



THE HISTORICAL DEVELOPMENT OF THE LAWS RELATING TO CHILD SEXUAL EXPLOITATION PRIOR TO THE PASSING OF THE UNCRC IN 1989



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ABSTRACT

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The abuse of children for sexual purposes has a long-standing history. It evolved due to many factors such as disparity in gender, misled religious beliefs, acceptable customary practices, superstition and economic development and it remains severe globally. The United Nations Children's Fund ("UNICEF") estimated in 2014 that about 120 million girls under the age of 18 have been subjected to forced sexual acts at some point of their lives. Even though this statistic covers all categories of sexual abuse, including exploitative as well as non-exploitative forms, the number is irrefutably alarming and UNICEF acknowledges that sexual violence, including sexual exploitation, is one of the most disconcerting of violations against the rights of children. Owing to the severity of the matter, protecting the children against sexual exploitation and abuse has become an international agenda since the late 1800s. It is now universally established under Article 34 of the United Nations Convention on the Rights of the Child ("the UNCRC") that children have the rights to be protected against any form of sexual exploitation and sexual abuse. This article seeks to canvass the historical development of the laws relating to child sexual exploitation prior to the passing of UNCRC in 1989.

Contribution/ Originality: This study contributes to the existing literature concerning child sexual exploitation. It has canvassed the historical development of the laws prior to the passing of UNCRC in 1989 emphasising on the factual circumstances that have driven such development.

1. INTRODUCTION

The abuse of children for sexual purposes has a long-standing history. It evolved due to many factors such as disparity in gender, misled religious beliefs, acceptable customary practices, superstition and economic development (Flowers, 1994). For instance, pre-pubescent boys were in demand during the ancient Greece and Rome era as the consequence of pederasty¹ praxis (Grille, 2014). Child prostitution was also institutionalised during ancient Rome and the business was taxable (Grille, 2014). In the 18th to 19th century, particularly in London and France, it was believed that sexual intercourse with children could cure venereal disease and this led to increasing number of child rape cases (Olafson *et al.*, 1993). Meanwhile in British Malaya, there was vigorous recruitment of women and girls

¹ Sexual activity involving a man and a boy

for the sex industry in the 1800s (Nagaraj and Yahya, 1998). Many girls were trafficked by mine operators and were forced to work as prostitutes in British Malaya (Nagaraj and Yahya, 1998; Ee, 2003). They were either kidnapped, deceived to believe that there were jobs or education opportunities, or initially sold due to poverty and extreme hunger (Bryder, 1998; Nagaraj and Yahya, 1998).

Besides that, the depiction of children as sexual objects could also be found in ancient work such as paintings and writings (Creighton, 2003; Gillespie, 2012; Wortley and Smallbone, 2012). Between 1757 and 1795, there was a famous publication entitled "Harris's List of Covent Garden Ladies" largely circulated in London. The book described the attributes and specialities of Covent Garden prostitutes and oftentimes referred to them as the young girls (Wortley and Smallbone, 2012). The later advent of camera in the 1800s has brought the production of pornography and it became a worldwide commercial industry since the 1960s (Creighton, 2003).

The abuse of children for sexual purposes remains severe globally. Although no precise figures are available on the extent of the phenomenon, the United Nations Development Programme ("UNDP") estimated that over 1.2 million children were involved in the commercial sex industry in the year 2000 (Roby, 2005; M'jid, 2013). The United Nations Children's Fund ("UNICEF") estimated in 2014 that about 120 million girls under the age of 18 have been subjected to forced sexual acts at some point of their lives (UNICEF, 2014). Even though this statistic covers all categories of sexual abuse, including exploitative as well as non-exploitative forms, the number is irrefutably alarming and UNICEF acknowledges that sexual violence, including sexual exploitation, is one of the most disconcerting of violations against the rights of children.

It is also estimated that 20% of all internet pornography involves children and the number of such images had increased 1500% since 1988 (Holmes and Holmes, 2009; Clancy, 2011). A total of 29,908 reports of child abuse material were lodged to the International Association of Internet Hotlines in 2011 with 71% of the reports involved prepubescent children (M'jid, 2013). Furthermore, 3,000 victims and 1,500 offenders from more than 40 countries have been identified by INTERPOL via the International Child Sexual Exploitation image database by early 2013 (M'jid, 2013).

Ensuing the severity of the matter, protecting the children against sexual exploitation and abuse has become an international agenda since the late 1800s. The international community has since created numerous dedicated legal instruments both domestic and international to address the concern. It is now universally established under Article 34 of the United Nations Convention on the Rights of the Child ("the UNCRC") that children have the rights to be protected against any form of sexual exploitation and sexual abuse. This article will canvass the historical development of the laws relating to child sexual exploitation prior to the passing of UNCRC in 1989.

1. Early Laws before UNCRC

The earliest legal response to address the issue of child sexual abuse and exploitation were appreciable from the enactment of age of consent law. By the end of the Middle Ages, the law against inappropriate sexual contact with children was enforced where sexual intercourse with a child who is under the age of consent to marry was made an offence notwithstanding the fact that the girl consented or failed to resist (Conte, 2002). This initial law was introduced in the English Statute of Westminster 1 in 1275 where it was prohibited to "ravish, nor take away by force" any girls under 12 years old (being the age of consent to marry) (Robertson, 2017). Further in 1576, the Statute 18 Elizabeth made it felony for carnal knowledge of girl aged below 10 years old and this offence was made punishable by death later in 1828 (Waites, 2005; Robertson, 2017). This statute had also become the model for the early rape laws in America, where 10 years old were the common age of consent in many states code (Posner and Silbaugh, 1996; Conte, 2002; Discover The Truth, 2013).

The age of consent law was later developed in other parts of the world in late 18th century (Posner and Silbaugh, 1996). For instance, countries under the French Napoleonic Code 1791, the age of consent was eleven and was later increased to thirteen years old in 1863 (Peakman, 2013).

Prostitution on the other hand, started to be regulated, not to control the sale of sex, but to control the spread of venereal diseases (Deady, 2011). It started in France, where a simple administrative measures was taken since 1802 for all working class women, regardless of their professions, to undergo medical check-ups and it was later decreed in 1810 for compulsory check-ups and registration with its sole aim to combat venereal diseases (Svanström, 2000). Similarly in Netherland, medical examination were compulsory for sex workers under their Penal Code in 1811 (McCoy, 2013). The French effort had encouraged similar calls over the Europe, including England (D'Itri, 1999). The Contagious Disease Act of England introduced in 1864 was enforced in army camps and naval ports, where sex workers were subject to compulsory registration and medical surveillance (Hamilton, 1978). The regulation however was criticized on various grounds – pithily on gender inequality as only women were forced to undertake the examination regardless of whether they were prostitutes or otherwise, and not to mention the ground that the women were subjected to the painful and humiliating examination procedures (Wojtczak, 2009).

It was during this period when the “Maiden Tribute campaign” was highlighted in the Pall Mall Gazette, an evening newspaper founded in London. A series of articles have exposed the trade and prostitution involving children and it was argued that young girls were “too young, in fact, to understand the nature of the crime of which they are the unwilling victims” (Beresford, 2014). The campaign led to the passing of the Criminal Law Amendment Act 1885, which increased the age of consent for girls to sixteen years old in in England. France and other European countries such as Spain, Denmark and Portugal which adopted the Napoleonic Code likewise raised the age of consent to between 13 and 16 years, from the initial age of 10 to 12 years old (Robertson, 2017). Similarly in Australian jurisdictions, the age of consent that was initially set to 14 years was increased to 16 years in late 1890s (Boxall *et al.*, 2014).

Besides increasing the age of consent, the law shifted towards outlawing the procuring, detaining, or keeping a person, as well as managing a brothel or letting out premises for the purpose of prostitution. At this juncture, prostitution *per se* was not outlawed, nonetheless profiteering from and exploiting for prostitution were made otherwise. For example, Public Morality Acts and the Penal Code of Amsterdam was amended in 1911 to forbid any activity that leads to prostitution (McCoy, 2013). Similarly in New England, ordinances were passed addressing brothels, adultery, fornication and street walking as well as adultery were enforced, and sexual misconduct was punishable with fines (Deady, 2011).

The booming prostitution business at this time had led to the increase in trafficking of women and girls. For instance, it was reported in the Dutch Parliament in 1906 that there were about 3,500 girls in Switzerland, 10,000 in Berlin and 2,100 in London had been saved from the recruiter (Schrover, 2015). These occurrences were then perceived as "white slave trade" in the late 19th century, as many innocent women and girls were taken by force and held in captive with threats to their lives by the commercial procurers (Deady, 2011).

The white slave trade issue earned the attention of the international governments. The National Vigilance Association, a non-governmental body in England, have been actively campaigning for the enforcement and improvement of the laws for the repression of criminal vice and public immorality (Allain, 2017). Their resolution ‘to open definite measures for its mitigation – if possible its suppression’ became the official governmental response to white slave trade malady (Allain, 2017). The association hosted the first International Congress on the White Slave Trade in 1899 (Davies, 2014). The Congress furthered the desire for an agreement to be established between the governments to punish the person who were involved in procuring of women and girls by force, violence and other illegal means, to commence simultaneous investigations, and to enter treaties for extradition (Allain, 2017).

It was later in 1904, that the International Agreement for the Suppression of the White Slave Traffic was adopted.² By virtue of this Agreement, the state parties were obliged to take measures to enable information exchange, victims' identification, and the employment agencies supervision (Obokata, 2006). Nonetheless, no law enforcement provisions were incorporated in this Agreement. As a result, the efforts to suppress white slave trafficking had been less effective. Consequently, the International Convention for The Suppression of The White Slave Traffic ("1910 Convention") was adopted in 1910 to fill up the lacunae (Allain, 2017). The state parties were urged to establish the law to suppress the act and to punish the offenders [Article 1 of 1910 Convention].

Whilst the above instruments concentrate on the suppression of the white slave traffic, there was another related international instrument which specifically address child rights - the Declaration of the Rights of the Child that was adopted by the League of Nations in 1924. This instrument was later adopted in an extended form by the United Nations in 1959 that contains an express provision recognising the rights of the child to be protected against every form of exploitation.

2. The UNCRC

The UNCRC comprises 54 articles encompassing all aspects of a child's life including civil, political, economic, social and cultural rights that all children are entitled to UNCRC (1989). A "child" in this Convention generally refers to person below 18 years old, unless the law of the state provides otherwise lower age of majority by virtue of Article 1 of the UNCRC. Further, Article 34 of the UNCRC seeks to protect children from any form of sexual exploitation and sexual abuse. The article specifically obliges the State Parties to prevent the engagement of a child in any unlawful sexual activities, prostitution and pornography.

The initial draft of this article in 1978 was to assert the right of every child to be protected against all form of neglect, cruelty, and exploitation as well as to protect them from any employment which would prejudice their development (United Nations, 1978).³ However, after a series of debates and proposals, tackling the issue of sexual exploitation specifically began to be the centre of consideration in the 1980s, where prostitution, pornography and child trafficking were the highlights leading to the enactment of the current Article 34, which reads:

"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."*

2. CONCLUSION

The abuse of children for sexual purposes is not a new phenomenon. As this article has canvassed, the practice could be traced since the period of ancient Greek and Rome. The abuse of children for sexual purposes, especially prostitution, subsequently became an auspicious venture as there were high demand for it. This leads to another

² International Agreement for the Suppression of the White Slave Traffic, signed at Paris on 18 May 1904, amended by the Protocol signed at Lake Success, New York, 21 March 1950

³ The draft article reads:

"Article IX

- 1. The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form*
- 2. The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development"*

serious issue of child trafficking. Hence in the early days, there was enactment of law domestically in certain jurisdiction such as Napoleon Code and England to control these activities. Furthermore, with the advancement of modern technology, these promiscuous activities expanded, with the sexual acts being depicted and recorded, and subsequently processed and transmitted online. Both pornography and prostitution have unfortunately expanded to become transnational crimes.

This article has also highlighted that the issue of child sexual exploitation has received international attention since the 1880s with the commencement of the First International Congress on the White Slave Trade hosted in 1899. By the subsequent adoption of the UNCRC in 1989, it is universally accepted that all children have rights to be protected against all forms of sexual exploitation and abuse. The state parties undertake to take feasible measures to effectuate the provisions of the Convention. It remains to be seen if the protection of potential victims of child sexual exploitation be better protected by the existence of these provisions. It goes without saying that for these provisions to be effective, strict implementation and rigorous enforcement mechanisms need to be put in place as well.

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