostitutes will tell you that they were victims of early marriage and ran away because they couldn't live with the husbands forced on them by their parents.

Problems in Adolescent Thinking:

Some of them are lured to Bombay the tinsel town. They dream of stellar roles in films and mostly end up as prostitutes in the cages.

Rural Issue:

Child sex workers are not confined to big cities. A survey in Bihar revealed that roadside brothels for truck drivers in the Aurangabad and Sasaram districts offered sex workers aged between 6 and 18 years.

CAUSE OF CHILD PROSTITUTION

Out of a sample of 100 persons comprising officials, students, parents and general public 69 of them said that poverty is the main cause behind the continuance of child prostitution whereas 12 of them said that trafficking is the cause for it. 11 of them opined that medical myths attached to it is responsible for the prevalence of this problem and as per 8 persons problems in adolescent thinking is the prime cause for it.

SAMPLE- 100

Poverty- 69

Trafficking- 12

Medical myths- 11

Adolescent thinking- 8

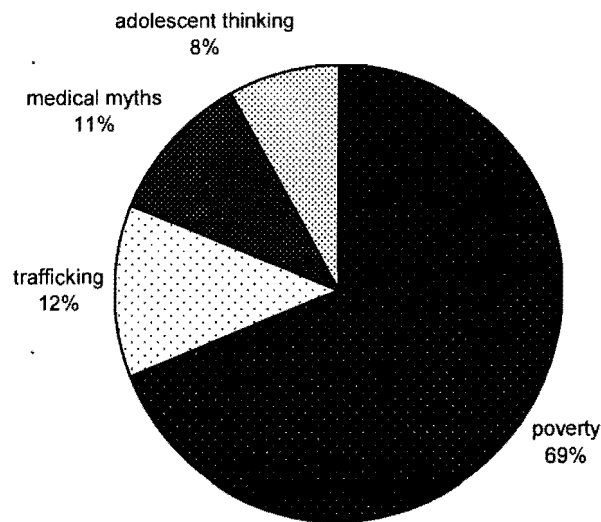


Figure 2

This graph, thus, clearly shows that poverty is the major factor contributing to the growth of this so called problem of child prostitution. Though other factors also play a role in it still poverty is the main cause behind this problem.

HARDSHIPS INVOLVED:

There are several dangers connected to the life of a child prostitute. Some of these dangers are:

- sexual assault by pimps and customers
- physical assault by pimps and customers
- sexually transmitted diseases of which the most serious is AIDS/HIV
- drugs
- pornography (60% of prostitutes have been asked to do some form of pornography)
- a criminal record
- pregnancy

(1) Termed as the oldest profession, prostitution has become an integral part of 'all sorts' that make the world. Women who resort to this rarely get a sympathetic word from the society and their life is wasted away selling

momentary pleasures for a meal and existence in cubby holes called 'cages'. If their plight is pathetic, worse still is that of the child prostitutes.

- (2) The prostitute is deprived of her earnings till the price which was paid to buy her is procured. If she utters a word of dissatisfaction she is whipped. They are kept in sophisticated cages by their owners. The child prostitutes who are minors and virgins are kept under strict vigil in reserve as they are in great demand.
- (3) The girls in the dhabhas, or brothels, along the Solapur-Hyderabad highway, are threatened, harassed, forced to service men, or *goondas*, freely and beaten by men and police. Local farmers abuse them also. Police do not register any complaints of assault. In one case, a woman who was running over unfamiliar fields to escape the police in pitch darkness; she stumbled into a well and was killed. Sometimes, bodies of women are found on the fields, half eaten by animals. Another woman had her ears cut off, was robbed and left unconscious on the road.⁶⁵
- (4) The girls have to live in a really unhygienic condition with very little food. A dozen girls have to live in a 10 x 10 room and that too without any medical check ups. These girls are forced to work round the clock. They are excused only when they are physically very weak.
- (5) The girls are seldom taken for treatment as sex with a minor girl is a crime so the madams are scared of the criminal proceedings.
- (6) The police, the brothel keeper, and pimps share the major part of the earnings of the prostitutes and the rest of it that percolates down to the prostitutes is a

⁶⁵ Meena Menon, *The twilight Zone*, The Hindu, 27 July 1997

mere pittance The lions share of the value generated by it is appropriated by some one else and the child is left with a fraction that can not meet comfortably even the survival needs. Underage girls are rarely found in brothels because the pimps and owners receive tip offs from police about impending raids⁶⁶.

- (7) In one brothel in Bombay, the police receive weekly bribes called *haftas* from the madams. Cops harass the girls, take their money, and demand free sexual services.⁶⁷
- (8) Escape, especially without the help of other people, is also nearly impossible. Prostitutes are usually guarded and kept under watch constantly. Even if they get past the threats and security, most prostitutes have nowhere to go, as they are illiterate and have been smuggled into the city. Many actually go back to the brothel and negotiate work deals that force them into larger debts, while others are punished for their actions
- (9) Girls may not leave the brothels until they have repaid their debt, at which time they are sick, with HIV and/or tuberculosis, and often have children of their own⁶⁸.
- (10) Practice of child prostitution is economically unsound, psychologically disastrous, and morally dangerous and harmful for a child. One can hardly imagine the extreme trauma that a child under goes. Studies show that on the contrary, children's bodies have not matured enough and their immune systems are often not fully developed, ready to take on these vile diseases.

⁶⁶ Meena Menon, *Tourism and Prostitution*, The Hindu, 14 February 1998

⁶⁷ Supra note 63

⁶⁸ Soma Wadhwa, *For Sale Childhood*, Outlook, 1998

And because of their immaturity, they are more susceptible to sexually transmitted and other diseases.

- (11) It also leads to various problems like teenage pregnancies, sexually transmitted diseases and various other fatal diseases. The children engaged are more likely to be affected by tuberculosis, meningitis scabies, chronic pelvic infections anaemia, syphilis, chaneroid. Tinea cruris, venereal war etc.
- (12) Child prostitution itself is a criminal activity and serves as a catalyst for further criminal association in other fields. The helpless children are turned into mere pawns in the criminal syndicates which lead to a steady deterioration of morals.
- (13) When a child is sexually exploited, what is denied is his or her childhood. The very basis of the child sex industry designating a child as a commodity for sale and purchase demeans and dehumanizes a child. It also serves the sexual drive of the men who seek emotional release by exploiting a completely powerless child. Child Prostitution is a direct violation of Human rights. When a child is sexually exploited, they have no opportunity to discover their own identity or their self-worth. They are being denied the right to grow up in a loving environment & denied their chance to have a childhood.
- (14) This leaves a child experiencing low self esteem who treats himself or herself as a taboo for the society whom nobody would accept. By this the child gets mentally tortured which hampers his or her personality.

- (15) Trafficked children are also exposed to different psychological problems. They suffer social alienation in the host and home countries. Stigmatization, social exclusion and intolerance make reintegration into local communities difficult. The governments offer little assistance and social services to trafficked victims upon their return. As the victims are also pushed into drug trafficking, many of them face criminal sanctions.
- (16) In India there are some myths that make men seek young girls, believing that sex with virgins can cure sexually transmitted diseases, employing that younger sex workers are less likely to carry HIV. On the contrary, a child's immature body and inadequately developed immune systems make her more susceptible to sexually transmitted and other diseases.
- (17) Child prostitution is fast becoming a big problem in the world today because those involved in it do not only engage themselves in the act of selling their body alone for money, but also get trapped into the world of drug and other social vices. Many of them feel dejected and rejected by the society because of the way they live their lives.
- (18) Children trapped into this profession suffer from multiple phobias, such as fear of sex, fear of being sold again, fear of men, fear of violence, fear of new care-givers, fear of ostracism and even fear of returning home.

CHAPTER-4

LEGAL FRAMEWORK DEALING WITH CHILD PROSTITUTION

The previous chapters dealt with facts regarding child prostitution and the factors leading to child prostitution. This chapter will throw some light on the legislations, both at national and international level, which deal with the rights of a child and which though not directly but can be indirectly applied in cases of child prostitution.

LEGAL FRAMEWORK (*national*):

Constitution of India:

The Constitution of India provides that the State should make special provisions for women and children for their protection and upliftment.⁶⁹ The Constitution of India has also prohibited trafficking in human beings and has made the contravention of the same, punishable in accordance with law.⁷⁰ The State is also required to direct its policy towards securing that the health and strength of children are not abused and that they should not be forced by economic necessity to enter into any avocation which is unsuitable for their age or strength⁷¹. This places a responsibility on the State to take care that poverty should not be a factor compelling a child to do anything which is harmful for

⁶⁹ Article 15 (3)

⁷⁰ Article 23 (1)

⁷¹ Article 39 (e)

his growth. The State is also required to direct its policy towards securing that the children are given full opportunities and facilities for their development in a healthy manner and in conditions of freedom and dignity and that their childhood is sufficiently protected against exploitation and against moral and material abandonment.⁷²

Thus the Constitution of India places a maternalistic responsibility on the State to protect a child from being exploited either by making any special provisions for them or by directing its policy towards securing the health and strength of children and protecting them from any sort of abuse which may hamper their childhood.

Juvenile Justice Act 2000:

The concerned Act deals with child in need of care and protection.⁷³ A child who is trapped into this flesh trade clearly falls into this category because in clauses vi, vii and viii of Section 2 (d) it has been stated that a child in need of care and protection means a child who has been or who is likely to be sexually abused or tortured for illegal acts or who has been trafficked or who has been abused for unconscionable gains. Thus a child prostitute is a child in need of care and protection because he is sexually abused, tortured and in most of the cases he is treated as a commodity and trafficked from one place to other for the purposes of carrying out prostitution. Thus the definition of child in need of care and protection includes the exploited mass of child prostitutes and children of prostitutes. In case of child prostitutes if they are not rescued from the red light areas and

⁷² Article 39 (f)

⁷³ Section 2 (d)

reformed through proper institution they will be destined to become prostitutes in future and prostitutes forever.

The said legislation also makes provision for the restoration of the child to his parents, adopted parents or his foster parents where he is deprived of his family environment temporarily or permanently.⁷⁴

Immoral Traffic Prevention Act, 1986:

This Act provides rigorous punishment for the person who procures, induces or takes away any person with the intention to make him carry on prostitution or to make him an inmate of a brothel etc. the punishment prescribed is rigorous imprisonment for minimum three years and not more than seven years with fine and if the offence is committed without the consent of the person procured or induced then the imprisonment of seven years shall extend to fourteen years. Provision has also been made that if the offence is committed against a child then the punishment extends to rigorous imprisonment for a term of not less than seven years and it may extend to life imprisonment also. If the victim is a minor then the punishment shall extend to rigorous imprisonment for minimum seven years and maximum 14years. The offence is triable in the place where the victim was procured or induced or taken away or in the place to which the victim has gone as a result of the inducement.⁷⁵

⁷⁴ Section 39

⁷⁵ Section 5

Provision for punishment has also been provided for detaining a person in the premises where prostitution is carried on, whether with or without the consent of the person taken for the same.⁷⁶

The concerned legislation has also made provision for the appointment of trafficking police officers. They are required to investigate any offence relating to sexual exploitation of persons. Provisions have also been made for the establishment of protective homes and corrective institutions.⁷⁷ This is a very relevant and useful provision as it helps in protecting a child from being exploited further after being rescued from the trap of flesh trade.

Indian Penal Code 1960:

The Indian Penal Code in its various provisions has dealt with the protection of child from being sexually exploited and has also made trafficking a punishable offence. There are various provisions dealing directly and indirectly with the protection of a child from falling into the traps of sex trade. The concerned legislation has dealt with kidnapping from India and kidnapping from the lawful guardianship where it has been stated that whoever takes away any person beyond the limits of India without the consent of the latter or any person legally authorized to give the consent, is said to have kidnapped the person from India.⁷⁸ Similarly if a person takes away any minor (in case of girls under 18 yrs of age and in case of boys under 16 yrs of age) without the consent of the lawful guardian is said to have kidnapped the minor from the lawful guardianship.⁷⁹

⁷⁶ Section 6

⁷⁷ Section 21 (1)

⁷⁸ Section 360

⁷⁹ Section 361

Furthermore punishment of imprisonment has been provided which may extend to 10yrs with fine where a person induces a minor girl under 18yrs to go from any place and forces her or seduces her to have illicit intercourse with another person⁸⁰ whereas the same punishment is also provided for if a person is found to have imported a girl under 21yrs of age for the purposes of having illicit intercourse with another person.⁸¹

Punishment of imprisonment extending upto 10yrs with fine has also been provided for the offence of selling or buying of minor girls for the purposes of carrying on prostitution.⁸²

Punishment for rape has also been provided in the present legislation. The minimum punishment is that of seven years which may extend to ten years or life if the victim is under 12 years of age.⁸³ Today having sex with the same sex trend is on rise and in most of the cases the minor boys are being preferred and abused sexually which is against the order of nature. The concerned legislation has dealt with this kind of offence also where it has stated about unnatural offences. Here the punishment provided for is 10 years imprisonment with fine.⁸⁴

⁸⁰ Section 366 A

⁸¹ Section 366 B

⁸² Sections 372 and 373

⁸³ Section 376 (1)

⁸⁴ Section 377

The Goa Children's Act

The Goa Children Act 2003 is legislation against child sexual abuse, especially those related to tourism. The legislation has specifically made any such cases of abuse non-bailable offences under Section 2 (a) of the Criminal Procedure Code, 1973. The fines and jail terms are also severe. The setting up of a Children's Court to try all offences against children is a bold step prescribed by this law. A child-friendly court will help to minimize the double trauma that abused children are subject to in courts, which even adults find awesome and terrifying. There have been at least three cases booked under the Goa Children's Act. However, the rules are yet to be formulated.

Apart from the provisions mentioned above the Act has also made some more provisions through an amendment for the better protection of children who are sexually exploited. They are as follows:

For the children's homes, some stringent provisions have now been included. No children's home shall reject or refuse admission of any "child in difficult circumstances" for care or custody or education or rehabilitation when expressly directed by the Government-appointed authority.

A child in difficult circumstances is defined as "one which is exposed to or is likely to be exposed to child abuse or sexual offences or child trafficking or commercial sexual exploitation or violation of his or her rights.

Every children's home should now ensure that no child under its care or custody was exposed to any of the exploitations under the Act. The "care givers" are held personally liable for the same.

Any contravention by any children's home was punishable with imprisonment up to three years and a fine which may extend to Rs.1 lakh, says the latest amendment.

The amended Act, among other things, has expanded the scope of various abuses under "commercial sexual exploitation of children" to include "all forms of sexual exploitation of a child including visual depiction of a child engaged in explicit sexual conduct, real or stimulated, or the lewd exhibition of genitals intended for sexual gratification of the user, done with a commercial purpose, whether for money or kind. It includes implying, allowing, using, inducing or coercing any child to engage in sexual conduct. It also includes the use of the child in assisting with other persons to engage in explicit sex."⁸⁵

The Goa Children's Act, in dealing with child sexual abuse, attempts to place a responsibility on different sections of society to play a role in protecting all children and preventing the abuse of any child.

JUDICIAL DECISIONS

The Supreme Court of India, in *Vishal Jeet V. Union of India*⁸⁶ and *Gaurav Jain V. Union of India*⁸⁷, has passed two important judgments on the subject of sexual exploitation of children & women & their rescue and rehabilitation. The Supreme Court of India in the

⁸⁵ www.hindu.com/2005/09/04/stories/2005090401461100.htm; last visited on 25 April 2009

⁸⁶ (1997) 8 SCC 114

⁸⁷ AIR 1997 SC 3021

former case passed an order stating that the Central and State governments should set up Advisory Committees to suggest measures to be taken in eradicating child prostitution;

NHRC GUIDELINES

The National Human Rights Commission has from time to time suggested some guidelines to be followed for the prevention of child prostitution. The National Human Rights Commission has blamed the societal indifference for child prostitution and said it must be eradicated from India, where nearly 30 per cent of prostitutes are children.

Describing child prostitution as the worst kind of exploitation and degradation and the worst violation of human rights, it said that the Indians had no right to call themselves civilised till they took up cudgels on behalf of children to end the menace.

According to its estimates, there are nearly 2,70,000 to four lakh children below 14 years in commercial prostitution in the country. NHRC suggested that the issue does not merely warrant action by government authorities and police but it is the responsibility of the entire civil society to participate and take steps to curb the problem of child prostitution

NATIONAL COMMISSION FOR CHILDREN

A National Commission for Children has been set up in February 2007 to address the issues of child rights and child protection. The national commission suggested that in case of **Immoral Traffic (Prevention) Act,1956** (for elimination of child prostitution and devising a comprehensive package for rehabilitation) the age of majority of the child

under the Act may be raised to 18 years. Further it suggested that the Government should take up correctional measures and also to rehabilitate the women and children in prostitution. The commission, in case of **Indian Penal Code 1960**, suggested for the strengthening of the laws to curb the incidence of sale of minor girls.

In **Beijing**, concern for girls was reflected in the plan of action. The fourth world conference on women (held at Beijing in the year 1995) reaffirmed that the Human rights of women and children are an inalienable, integral and indivisible part of universal human rights. During the last one decade ECPAT (End Child prostitution and Trafficking) and UNICEF have considerably contributed towards awareness raising at the regional and global level. The Stockholm Conference on Commercial Sexual Exploitation was the first serious international effort to move from statements of concern to actions.

LEGAL FRAMEWORK (*international*):

CRC:

The Convention on Rights of Child has defined a child to be every human being below 18 years of age⁸⁸ and has provided the meaning of child prostitution as the use of a child in sexual activities for remuneration or any other form of consideration.⁸⁹

⁸⁸ Article 1

⁸⁹ Article 2

The other provisions include the requirement on the part of the State parties to take appropriate measures – legislative, administrative, social and educational- for the protection of a child from all forms of abuse or exploitation or all forms of physical or mental violence, injury, negligent treatment or maltreatment including sexual abuse while they are in the care of parents or legal guardians.⁹⁰ Furthermore provisions have also been made for the protection of the child by giving directions to the State Parties not to allow a child to remain in an environment which deprives him of his family environment and see to it that he shall be given special protection.⁹¹ State parties are also required to recognize the right of a child to be protected from economic exploitation and from performing any work harmful to the child's health or physical, mental, spiritual, moral or social development.⁹² State parties should also take all national, bilateral, multilateral measures to prevent a child from falling into the traps of flesh trade or from being abducted, sold or trafficked for any purpose.⁹³

Similarly provisions have also been made for the State parties to take appropriate measures to promote physical and psychological recovery of a child victim and to promote for his social reintegration.⁹⁴

The convention draws attention to four sets of civil political, social, economic and cultural rights of every child. These are:

⁹⁰ Article 19

⁹¹ Article 20

⁹² Article 32

⁹³ Article 34 and 35

⁹⁴ Article 39

THE RIGHT TO SURVIVAL:

which includes the right to life, the highest attainable standard of health, nutrition and adequate standards of living. It also includes the right to a name and a nationality.

THE RIGHT TO PROTECTION:

which includes freedom from all forms of exploitation, abuse, inhuman or degrading treatment and neglect, including the right to special protection in situations of emergency and armed conflicts.

THE RIGHT TO DEVELOPMENT:

which includes the right to education, support for early childhood development and care, social security and the right to leisure, recreation and cultural activities.

THE RIGHT TO PARTICIPATION:

which includes respect for the views of the child, freedom of expression, access to appropriate information, and freedom of thought, conscience and religion.

ICCPR:

The present Covenant provides that no one shall be required to perform forced or compulsory labour.⁹⁵ The right of every child to protection has also been provided for in

⁹⁵ Article 8

this Convention. It also prohibits any sort of discrimination in this case.⁹⁶ Equality before law and equal protection of the law has also been provided for⁹⁷ in the concerned piece of legislation which gives a child prostitute the right to have an equal protection of law as any other human being.

CEDAW:

This Convention has also made some provisions for the protection of children from being sexually exploited. Though this convention deals specifically with women still it can be very useful in protecting the girl child from falling prey into the hands of the procurers and traffickers. The State Parties are required to take appropriate measures, including legislation, for the purpose of suppressing all forms of trafficking in women and the exploitation of prostitution of women.⁹⁸ This gives the State parties the responsibility to take steps for curbing the so called problem of child prostitution.

UDHR:

Respect for every human being has been provided for in this Declaration. Every human being has the right to life, liberty and security of person which is the most essential right given to an individual for its survival.⁹⁹ It has also prohibited slavery and servitude in all their forms¹⁰⁰ and that no one shall be subjected to torture or to cruel, inhuman or

⁹⁶ Article 24

⁹⁷ Article 26

⁹⁸ Article 6

⁹⁹ Article 3

¹⁰⁰ Article 4

degrading treatment or punishment.¹⁰¹ Furthermore discrimination of any sort and on any ground has been prohibited in the concerned Declaration.¹⁰²

ICESCR:

Equal rights of men and women to the enjoyment of all economic, social and cultural rights have been provided for in the present Covenant.¹⁰³ States which are parties to the present Convention are required to ensure that everyone has the right to the enjoyment of just and favourable conditions of work which ensures safe and healthy working conditions.¹⁰⁴

State parties are also required to take special measures of protection and assistance on behalf of children without any discrimination for reasons of parentage or other conditions. Furthermore it has been provided that employments of any children in any work which is harmful to their morals or health or dangerous to their life or which hampers their normal development is to be punished by law. State parties are required to set the minimum age limit for the children below which they should not be employed.¹⁰⁵

¹⁰¹ Article 5

¹⁰² Article 7

¹⁰³ Article 3

¹⁰⁴ Article 7

¹⁰⁵ Article 10

NEED FOR A SEPARATE LEGISLATION

Out of a sample of 100 persons 92 of them said that there is a need for a separate legislation dealing with child sexual abuse covering the cases of child prostitutes also whereas 8 of them opined that there is no necessity of having a separate legislation as the present legislations are sufficient enough to curb this problem.

SAMPLE-100

Yes- 92

No- 8

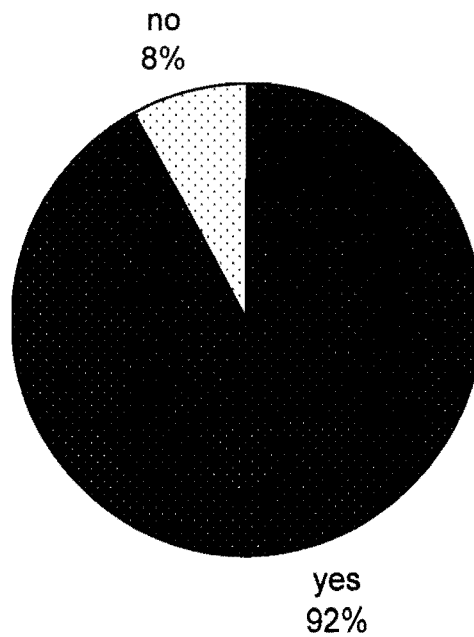


figure 3

The above graph thus represents the opinion of people regarding the need for a specific legislation to deal with the problems of child sex abuse. Out of a sample of 100 persons comprising officials and students, including law students, 92 of them opined that there is a need for a specific legislation to deal with the present problem. This proves that the need of the hour is to have a separate legislation dealing with child sex abuse.

CHAPTER-5

INADEQUACIES IN THE LEGAL FRAMEWORK

Though there are various legislations, both in national and international level, for the protection of the child still the statistics show that it has not been adequate enough and thus not helpful in curbing the problem. Day by day the number of children falling into this so called flesh trade is increasing. The possible reasons for it have been dealt with in this chapter. Some of the inadequacies in the legal framework which is responsible for the continuance of the problem are as follows-

1. The laws dealing with sexual offences do not specifically define child sexual abuse. Moreover it has mostly centered on a girl child whereas in today's parlance boys are also being trapped in sex trade. There are no provisions for the protection of a male child who has been forced to enter prostitution.
2. These laws are problematic when they are applied to children. The word 'rape' is too specific, this does not include abuse on 'boys'; moreover, 'intercourse' is often interpreted to mean with an 'adult'.
3. Offences under Sec. 354 of the IPC are a cognisable offence but are also bailable, which allows foreigners to simply leave the country before prosecutions begin.
4. What is also lacking is a central law on the subject. The Juvenile Justice Act was amended and rewritten in 2000, but it makes no attempt to identify sexual abuse on children.

5. The law has many loopholes and inadequacies. It does not punish the client and it does not make any provision for the rehabilitation of women and children who are rescued from brothels. There is no single legal entity which oversees its implementation. The definition of prostitution is vague and tends to punish women and minor girls, who are the victims, rather than those who live off their earnings. Besides, though all offences are cognisable under the Act, they rarely result in convictions. While the minor girls are sometimes rounded up during raids and detained in remand homes, the pimps, kotha malkeens (women who own brothels) and clients go scot free. Kotha malkeens or madams arrested usually manage to secure bail and continue running their business of exploiting minor girls.
6. The **Goa Children's Act** has also come in for severe criticism for its poor drafting, and the lack of legal insight into some of its provisions.
7. Police officers help in running the brothels adding fuel to the fire. In fact, police officers extort money from traffickers, prostitutes, and madams and abet the system of prostitution through a scheme of false registration of the girls that creates the fiction that they are not minors and creates a debt paid by the madams that places the girls in virtual bondage.¹⁰⁶ Ordinarily, a minor girl is purchased for about Rs 10,000. The police take a bribe of Rs 10,000 to frame the charges. Rs 20,000 is spent on getting the bail. The total expenditure incurred in the process is Rs 40,000 which is borne by the kotha malkeen. However, this amount is recorded as a debt the minor girl owes the malkeen. In this entire operation the dominant role is played by the police. There is a set rate for police bribes,

¹⁰⁶ www.ncbi.nlm.nih.gov/pubmed/12321933; last visited on 10 April 2009

depending upon the size of the brothel. Police also are clients themselves and/or extort money from clients. When arrests are made (to make police records look good), police deliberately target adult prostitutes instead of the minors because it is harder to get the minors released back into prostitution. The police are reluctant to release records about prostitution and are complicit when madams present false affirmations that they are relatives of minor girls to get them released from juvenile remand homes. The police helps the brothel keeper even by bringing back the ones who have run away. In a case where a girl named Geeta who was ten years old was rescued by a hawker after many attempts was returned back to the brothel keeper by the inspector himself on the same day.

7. ITPA is an abject failure. In ITPA what was sought and what has happened

- It sought to prevent trafficking by inhibiting organized sex work but trafficking continues unabated in sex work and other sectors.
- It sought to punish those who thrive on prostitution of others, not sex workers but third parties evade law and most arrests / convictions against sex workers U/S 8.
- It sought to protect trafficked persons by rescue & removal but police raids intensify violence & abuse against sex workers
- It sought to rehabilitate sex workers in state run institutions but practically no homes have been arranged for that purpose and there has been no effective rehabilitation of sex workers.

AMENDMENTS SOUGHT TO BE MADE IN ITPA

ITPA Amendment Bill 2006 - Amendments at a glance

- * Modification of definition of prostitution.
- * Enhanced penalty for brothel keeping.
- * Creation of offences of trafficking in persons.
- * Penalties for visiting brothels.
- * Set up anti-trafficking authorities at centre and State.
- * In camera trials.

OFFENCES AGAINST CHILDREN'S BILL 2006

The proposed Bill aims to prevent commission of offences of atrocities against children and to provide for Special Courts for the trial of such offences and for their relief and rehabilitation. Provisions have also been made for their relief and rehabilitation. Clause 10 provides that the Central govt. shall provide requisite funds for the purposes of this Bill. But the problem is it's still a Bill.

CHAPTER-6

CONCLUSION WITH SUGGESTIONS

The previous chapters gave a clear idea as to what is child prostitution, how intense the problem is in our country, what are the facts regarding prostitution and what are the problems faced by the child prostitutes, what protection is available for them, through various legislations, both at national and international level and what are the inadequacies in the legal framework for which the so called problem is still continuing and, to a great surprise, gaining its momentum day by day. The present chapter deals with certain suggestions which, if worked out, may help in curbing this problem.

From the historical background itself we get a clear vision as to the existence of this problem since time immemorial. Chapter 1 focusses on the definition and types of prostitution. It is hard to put a child into any of these water tight compartments of the types of prostitutes. A controversy has arisen regarding the nomenclature given to child prostitutes as some authors have opined that a child who enters into this sex trade never enters voluntarily and has in every case been forced or lured to do so. So, they should not be termed as prostitutes because they have no consent in it and even if they have then it cannot be treated as a valid one because a child's consent is no consent. So the nomenclature for a child engaged in sex trade is a big problem. The definition of child prostitution in the CRC has to be modified and the element of force present in it should be highlighted. Moreover the term 'prostitute' used for them is derogatory of their dignity as individuals because it has a psychological impact on them and it hampers their morale

which prevents their normal growth. So in the opinion of the researcher the nomenclature should be changed.

The second chapter dealt with the facts regarding child prostitution in India. The hazy picture provided for the same makes it crystal clear that there is inadequate data for the children engaged in the flesh trade. When this problem has been in existence in our society since time immemorial then what prevented it from coming into the limelight and drawing the attention of the public. The State didn't take this problem that seriously. That is the reason for which there is no relevant statistics available till date. This also shows the negligence on the part of the state authorities to provide proper protection to the children from getting indulged into this flesh trade. It is high time that we expose this problem to the society and make the public aware of this crime happening in our society and educate them to take immediate steps to curb this problem because we never know what will happen to our child tomorrow. The pace at which this problem is growing threatens each and every parent today. But the sad fact is that our public is still not aware of this heinous crime being committed in a large scale in our country. This is evident from the graph relating to the awareness level of the public regarding the problem of child prostitution. Even if the problem is growing in an alarming rate but still our government is sleeping and is least bothered to provide us a proper statistics so that the intensity of this problem can be clearly known.

The third chapter hinges on the factors leading to the problem of child prostitution. Although there are various factors which are playing a key role behind child prostitution still as per the data collected by the researcher poverty has been proved to be the major

factor behind child prostitution. Due to that children are being sold by parents, trafficked by luring them and giving them false promises of getting them a job or of marrying them etc. So basically poverty is the major factor which leads to the rising of other factors like trafficking, lack of employment etc. and ultimately adding fuel to the fire of continuance of the so called problem. From the data collected by the researcher and the graph which is represented (figure 2) the hypotheses of the researcher has been proved that poverty is the main cause behind child prostitution.

The fourth and fifth chapter deal with the legal framework provided, both at the national and international level, for the protection to the child from getting exploited through prostitution, trafficking etc. and the inadequacies in the same. The facts mentioned therein show that even though there are various legislations through which a child has been protected still the problem is continuing and growing with a much faster pace. Even the policemen, who are required and expected to protect the children, help the pimps and madams to continue this sex trade and exploiting the innocent tender kids by forcing them and torturing them to sell their bodies to satisfy the customers.

The above facts mentioned calls for an urgent need to hear the cries of the tender kids and help them come out of that trap and to reintegrate themselves in the society as normal human beings.

Child prostitution, today, is a global problem. If this problem is to be eradicated, the governments and agencies and those responsible for enforcement need to start doing their jobs. As discussed above, the most important thing is to increase awareness and keep discussing ways and means to check this problem. We have to decide whether we are

going to take up the problem head-on and fight it any way we can or leave it to the adults who might not be there when things go out of hand. The researcher has made an attempt to suggest some steps to be taken in order to curb this problem of child prostitution

- India being a State party to various international conventions must take affirmative action in protecting children falling into prostitution
- Governments can also develop systems of co-operation between different nation's law enforcement agencies and with non-government organisations (NGOs) to prevent trafficking of human beings.
- It is absolutely necessary to alert government, civil society and concerned citizens to play a more active role in promotion, respect and appreciation of the rights of the child, and thereby to prevent the abuse of children, especially in sexual ways. Merely acknowledging this on the International Day for the Rights of the Child - 19th November - is insufficient. What is needed is continuous development of law and civil society responses to a perennial problem. In the legal arena, the problems in addressing child abuse are not so much related to the absence of law, but more due to the lack of a system of awareness, the lack of information, and poverty - which makes this problem that much challenging.
- Sensitization, education and awareness on the issue of child prostitution, is an important element of prevention as well as eradicating child prostitution
- A coordinated international campaign is needed to prevent child prostitution, provide services to children who are prostituted until they can be removed from prostitution, and implement effective recovery and reintegration programs. For such a campaign to be successful, it will require global coordination,

implementation at national, regional and community levels, and the leadership of many health professionals. The prostitution of children and the related health consequences have been accepted for far too long. The time has come to make them unacceptable.

- One effective way to fight child prostitution is to ensure everyone knows about this problem and to use all resources available to wipe out the same from the face of this earth. It is a war that needs world leader's utmost attention because it is a great crime against humanity to allow innocent lives to be destroyed by lust, poverty and sickness of the mind.
- There is much that the legal system must do to improve its response to this crime. The baby steps a few states have taken must mature into adulthood themselves
- Countless children can be saved from this experience if we all join together in a commitment to breaking the silence-every single time it happens. But even more critically, we need to join together in a commitment to breaking the general silence about sexual issues. Not until we have the kind of straightforward family discussions about sex prior to any abuse will we be able to be effective in preventing the sexual abuse of our children.
- Our society has not only turned a blind eye to minor girls being enticed into prostitution but also is directly responsible for the continuance in growth of child prostitution. First the demand for virgin prostitutes, and secondly it abets child prostitution by failing to provide adequate facilities for orphan and destitute children. Unless so called respectable sections of the society rise in revolt against exploitation the future of younger generation looks bleak. We have to forget the

idea of once a prostitute for ever a prostitute and think how can a child help what has been done her by an unthinking adult? We have to overlook their past and rehabilitate them

- Child prostitutes should be rescued from on-the-job violence and rehabilitation programs be established for those who discontinue this stigmatic profession, along with efforts to minimize reentry.
- The Government should divert more funds for rehabilitation of the child prostitutes
- Laws on family relations have a clear impact on the treatment of women and girls in the society. Although legal measures are in themselves not sufficient to tackle this problem, any legal change does have a demonstratively positive effect. Therefore there is a need for the strictest enforcement of the laws against prostitution and trafficking. The existing law is very weak in its intention and even weaker in its application. Thus there should be a separate legislation to deal with the problems of child prostitution. Stringent punitive measures should be taken against the traffickers.
- An effective way to stop child prostitution is to stop the demand for it by implementing harsh punishments and empowering police to have constant raids on places where there is child prostitution.
- There is a need to keep special vigils at railway stations, bus-stands, airports, sea-ports and such other places, which act as transit points for missing children, including children who run away or are made to run away. In this context, the

Government Railway Police, the Railway Protection Force, Airport and Seaport authorities needs to be oriented about the issue of missing children

- Child prostitutes need counseling. So steps should be taken by the non governmental organizations and the govt. for arranging programmes for the counselling of the child victims.
- To allow child prostitution is as good as allowing criminals to get away with killing children. That should not be allowed otherwise many of them will run loose and destroy innocent lives. It's time we get the world leaders and people who can do something to stop this horrible crime to do more to protect and save these innocent children.
- Through the power of the Internet, the most powerful communication tool, we can educate people about what's happening right now and how they can help in one way or the other to protect these children. As most of the people are still not aware of this problem they should be made aware and internet is one of the best means of spreading awareness among people.
- The social awareness programmes on national TV should be encouraged to document the phenomenon and broadcast it, so that there is country wide awareness which would put pressure on the authorities in every region.
- There is a clear indication that political parties in India have not considered the question of child prostitution in their agenda. Local party workers can play a major role in stopping the commercial sexual exploitation of the children. All major political parties have links with atleast one major trade union. The trade union leaders can play a crucial role by creating political pressure in this regard.

- Through the power of network marketing, we can help people make more money so they can contribute money to the organisations that are fighting child prostitution.
- Through donations from companies that are socially conscious of what's happening and through the money and efforts from foundations set up by billionaires to make this world a better place!
- Special schooling arrangement should be done for the children who are rescued from prostitution so that they may get the fruits of education.
- The media plays a significant role. The Press may not be successful in telling people what to think, but it is stunningly successful in telling its reader what to think about. Media professionals should address the issue of sexual violence against children in a consistent, sensitive and effective manner, consonant with the rights and best interests of children rather than sensationalizing them.
- **Child prostitution** is thus an evil which should be uprooted with all the society support. If the people are willing to adopt such children, no poor shall ever send their children for prostitution. The need of the hour is to improve the financial condition of the parents of the child prostitutes so that the problem gets nipped in the bud.
- Rather than worrying about these problems and feeling bad about the things that are happening in our world, we should do something about it and take action.

ANNEXURE-1

➤ Constitution of India:

Article 15(3):

Nothing in this article shall prevent the State from making any special provision for women and children.

Thus this Article provides that the State should make special provisions for the children for their upliftment.

Article 23:

Prohibition of traffic in human beings and forced labour.

(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law

(2) Nothing in this article shall prevent the State from 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.

Article 39 (e) and (f):

Certain principles of policy to be followed by the State. The State shall, in particular, direct its policy towards securing-

(e) 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.

f) That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.¹

➤ **Juvenile Justice Act 2000:**

Section 2(d):

This Section deals with 'child in need of care and protection' and provides in its clauses vi, vii and viii that,

In this Act, unless the context otherwise requires, - "child in need of care and protection" means a child –

- *who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts,*
- *who is found vulnerable and is likely to be inducted into drug abuse or trafficking,*
- *who is being or is likely to be abused for unconscionable gains,*

Thus from the above provision it is crystal clear that a child who is trapped into the flesh trade is a child in need of care and protection as per the Juvenile Justice Act 200 and thus is entitled to protection.

¹ Substituted by the Constitution (Forty Second Amendment) Act, 1976, s. 7, for cl. (f), (w.e.f 3.1.1977)

Section 39:

This Section deals with restoration and provides as under;

Restoration- (1) Restoration of and protection to a child shall be the prime objective of any children's home or the shelter home.

(2) The children's home or a shelter home, as the case may be, shall take such steps as are considered necessary for the restoration of and protection to a child deprived of his family environment temporarily or permanently where such child is under the care and protection of a children's home or a shelter home, as the case may be

(3) The Committee shall have the powers to restore any child in need of care and protection to his parent, guardian, fit person or fit institution, as the case may be, and give them suitable directions

Explanation: For the purposes of this Section 'restoration of child' means restoration to-

- a) parents*
- b) adopted parents*
- c) foster parents*

From this provision it is clear that a child who has been rescued from prostitution should be restored to his parents or adopted or foster parents.

➤ **Immoral Traffic Prevention Act, 1986:**

Section 5:

Procuring, including or taking person for the sake of prostitution. -

(1) Any person who -

- a) procures or attempts to procure a person, whether with or without his consent, for the purpose of prostitution; or*
- b) includes a person to go from any place, with the intent that he, may for the purpose of prostitution become the inmate of or frequent, a brothel; or*
- c) takes or attempts to take a person, or causes a person to be taken, from one place to another with a view to his carrying on or being brought up to carry on prostitution; or*
- d) causes or induces a person to carry on prostitution;*

shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years:

Provided that if the person of whom an offence committed under this sub-section,-

- i) is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and*
- ii) is a minor, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years.*

(3) An offence under this section shall be triable -

- a. in the place from which a person is procured, induced to go, taken or caused to be taken or from which an attempt to procure or take such person is made; or*
- b. in the place to which he may have gone as a result of the inducement or to which he is taken or caused to be taken or an attempt to take him is made.*

Section 6:

Detaining a person in premises where prostitution is carried on. -

(1) Any person who detains any other person, whether with or without his consent, -

- a. in any brothel, or*
- b. in or upon any premises with intent that such person may have sexual intercourse with a person who is not the spouse of such 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 be mentioned in

the judgement, impose a sentence of imprisonment for a term of less than seven years].

(2) Where any person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offence under sub-section (1).

(2A) Where a child or minor found in a brothel, is on medical examination, detected to have been sexually abused, it shall be presumed unless the contrary is proved, that the child or minor has been detained for purposes of prostitution or, as the case may be, has been sexually exploited for commercial purposes.

(3) A person shall be presumed to detain a woman or girl in a brothel or in or upon any premises for the purpose of sexual intercourse with a man other than her lawful husband, if such person, with intent to compel or induce her to remain there, -

a. withholds from her any jewellery, wearing apparel, money or other property belonging to her, or

b. threatens her with legal proceedings if she takes away with her any jewellery, wearing apparel, money or other property lent or supplied to her by or by the direction of such person.

(4) Notwithstanding any law to the contrary, no suit, prosecution or other legal proceeding shall lie against such woman or girl at the instance of the person by whom she has been detained, for the recovery of any jewellery, wearing apparel or other property alleged to have been lent or supplied to or for such woman or girl or to have been pledged by such woman or girl or the recovery of any money alleged to be payable by such woman or girl.

Section 13 (4):

(4) The Central Government may, for the purpose of investigating any offence under this Act or under any other law for the time being in force dealing with sexual exploitation of persons and committed in more than one State, appoint such number of police officers as trafficking police officers and they shall exercise all the powers and discharge all the functions as are exercisable by special police officers under this Act with the modification that they shall exercise such powers and discharge such functions in relation to the whole of India.

Section 21 (1):

Protective Homes. - The State Government may in its discretion establish as many protective homes and corrective institutions under this Act as it thinks fit and such homes and institutions, when established, shall be maintained in such manner as may be prescribed.

➤ **Indian Penal Code 1960:**

Section 360: (kidnapping for exporting)

Kidnapping from India –

Whoever conveys any person beyond the limits of India without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from India.

Section 361:

Kidnapping from lawful guardianship –

Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation.-The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Section 366 A:

Procreation of minor girl –

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 seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

Section 366B:

Importation of girl from foreign country –

Whoever imports into India from any country outside India or from the State of Jammu and Kashmir any girl under the age of twenty-one 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 ten years, and shall also be liable to fine.

Section 372:

Selling minor for purposes of prostitution, etc. –

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, or 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 ten years, and shall also be liable to fine.

Explanation I.-When a female under the age of eighteen 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 II.-For the purposes of this section "illicit intercourse" means sexual intercourse between persons not united by marriage, 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.

Section 373:

Buying minor for purposes of prostitution, etc. –

Whoever buys, hires or otherwise obtains possession 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, or 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 ten years, and shall also be liable to fine.

Explanation I.-Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of eighteen 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.

Explanation II.-"Illicit intercourse" has the same meaning as in section 372.

Section 376 (1):

Punishment for rape –

- (1) *Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished 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 unless the woman raped is his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:*

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

Section 377.

Unnatural offences –

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.- Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

ANNEXURE-2

➤ Convention On the Rights of Child (CRC):

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

For the purposes of the present Protocol:

(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;

Article 19

- 1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;*
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;*
- (c) The exploitative use of children in pornographic performances and materials.*

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

➤ **International Covenant on Civil and Political Rights**

(ICCPR):

Article 8

3.(a) No one shall be required to perform forced or compulsory labour;

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

➤ **Convention on All Forms of Discrimination against Women**

(CEDAW):

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

➤ **The Universal declaration of Human Rights (UDHR):**

Article 3.

Everyone has the right to life, liberty and security of person.

Article 4.

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 7.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

➤ **International Covenant on Economic, Social and Cultural**

Rights ICESCR:

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(b) Safe and healthy working conditions;

Article 10

The States Parties to the present Covenant recognize that:

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

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